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International Trade Client Alert

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U.S. Customs and Border Protection Has ACE Up Its Sleeve

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What a difference a few days make! Up until Monday, February 8th, it was understood that on February 28th, CBP entries, and those filed with the Food and Drug Administration (FDA), the National Highway Traffic Safety Administration (NHTSA) and the Animal and Plant Health Inspection Service (APHIS) (Lacey Act) would all have to be filed through ACE. Thirteen more PGAs were scheduled to come on-line in July 2016, full implementation for all remaining electronic portions of the CBP cargo process was scheduled for October 2016 and ACE for all agencies and all purposes would be operational by December 2016.

Then, on Monday February 8, CBP responded to the multitude of concerns expressed by the trade community and other stakeholders and conceded it is better to be safe than sorry, meaning there will be further delays in the deadlines for certain phases to be implemented with the Automated Commercial Environment ("ACE"). Beyond certain elements to be in place at later dates, the most striking change is the complete removal of Food and Drug entries from the timeline. It is expected FDA will be operational in ACE by November 2015, but that is just an estimate and is really cutting it close!

The February 28, 2016 deadline remains in place but on a much more limited basis. Specifically on that date, CBP will begin to narrow the services available through the legacy Automated Commercial System ("ACS") to consist of the Client Representative and Technology Service Desk; performing ACS maintenance during peak business hours; and providing processing priority to ACE entries where corresponding ACS entries are still available.

Next comes March 31, 2016 at which time the legacy ACS system gets shut down and ACE becomes the only available vehicle through which to file: electronic entry summaries, associated with the following entry types 01, 03, 11, 23, 51 and 52 [see entry/entry summary type key at end], with no PGA data. Add to that electronic entries and corresponding entry summaries associated with the entry types above, with data for the following agencies: Animal and Plant Health Inspection Service (APHIS) for Lacey Act, unless paired with other Partner Government Agency (PGA) data, and National Highway Traffic Safety Administration (NHTSA), unless paired with other PGA data.

On March 31, 2016 only electronic entries and corresponding entry summaries (01, 03, 11, 23, 51 and 52) with only APHIS Lacey Act or NHTSA data, unless paired with other PGA data on the same transaction, may be filed in ACE.

After that, on May 28, 2016, electronic entries and entry summaries for 01, 03, 11, 23, 51 and 52, to include APHIS Lacey Act and NHTSA data only, unless paired with other PGA data, must be filed in ACE. Which means, these same entry and entry summary types may no longer be filed in ACS.

During Summer 2016 (no specific dates yet) filers will be required to file in ACE and no longer permitted to file in ACS the following transactions: electronic entries and entry summaries, associated with the following entry types, with no PGA data (except for APHIS Lacey Act or NHTSA data) will be deployed and must be filed in ACE, entry types 02, 07, 12, 21 and 22; plus additional entry summary types 11, 31, 32, 34 and 38.

Also during Summer 2016, electronic entries and entry summaries associated with entry types 02, 07, 12, 21, or 22 plus electronic entry summaries associated with entry types 31, 32, 34 or 38 will be able to be filed in ACE.

As Summer 2016 unfolds, the below listed agencies will become functional in ACE:

- Agricultural Marketing Service (AMS);
- Bureau of Alcohol, Tobacco and Firearms and Explosives (ATF);
- Remaining APHIS data (APHIS Core);
- Centers for Disease Control (CDC);
- Defense Contract Management Agency (DCMA);
- Directorate of Defense Trade Controls (DDTC);
- Drug Enforcement Administration (DEA);
- Enforcement and Compliance Commission (E&C);
- Environmental Protection Agency (EPA);
- Fish and Wildlife Service (FWS);
- Food Safety and Inspection Service (FSIS);
- National Marine Fisheries Service (NMFS); and
- Alcohol and Tobacco, Tax and Tariff Bureau (TTB).

Still unclear are the details regarding deployment of the remaining core trade processing capabilities in ACE, and the mandatory use of ACE for all remaining electronic portions of the CBP cargo process. For updates about the progress of individual agencies, see www.cbp.gov/ace-pga.

During the transition period, electronic filings will be permitted prior to the mandatory filing requirements in ACE for entry summaries associated with entry types 01, 03, 11, 23, 51, and 52, until March 31, 2016; data for APHIS Lacey Act or NHTSA, until March 31, 2016; entries associated with entry types 01, 03, 11, 23, 51, and 52, until May 28, 2016; and entries and entry summaries associated with entry type 06, until May 28, 2016, when they are all required to be filed in ACE.

And the latest news comes from Census. AESDirect portal at aesdirect.census.gov and the AESPCLink application users will have their services migrated on the following schedule:

Prefixes 00-19 on 02/29/2016
Prefixes 20-39 on 03/14/2016
Prefixes 40-59 on 03/28/2016
Prefixes 60-79 on 04/11/2016
Prefixes 80-99 on 04/25/2016

AESWebLink and AESDirect EDI Upload users are not affected by this migration.

The December 2016 implementation date is firm, yet much remains to be accomplished. CBP has clearly listened to the many warnings of what could happen if full ACE implementation is not done in measured steps. The agency should be given credit for understanding the magnitude of this undertaking, as should the PGAs involved. With good reason, there is much concern about what could happen if this rollout turns out catastrophic, so the federal agencies clearly appreciate that measured actions are the wisest course.

Entry/Entry Summary Type Key:

- 01 - Consumption
- 02 - Consumption - Quota/Visa
- 03 - Consumption - Antidumping/Countervailing Duty
- 07 - Consumption - Antidumping/Countervailing Duty and Quota/Visa Combination
- 11 - Informal
- 12 - Informal - Quota/Visa (other than textiles)
- 21 - Warehouse
- 22 - Re-Warehouse
- 23 - Temporary Importation Bond (TIB)
- 31 - Warehouse Withdrawal Consumption
- 32 - Warehouse Withdrawal - Quota
- 34 - Warehouse Withdrawal - Antidumping/Countervailing Duty
- 38 - Warehouse Withdrawal - Antidumping/Countervailing Duty and Quota/Visa

Combination

- 51 - Defense Contract Administration Service Region (DCASR)
- 52 - Government - Dutiable

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