

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Announcement of the National Customs Automation Program Test Concerning the Electronic Issuance of Demands on Surety

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: General notice.

SUMMARY: This document announces that U.S. Customs and Border Protection (CBP) will conduct a National Customs Automation Program test regarding the electronic issuance of demands on surety for certain kinds of claims, the “Electronic Issuance of Demands on Surety” (EIDS) test. Test participation is limited to sureties that receive the “Notice of Penalty or Liquidated Damages Incurred and Demand for Payment” (CBP Form 5955A) for claims for liquidated damages or penalties. The EIDS test will not include any other purpose or type of claim for which the CBP Form 5955A is used, such as a demand for duties, taxes, fees, or charges other than liquidated damages or penalties.

DATES: The EIDS test will commence on December 13, 2023, and will continue indefinitely subject to any extension, modification, or termination as announced in the **Federal Register**. CBP will begin to accept requests from sureties to participate in the test on December 13, 2023, and CBP will continue to accept such requests until the EIDS test concludes. Public comments on the test are invited and may be submitted to the address set forth below at any time during the test period.

ADDRESSES: Comments and questions concerning this notice, or any aspect of the test, may be submitted at any time before or during the test period via email to Trade Remedy Law Enforcement Directorate, U.S. Customs and Border Protection, at EIDS@cbp.dhs.gov, with the subject line reading “Comments/Questions on EIDS Test.”

FOR FURTHER INFORMATION CONTACT: For policy-related questions, contact Sandra Barbosa, Supervisory International Trade Analyst, Civil Penalties Branch, Civil Enforcement Division, Trade Remedy Law Enforcement Directorate, Office of Trade, U.S. Customs and Border Protection, at (202) 853-6026 or via email at EIDS@cbp.dhs.gov, with a subject line reading “Electronic Issuance of Demands on Surety Test.”

For technical questions related to SEACATS, please contact Daniel P. Travi, SEACATS Program Manager, Border Enforcement Management Systems, Office of Information Technology, U.S. Customs and Border Protection, at (571) 375-5707. For all other questions related to SEACATS, please contact Stephen Haigler, Chief, SEACATS/Training Branch, Office of Field Operations, U.S. Customs and Border Protection, at (202) 316-3898 or via email at EIDS@cbp.dhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

A. The National Customs Automation Program

The National Customs Automation Program (NCAP) was established by Subtitle B of Title VI—Customs Modernization in the North American Free Trade Agreement Implementation Act (Customs Modernization Act) (Pub. L. 103-182, 107 Stat. 2057, 2170, December 8, 1993) (19 U.S.C. 1411-1414). As a result of the implementation of NCAP, the thrust of customs modernization was focused on informed trade compliance and the development of the Automated Commercial Environment (ACE), an automated and electronic system for commercial trade processing, intended to streamline business processes, facilitate growth in trade, ensure cargo security, and foster participation in global commerce, while facilitating compliance with U.S. laws and regulations and reducing costs for U.S. Customs and Border Protection (CBP) and all of its communities of interest. The ability to meet these objectives depends on successfully modernizing CBP’s business functions and the information technology that supports those functions, including modernization of the administrative enforcement process (which includes the assessment of penalties, liquidated damages, and seizures). CBP’s modernization efforts are accomplished through phased releases of ACE component functionality, which update the system and add new functionality.

Sections 411 through 414 of the Tariff Act of 1930 (19 U.S.C. 1411-1414), as amended, define and list the existing and planned components of the NCAP (section 411), promulgate program goals (section 412), provide for the implementation and evaluation of the program (section 413), and provide for Remote Location Filing (section 414). Section 411(a)(2)(E) provides for an electronic penalty process as a planned component of the NCAP. Section 411(d)(2)(A) provides for the periodic review of data elements collected in

order to update the standard set of data elements, as necessary. CBP has begun development of an electronic liquidated damages and penalty process, and this notice announces the first test of a feature of the new process. The electronic liquidated damages and penalty process is intended to enhance, but not necessarily replace, the current paper process.

B. Authorization for the Test

The Customs Modernization Act provides the Commissioner of CBP with the authority to conduct test programs or procedures designed to evaluate planned components of the NCAP. The test described in this notice is authorized pursuant to the Customs Modernization Act and section 101.9(b) of title 19 of the Code of Federal Regulations (19 CFR 101.9(b)), which provides for the testing of NCAP programs or procedures. As provided in 19 CFR 101.9(b), for purposes of conducting an NCAP test, the Commissioner of CBP may impose requirements different from those specified in the CBP regulations.

C. Current Penalty/Liquidated Damages Claim Issuance Procedures

Consistent with 19 CFR 162.31(a), CBP must provide written notice of any fine or penalty incurred to each party that the facts of record indicate has an interest in the claim. Pursuant to 19 CFR 172.1(a), when there is a failure to meet the conditions of any bond posted with CBP or when a violation occurs which results in assessment of a penalty that is secured by a CBP bond, CBP must notify the principal, in writing, of any liability for that penalty or liquidated damages incurred and make a demand for payment. CBP also must notify the surety on the bond of any such liability, in writing, concurrent with notice to the principal. Claims for liquidated damages and penalties, including penalties secured by bonds, are issued by the Fines, Penalties and Forfeitures (FPF) Office in the port having jurisdiction over the claim on the CBP Form 5955A.

If the principal on the bond fails to file a petition for relief, or fails to comply in the time prescribed with a decision to mitigate a penalty or to cancel a claim for liquidated damages issued with respect to a petition for relief, the FPF Office having jurisdiction over the claim will mail a demand for payment to the surety. The surety will have 60 days from the date of the demand to file a petition for relief. See 19 CFR 172.4.

CBP created and maintains an electronic system entitled SEACATS¹ which is internal to the federal government, and functions as a case management system, capturing the relevant information for processing and adjudication of the legal outcomes of all fines, penalties, and claims for liquidated damages, among other things. The system allows CBP officers, import specialists, entry specialists, and other designated employees to input pertinent penalty and liquidated damages claim violation data (violator name, address, legal citations, facts pertinent to the violation, etc.) for the purpose of producing a completed CBP Form 5955A for mailing. The System of Records Notice (SORN) for SEACATS was published in the **Federal Register** on December 19, 2008 (73 FR 77764). The SORN established SEACATS as the system of records for persons found violating laws and regulations enforced by the Department of Homeland Security (DHS)/CBP.

II. Description of the Electronic Issuance of Demands on Surety Test

As part of its ongoing efforts to modernize the liquidated damages and penalty process, CBP engaged in regular outreach with internal and external stakeholders, including, but not limited to, FPF Officers, sureties, and trade associations. Through this outreach, CBP determined that the issuance of the CBP Form 5955A is time consuming and may not result in timely action on liquidated damages or penalties claims by sureties. As a result of these discussions, CBP developed the Electronic Issuance of Demands on Surety (EIDS) test, which will enable CBP to test the transmission of the CBP Form 5955A to the surety electronically by email, at the time the document is mailed to the principal on the bond, for claims for liquidated damages or penalties. Participating sureties will continue to receive a paper copy of the CBP Form 5955A by mail. The EIDS test will not include any other purpose or type of claim for which the CBP Form 5955A is used, such as a demand for duties, taxes, fees, or charges other than liquidated damages or penalties.

The EIDS test is voluntary, and sureties who wish to participate must comply with all the conditions set forth below. Test participants must provide an email address to which CBP will send CBP Form 5955A notices. The

email address provided will be maintained and stored in SEACATS. Participating sureties must inform CBP immediately of any changes to the email address used to receive the notices.

Participating sureties will receive a daily email from CBP. The email will contain a zip file listing up to 50 electronic notices of claims for liquidated damages or penalties secured by the receiving surety's bonds. Each zip file will be password protected, with the password being sent as a separate email, in tandem with the daily email containing the zip file. A surety could receive multiple emails in a day if the number of demands against its bonds for that day exceeds 50. Each email will indicate the total number of demands issued to the surety that day, which, if more than 50 demands are issued to a surety on a single day, could exceed the number of demands attached to an individual email. The relevant FPF Office will be copied on each email that includes notices that fall within its jurisdiction. Participating sureties will also receive paper copies of the Form 5955A. For participating sureties, the date the email with zip file and password is sent will be the date of demand for purposes of establishing the petition response period of 60 days as required by 19 CFR 172.4.

Participation in the test will provide test participants with the opportunity to test and give feedback to CBP on the EIDS test design and scope. Participation may also enable test participants to determine whether receiving the CBP Form 5955A electronically allows them to better track and reference demands on their bonds, to communicate more effectively with their clients and CBP, and to better understand when their bonds become obligated. Consequently, participation may allow sureties to better manage and validate their bond issuance and bond obligation processes.

III. Eligibility Requirements, Application Process, and Acceptance Into the Test

CBP is opening this test to sureties that receive the CBP Form 5955A. Participating sureties must have the ability to receive zip files at the email address provided and to open zip files and PDF documents. Every surety must have a 3-digit surety code to be eligible to participate in the test.²

Sureties interested in participating in the EIDS test should submit an email to the Civil Enforcement Division at *EIDS@*

cbp.dhs.gov stating their interest and ability to meet the eligibility criteria described in this notice. The email will serve as an electronic signature of intent to participate and must also include the email address to which the electronic notices will be sent, a point of contact name, and telephone number.

CBP may, in its discretion, decline to permit an interested surety from participating in the EIDS test, to include, for example, if CBP determines that a surety has neglected or refused to pay a valid demand made on the surety company's bond or otherwise has failed to honor an obligation on that bond or if CBP determines that any other unacceptable compliance risk exists. If CBP declines an interested surety's request to participate in the EIDS test, CBP will provide notice and an opportunity to respond, which will follow the procedures detailed below for proposed suspensions from test participation.

CBP will notify applicants by email if they are selected to participate in the test. Applicants will also be notified once CBP has verified their ability to receive email notifications that they are permitted to participate fully in the test. Test participants will receive technical, operational, and policy guidance through all stages of test participation.

IV. Misconduct Under the Test

Misconduct under the test may include failure to abide by the rules and procedures established under this test, failure to exercise reasonable care in the execution of participant obligations, or the failure to comply with any applicable laws or regulations that have not been waived. If a test participant fails to abide by the rules, procedures, or terms and conditions of the EIDS test as provided in this notice, and all other applicable **Federal Register** notices, or fails to comply with any applicable laws and regulations, then the participant may be suspended from participating in this test. Additionally, and in accordance with the procedures below, CBP may suspend a test participant based on a determination that an unacceptable compliance risk exists.

If the Director, Civil Enforcement Division (CED), Trade Remedy Law Enforcement Directorate, Office of Trade, finds that there is a basis to suspend a participant from participating in the test, then CBP will provide a written notice, via email, proposing the suspension with a description of the facts or conduct supporting the proposal. The test participant will have the opportunity to reply to the Director's email within ten (10) business days of the date of the written notice. When

¹ The Seized Asset and Case Tracking System (SEACATS) is the system CBP uses to track seized and forfeited property, from case initiation to final resolution. CBP has retired the full name usage, and now the acronym "SEACATS" is a standalone term for the system.

² Inquiries regarding the 3-digit surety code should be directed to the CBP Office of Finance, Revenue Division at *BondQuestions@cbp.dhs.gov*.

responding to a proposed suspension from the test, the participant should address the facts or conduct charges contained in the notice and state how compliance has been or will be achieved.

If no timely response is received, the proposed suspension becomes the final decision of CBP as of the date that the response period expires. If a timely response is received, the Director, CED, will issue a final decision in writing, by email, on the proposed suspension within thirty (30) business days after receiving the response from the test participant, unless such time is extended for good cause. Suspension of a test participant's privileges will take place either when the proposal becomes final, if the participant fails to timely respond to the proposed suspension, or upon the final adverse decision issued by the Director after the participant has responded. The decision to suspend a surety from participation in the test may be appealed to the Executive Assistant Commissioner, Office of Trade, within fifteen (15) days of the date of CBP's final adverse decision, by submitting an email entitled, "Appeal—EIDS Suspension", to the Executive Assistant Commissioner, CBP, at EIDS@cbp.dhs.gov, and attaching a copy of the decision being appealed. The surety filing the appeal must set forth its reasons for appealing the Director, CED's final decision. The Executive Assistant Commissioner's decision is not subject to further review.

V. Test Evaluation Criteria

All interested parties are invited to comment on any aspect of this test at any time. To ensure adequate feedback, participants are required to take part in evaluation of the test. CBP needs comments and feedback on all aspects of this test, including the design, conduct and implementation of the test, to determine whether to modify, alter, expand, limit, continue, end, or implement this program. Comments should be submitted via email to EIDS@cbp.dhs.gov, with the subject line reading "Comments/Questions on EIDS Test."

The EIDS test is intended to evaluate the feasibility of sending via email the CBP Form 5955A to sureties. CBP will evaluate whether the test: (1) improves CBP's ability to quickly, safely and securely transmit the CBP Form 5955A to the surety; (2) enables sureties to better track claims posted against their bonds; (3) enables sureties to timely respond to claims; (4) obtains buy-in from stakeholders (including FPF Officers, sureties, and trade associations); and, (5) facilitates legal

compliance with the laws, regulations, policies, and instructions enforced by CBP. At the conclusion of the test, an evaluation will be conducted to assess the efficacy of the information received throughout the course of the test. The final results of the evaluation will be published in the **Federal Register** and the *Customs Bulletin* as required by section 101.9(b)(2) of the CBP regulations (19 CFR 101.9(b)(2)).

Should the EIDS test be successful and ultimately be codified under the CBP regulations, CBP anticipates that this data would greatly enhance CBP's penalty and liquidated damages notification process, reduce risk, and improve compliance operations. CBP would also anticipate greater visibility into bond claims, which will support better decision-making during and after the case resolution process.

VI. Confidentiality

Data submitted and entered into SEACATS may include confidential commercial or financial information which may be protected under the Trade Secrets Act (18 U.S.C. 1905), the Freedom of Information Act (5 U.S.C. 552), and the Privacy Act (5 U.S.C. 552a). The electronic notice of demand on surety will only contain that information that is currently provided on the paper CBP Form 5955A. However, as stated in previous test notices, participation in this test or any of the previous NCAP tests is not confidential and, therefore, upon receipt of a written Freedom of Information Act request, the name(s) of an approved participant(s) will be disclosed by CBP in accordance with 5 U.S.C. 552.

John P. Leonard,

*Acting Executive Assistant Commissioner,
Office of Trade.*

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DEPARTMENT OF HOMELAND SECURITY

Agency Information Collection Activities: Science and Technology Collection of Qualitative Feedback

AGENCY: S&T, DHS.

ACTION: 30-Day notice and request for comments; Science and Technology Collection of Qualitative Feedback, DHS-2023-0039.

SUMMARY: The Department of Homeland Security, S&T/CIO, DHS will submit the following information collection request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork

Reduction Act of 1995. DHS previously published this information collection request (ICR) in the **Federal Register** on November 1, 2023, for a 60-day public comment period. One comment was received by DHS. The purpose of this notice is to allow additional 30-days for public comments.

DATES: Comments are encouraged and will be accepted until December 13, 2023. This process is conducted in accordance with 5 CFR 1320.10.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

The Office of Management and Budget is particularly interested in comments which:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

FOR FURTHER INFORMATION CONTACT: If additional information is required contact: DHS/S&T/OES/CIO/Business Management Office: Heather Erhuanga, Heather.Erhuanga@hq.dhs.gov or 202-941-8731 (not a toll-free number).

SUPPLEMENTARY INFORMATION: This notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. 3501 *et seq.*, chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a S&T collection of information (collection). The ICR contains information describing the collection's purpose, the collection's likely burden on the affected public, an explanation of the necessity of the collection, and other important