

port of entry, before that merchandise has been entered for consumption with duties paid thereon and its admissibility into the commerce determined. The custodial bond conditions appear at 19 CFR 113.63. The custodian of the merchandise guarantees compliance with all regulations governing the receipt, carriage, safekeeping and disposition of merchandise transported or held.

#### **Diversion/Fuel Stop Issues**

*Comment:* It was asked whether the rule allowed for aircraft to stop for fueling at a U.S. location prior to arriving at its final destination. Four commenters requested that fuel stops be exempt from reporting requirements from the U.S. port of arrival to the port of destination.

*CBP Response:* Section 122.48a does not prohibit an aircraft from including a fuel stop in its itinerary; however, that stop may be the port of arrival in the United States for purposes of § 122.48a(b). Fuel stops will not be excluded from the advance reporting requirement because it is vital to security to target at the first port of arrival and, if necessary, to examine cargo at that location.

*Comment:* If an aircraft were diverted for reasons such as weather or equipment problems, it was requested that this not be considered part of the manifest reporting requirement if passengers and cargo were not to be discharged there.

*CBP Response:* The CBP understands that aircraft may be diverted due to weather and/or equipment problems. When this situation occurs, the airline must notify CBP at the designated first port of arrival (the diverted port) as soon as it realizes it is not going to initially reach the original port of arrival. The carrier would then need to re-transmit the electronic cargo information with corrections to reflect the new (diverted) arrival port.

#### **Air AMS Testing/Problems**

*Comment:* Outstanding operational programming issues should be completed prior to the implementation of the final rule.

*CBP Response:* The CBP is diligently working on an outstanding list of operational issues and will continue to correct these issues. Under § 122.48a(e)(2), the implementation date for advance air cargo reporting may be delayed if necessary modifications to the CBP-approved electronic data interchange system are not yet in place.

*Comment:* Qualified air freight forwarders electing to participate in advance electronic cargo reporting

should be tested on the approved data interchange system prior to the implementation of the final rule.

*CBP Response:* Appropriate testing will be given to all parties who develop Air AMS communications with CBP. Those parties who elect to use a service provider will be tested via the service provider.

*Comment:* Programming should be provided between the Automated Broker Interface (ABI) and the Air AMS system so that data information could be shared (alternate filers could be brokers and forwarders).

*CBP Response:* Cargo selectivity information provided through ABI is distinct from the electronic cargo information required through Air AMS under § 122.48a. The data elements to satisfy compliance with this regulation must be provided through Air AMS; Air AMS is accessible to ABI filers.

*Comment:* The Air AMS system should be changed to preclude an inward air carrier from refusing to authorize (nominate) another eligible party as an agent who had elected to transmit consolidated cargo data directly to CBP; and the system should be programmed to notify such other party of its authorization (nomination) by the inward carrier.

*CBP Response:* The Air AMS system will independently accept information from each of the parties that supply data to satisfy the advance cargo reporting requirements of § 122.48a. In other words, the inward carrier will no longer need to authorize or nominate another eligible party in order to enable that party to supply house air waybill information to CBP. The identification of another eligible filer in the agent ("AGT") line will be merely for the purpose of notifying CBP that this party will transmit the house air waybill information, which may be effected either prior to or after the carrier's transmission of the master air waybill record to CBP.

*Comment:* The Air AMS system should be changed to allow for the transmission of a notification that air cargo data had been received or that the air cargo manifest had been accepted with the date and time specified. This feature was said to be currently available in Vessel AMS.

*CBP Response:* The Air AMS transmits a Freight Error Report message if an air waybill record does not pass certain data acceptance edits. In addition, the Air AMS also provides a Freight Status Query feature that allows an Air AMS participant to query the status of an air waybill record. This feature is available to the Air AMS participant that transmitted the original

message and to Air AMS participants that have been properly nominated by the carrier that transmits the master air waybill data.

*Comment:* One commenter was of the opinion that airlines did not want to be obligated to input house air waybill information on behalf of an air freight forwarder.

*CBP Response:* Under § 122.48a, unless another qualified party elects to participate in the Air AMS system, the relevant house air waybill information must be furnished to the incoming air carrier for presentation to CBP.

*Comment:* It was asked how a carrier would provide any required cargo data if the records were in the possession of a third party that was not one of the parties identified in proposed § 122.48a(c)(1).

*CBP Response:* Under § 122.48a(c)(4), any third party entity in possession of required data for inbound air cargo must fully disclose and present such data to the carrier for presentation to CBP.

#### **In-Bond Issues**

*Comment:* Participants in Air AMS should be permitted to create subsequent in-bond transactions to close out air manifests at both the master air waybill and house air waybill levels.

*CBP Response:* This is included in the regulation (see § 122.48a(a)(1) in this final rule). In-bond information may of course be included at both the master and house air waybill levels (see § 122.48a(d)(1)(xvi) and (d)(2)(viii) in this final rule).

*Comment:* It was thought that Air AMS could not handle in-bonds for one consolidated express shipment.

*CBP Response:* The Air AMS system is capable of processing in-bond information for all house air waybills under a consolidated master air waybill.

*Comment:* The Air AMS programming should be altered to allow for more than one in-bond warehouse per location.

*CBP Response:* Cargo covered by each master air waybill may be transferred to any warehouse location with a unique FIRMS (Facilities Information and Resources Management System) code within the limits of a port of entry.

*Comment:* The scope and timing of the carrier's transmission of any in-bond information should be clarified. Specifically, it was asked whether it would be necessary to allow transmission of this information after arrival of the cargo in the United States, and whether such information would be used for the movement of the subject cargo from the first port of arrival to the master bill destination location.

*CBP Response:* The data elements specified in § 122.48a(d)(1), including