

any in-bond information in § 122.48a(d)(1)(xvi), if applicable, will be analyzed by CBP for the purposes of identifying high-risk cargo. Such data elements must be supplied within the respective advance time frames prescribed in § 122.48a(b).

*Comment:* In-bond information (from a party other than the incoming carrier) might not be known by origin or prior to its arrival in the United States. It was asked whether information related to the subsequent in-bond movement of the cargo could thereafter be transmitted to CBP prior to the in-bond movement being authorized.

*CBP Response:* The CBP recognizes that the in-bond destination for cargo covered by house air waybills may not be known prior to the arrival of the aircraft in the United States. If such information is provided outside of the required time frame prescribed in § 122.48a(b), it will be treated as a change to the original information.

*Comment:* It was asked whether CAFES (Customs Automated Forms Entry System) was compatible with Air AMS for use on in-bonds.

*CBP Response:* CAFES is not yet compatible with Air AMS for merchandise arriving via air.

#### Truck/Air Issues

*Comment:* The use of Air AMS should be allowed for goods transiting the border by truck in lieu of a truck manifest. It was advocated that Customs brokers at the border should be required to transmit data through Air AMS for cargo that originated as an air shipment and arrived in a contiguous foreign country, notwithstanding that the cargo would be crossing the border into the United States by truck.

*CBP Response:* The Air AMS system is the electronic cargo reporting data interchange for merchandise arriving via an aircraft. Merchandise arriving via another mode of transportation, including by truck, must be reported in the manner specified for such mode. Thus, if the merchandise crosses the U.S. border on a truck, such merchandise is not considered to be an air shipment, notwithstanding that such cargo may have arrived in the contiguous foreign country by air. As such, in the event that merchandise, which was previously reported to arrive via an aircraft, should change its mode of transportation prior to arrival in the United States, the previously transmitted information must be cancelled and then reported in the manner appropriate to the actual mode of transportation employed in bringing the merchandise into the United States.

#### Shipments by U.S. Postal Service; Letters and Documents Otherwise Shipped

*Comment:* A number of commenters believed that the advance cargo reporting rules should be applied to shipments through the United States Postal Service (USPS).

*CBP Response:* Paragraph K of section 343(a)(3) of the Trade Act of 2002 (19 U.S.C. 2071 note, section (a)(3)(K)), compels consultation with the Postmaster General in considering what type of electronic cargo information requirements should be imposed upon carriers of mail shipments through the USPS. The CBP still has this issue under consideration. Should a determination be made to extend the advance electronic cargo information mandate to USPS shipments, such postal shipments would be the subject of a separate rulemaking procedure. Current procedures regarding the processing of shipments for the USPS will remain in effect.

*Comment:* Shipments of letters and documents, including the material described in General Note 19(c), Harmonized Tariff Schedule of the United States (HTSUS), that were transported by air otherwise than through the USPS, should also be exempted from full advance cargo reporting requirements.

*CBP Response:* The CBP has decided to make the requirements for advance cargo information for letters and documents the subject of a separate publication in the **Federal Register**. Proposed § 122.48a(d)(3) concerning advance cargo information requirements for letters and documents is thus removed from this final rule.

#### Liability Issues

*Comment:* Should the shipper provide inaccurate information in the description, shipper or consignee fields, it was urged that the incoming carrier or other electronic filer presenting such information to CBP not be held liable.

*CBP Response:* Whether or not liability would be imposed on a carrier in such circumstances would be governed by section 343(a)(3)(B), as amended, and § 122.48a(c)(5) in this final rule. Section 122.48a(c)(5) provides that CBP will take into consideration how, in accord with ordinary commercial practices, the presenting party acquired the information submitted and whether and how that party is able to verify such information. Where the information is not reasonably verifiable, the party will be permitted to present such information based upon a reasonable belief as to its accuracy.

*Comment:* Three commenters wanted to know whether the carrier would be liable for the submission of house air waybill information where another party that elected to furnish this information to CBP did not do so.

*CBP Response:* The carrier will indicate in the master air waybill record if another party will be transmitting the house air waybill data. If such other party fails to comply with the advance cargo reporting provisions, this party, and not the incoming carrier, will be held liable.

*Comment:* One commenter inquired as to who would be responsible for submitting advance cargo data in the case of a chartered aircraft.

*CBP Response:* In the case of a time or voyage charter, the aircraft owner/operator is the party required to transmit the information. In the case of a bareboat charter, where the charterer in effect becomes the owner of the aircraft (the owner *pro hac vice*), the bareboat charterer would be responsible for reporting the cargo information to CBP.

*Comment:* A question was presented as to what kind of penalty would be imposed on airlines that failed to meet the advance time frame submission.

*CBP Response:* An incoming air carrier failing to meet the advance reporting time frame may be liable under 19 U.S.C. 1584 as well as under other pertinent penalty provisions (see § 122.161, Customs Regulations; 19 CFR 122.161). Should another party electing to file advance cargo information fail to do so, such party may be liable for liquidated damages pursuant to its Customs bond.

*Comment:* It was asked who would be responsible for transmitting cargo data to CBP where a number of freight forwarders co-loaded cargo.

*CBP Response:* Either the incoming carrier or one of the parties qualified to do so under § 122.48a(c)(1) will be responsible for supplying the information for all house air waybills under a single consolidated master air waybill.

#### Data Elements

*Comment:* A couple of commenters took exception to the requirement that the flight number for the incoming aircraft be reported 4 hours prior to arrival. The flight number could change. Also, it was unclear how the indirect air carrier would know the exact flight number.

*CBP Response:* Only the incoming carrier is responsible for the transmission of the flight number. The carrier should be aware of its flight