

time frame represents the minimum period during which CBP is confident that essential targeting can still be accomplished, without a concomitant undue disruption to rail business practices.

In addition, without proper consist information (which identifies the incoming train, and gives its locomotives' and cars' numbers and initials and the train's schedule), CBP would not have the complete information essential for targeting on the incoming cargo in connection with the particular train on which the cargo would arrive. The availability of information on both the cargo and the arriving conveyance as provided in the rail consist is vital in order to enable CBP to do its targeting effectively in the time required.

#### *Required Data; Carrier Responsibility*

*Comment:* Four commenters wanted it made clear that a railroad was required to provide the scheduled date and time of arrival to the best of its knowledge, and that a railroad should not be penalized or held responsible should that date and time prove inaccurate within some reasonable time frame.

*CBP Response:* The railroad carrier must provide the scheduled date and time of arrival to the best of its information, knowledge and belief at the time that this information is filed. However, carriers will be held responsible for failure to keep CBP informed of any changes in this information as it becomes available.

*Comment:* Rail carriers should not be held responsible for the accuracy of information supplied by others. The CBP should change the language in proposed § 123.91(c)(2) to state that where the rail carrier electronically presenting the cargo information received any of this information from another party, the rail carrier would not be held responsible for the inaccuracy of any information supplied by that other party.

*CBP Response:* The CBP disagrees. Section 123.91(c)(2) repeats, and CBP is bound by, the statutory standard against which the potential liability of a rail carrier would effectively be gauged in presenting inaccurate cargo data to CBP that had been acquired from another party.

*Comment:* It was important that Rail AMS be able to manage multiple shipment data. The CBP would need to coordinate implementation of this aspect of the process with all elements of the supply chain and with U.S. trading partners.

Specifically, the requirement that the rail carrier supply information from the

house bill of lading was problematic. In most cases, railroads would only have the capability of receiving one bill of lading and that bill would generally be a master bill of lading. Also, if the railroad had a container holding several consolidated shipments with individual house bills associated with each shipment, even if the railroad had the capability of receiving the individual house bills, information from such bills could not be transmitted to CBP inasmuch as Rail AMS could only handle the transmission of one bill of lading in association with the cargo manifest data for that one shipment.

*CBP Response:* The CBP is currently reviewing Rail AMS programming requirements to release the edit that only allows one bill of lading per shipment, which will enable house bills of lading to be utilized in the rail environment. In addition to possible programming changes, CBP is reviewing the prospect of authorizing other parties to transmit information via Rail AMS. This would further facilitate the submission of the house bill of lading information that is required on all shipments.

Should CBP decide to allow another electronic filer to voluntarily present house bill information for a shipment through Rail AMS, a test program notice to this effect would first be published in the **Federal Register** pursuant to § 101.9(b) and (b)(1), Customs Regulations (19 CFR 101.9(b) and (b)(1)), inviting public comments on any aspect of the proposed test and informing interested members of the public of the basis for selecting participants, the eligibility criteria for participation in the test, and the effect of such participation on the responsibilities of incoming rail carriers for the transmission of required advance cargo data to CBP.

*Comment:* Proposed § 123.91(d)(4) stated that carriers would have to supply the numbers and quantities of the cargo laden, as contained in the carrier's bill of lading, either master or house, as applicable, which meant the quantity of the lowest external packaging unit. This information was contained in the house bill, not the master bill. For a container shipment, the railroads would only know the quantity expressed on the master bill, which might not be at the level of the lowest external packaging unit.

Similarly, proposed § 123.91(d)(6) and (d)(7) would require that the railroad carrier provide the complete name and address for the shipper and consignee respectively. Again, however, the master bill of lading possessed by the rail carrier could contain only the name of

a freight forwarder instead of the actual shipper and consignee; if so, the rail carrier would not know the identity of the actual shipper and consignee.

*CBP Response:* House bill of lading information is required under this regulation; therefore, as already discussed, CBP is reviewing programming changes to Rail AMS that would enable the system to accept such information. Hence, when Rail AMS is programmed to capture house bill of lading information, and when the rail industry has been given additional time to make essential adjustments to its own programming for the transmission of such house bill data through Rail AMS, all the referenced data elements would, at such time, need to be presented to CBP, which would include information for the shipper and consignee, including the full name and address of each, as well as the numbers and quantities (of the lowest external packaging unit) of the cargo laden aboard the train. To this end, CBP will take these programming matters into account in establishing the effective date(s) for implementing the incoming rail cargo data regulation (see § 123.91(e) in this final rule).

*Comment:* One commenter suggested that it might be difficult or impossible for the rail carrier to obtain the necessary cargo information when the rail cargo had initially arrived in Canada or Mexico by vessel or air carrier from another foreign country. In such a case, unless the ocean or air carrier had first required the complete disclosure of all information at the port of loading in the other foreign country, and thereafter passed this information along to the rail carrier, there would be no way that the required information would be available to the railroad.

*CBP Response:* For cargo that is transferred in Canada or Mexico to a rail carrier for shipment to the United States, whether such cargo originated in Canada or Mexico or was first brought there by a vessel or air carrier from another foreign country, the rail carrier, as explained above, will be required to provide the requisite data elements for such cargo to CBP.

#### **Line Release**

*Comment:* The CBP should retain Line Release not only for the present as stated in the proposed rule, but for the long term, as it was declared to be critical for cross-border rail traffic.

*CBP Response:* The CBP fully recognizes the importance of Line Release for Rail AMS. In fact, CBP has recently made Line Release available, for rail shipments only, to ports that ordinarily would not have access to it,