on federal preemption of State law governing contracts or the regulation of common carriers. Their position on both issues coincides in certain fundamental respects with IATA's reasons for urging the continued filing of cargo rules tariffs, and therefore we will discuss these comments together. Then we will address the arguments of the parties who support the continuation of cargo rates tariffs as well.

Decision

We have decided to adopt the NPRM substantially as proposed. However, we are making certain minor changes in response to the comments. First, as a transition measure, we will permit the carriers to maintain in effect as official tariffs their current rules relating to the general conditions of carriage,[6] for a period of up to ninety days, in order to maintain the legal framework for current contracts while the carriers are drafting new language for air waybill and/or other documents to provide acceptable forms of actual notice to shippers of such terms. We do not find a similar transitional need for cargo rate tariffs, including related applicability rules,[7] because pricing is a key term negotiated and stated in every contract. At the same time, we are providing expressly that carriers may cancel any or all rules tariffs prior to 90 days, and that they may deviate from any filed rules by express contract provision. Second, we are providing explicitly that carrier compliance with the notice requirements set forth in 14 CFR 221.177 permits incorporation of contract terms as a matter of federal law, and that such requirements supercede any contrary State contract law requirements relating to incorporation by reference. On the other hand, we are also making clear that terms cannot be enforced against shippers without proper notice. We also make explicit, in our discussion below, that this cargo tariff exemption is not intended to undermine in any respect the scope of the statutory preemption of State economic regulation provided under 49 U.S.C. 41713.

We find that this final rule should be made effective immediately upon publication in the Federal Register because it grants an exemption from costly regulatory burdens and relieves certain restrictions.

[6] This would include all rules in separate governing rules tariffs and separate restricted articles tariffs.

[7] This would include rate ''classification'' tariffs, which, as IATA notes, may be filed in the rate tariffs or separately.

Discussion of Comments and Issues

1. Notice. Most of the concerns raised by our proposal involve the issue of legal notice of contract terms. While taking no position on the elimination of the requirement to file cargo *rate* tariffs, IATA contends that the proposed rule should be amended to permit the continued filing of cargo *rules* tariffs governing such matters as consignments, liability for loss, claims procedures, handling of dangerous or other restricted goods, acceptability of cargo, and other general matters of concern to shippers of cargo to/from U.S. points. It argues primarily that such rules should continue to be deemed a part of each contract of carriage as a matter of tariff law, regardless of any actual notice to shippers of their existence or content.[8] ATA, AFA, American and United support the elimination of all official tariffs, but want the proposed rule amended or clarified so that a carrier's continued publication of its cargo tariffs or the ''filing of its rates and rules with a named tariff publishing agent'' will ''provide constructive notice to the public of their contents.'' [9] In the alternative, ATA and American request that cargo tariffs be permitted to remain in effect for 180 days in order to allow carriers to revise existing air waybill language to provide adequate notice of all contract terms. British Airways requests at least a 90-day transition period, paralleling the action of the Civil Aeronautics Board (CAB) in eliminating charter tariffs, forwarder tariffs and carrier tariffs for domestic cargo transportation.

IATA joins ATA, American and British Airways in arguing that an immediate elimination of official rules tariffs will cause a disruption in the administration of existing contracts because most waybills state only generally that carriage is subject to the carrier's ''applicable tariffs.'' [10] We are persuaded, as was the CAB in taking similar actions, that a brief transition period of 90 days is justified to permit clarification of any existing contracts that may be rendered ambiguous by reference to rules tariffs no longer officially on file with the Department and to facilitate the redrafting of waybills and other contract documents to provide acceptable actual notice of any missing terms, whether through incorporation by reference or otherwise. A longer period may cause confusion and appears unnecessary. Carriers are neither required nor expected to completely replace their current waybill stock in this 90-day period. The period should be sufficient, however, for them to print notices or other supplemental contractual materials to conform such stock to the new environment until it can be replaced. Carriers needing less time should be able to cancel their rules tariffs when ready, while no carrier should be bound to tariffs on file during the transition where negotiations with shippers suggest a different result.

IATA argues that in the longer term eliminating rules tariffs will not only force carriers to incur the cost of redrafting waybills or other contract documents to provide adequate forms of notice of contract terms, but also that efforts to incorporate terms by reference could engender litigation under State contract law. It also contends that many matters not now subject to direct carrier-shipper negotiation would become so, with the effect of reducing uniformity among carriers, complicating transactions, and hindering the introduction of a paperless ''electronic data interface.'' In IATA's view, such burdens greatly outweigh the perceived cost savings related to the elimination of rules which assertedly change infrequently and impose relatively few administrative costs on DOT and filing parties. IATA contends that the Department's ''narrow cost-benefit analysis'' fails to recognize that the tariff system provides the most efficient means of establishing uniform, binding and predictable contract conditions of carriage, and that therefore the Department has failed to demonstrate that the exemption is ''compelled'' by the public interest.

At the outset, we note that IATA's position contains two fundamental errors. First, the filing of rules tariffs is not a statutory requirement. Rather, rules are to be filed to the extent that the Secretary requires by regulation. It is sufficient to find that the continued filing and review of such tariffs can no longer be justified by the public interest factors underlying the promulgation of the original filing requirement in Part 221, which is certainly the case. Secondly, we do not presume that carriers will cease publishing their rates and rules in tariff-like formats. To the contrary, we assume that the carriers will continue to promulgate, publish and disseminate, directly or through

[8] See, e.g. Slick Airways, Inc. v. U.S., 292 F. 2d 515 (1961).

[9] ATA comments, page 3.

[10] The argument presumes that such a general reference would not constitute a valid ''incorporation by reference'' of tariff provisions into the contract of carriage under State contract law, nor would it fully comply with the Department's notice regulations in 14 CFR Part 221. Without the specificity of certain tariff provisions, these parties contend, the waybill contract might be rendered ambiguous or uncertain.