agents, a number of documents containing both rules and rates, as indicated by ATA, American and United. In addition to foreign tariff-filing requirements, the carriers indicate that such publications are necessary to reach potential customers and to incorporate terms into the waybill by reference, where necessary.

IATA's characterization of constructive notice of official tariff material as more ''efficient'' than the forms of actual notice that have been used successfully where cargo tariffs have been eliminated is, in our view, questionable. More fundamentally, its emphasis on official tariffs as a means to produce ''uniformity'' among carrier rules ignores many of the considerations of procompetitive and market-oriented public policy that underlay previous reductions in filing requirements. Those considerations are equally present here and form an additional basis for our conclusion that the continued filing of international cargo rates and rules tariffs is no longer in the public interest.

Most of IATA's arguments relating to the long-run desirability of maintaining constructive notice of cargo rules through filed tariffs are similar to those found unpersuasive by the Civil Aeronautics Board when it eliminated domestic cargo tariffs and international air freight forwarder tariffs.[11] More importantly, IATA has not effectively challenged the reasons given in the NPRM for concluding that the elimination of filed tariffs should have no significant impact on the ability of carriers and shippers to deal with the general terms and conditions of carriage.

Thus, the NPRM noted that domestic cargo tariffs were eliminated without significant difficulty; that international forwarder tariffs were eliminated in 1979 with no apparent adverse effect on the forwarders' ability to do business with their customers, many of whom are smaller shippers; that most international small shipper traffic is handled by large forwarder intermediaries and small package specialists who are familiar with direct carrier services and are able to negotiate the best price/service options; that most areas of potential carrier and shipper concern are governed directly by provisions of the Warsaw Convention and that, largely as a result of its requirements, the basic conditions of service for international cargo transportation are already stated in the carriers' waybills; and that to the extent that shippers have questions about the application or interpretation of certain contract provisions, it is likely that they consult the carrier directly rather than its tariffs. IATA has not demonstrated that the elimination of cargo rules tariffs in the past has created any of the longer-term difficulties it describes, nor has it even alleged that to be the case. Moreover, IATA does not address the fact that domestic cargo carriers have functioned effectively without the presumed advantage of federal incorporation rules, since 14 CFR Part 253 was limited to passenger transportation. All general conditions of domestic carriage are either fully stated on contract documents or are incorporated by reference to other sources accessable to shippers without apparent significant risk of challenge under State contract law requirements.[12]

While IATA and AFA both assert that international rates, classifications, and rules are more complex than domestic ones, they have not cited significant differences, nor have they indicated how current international waybills or other transportation documents would need to be revised to provide sufficient actual notice of all necessary conditions of carriage.[13] AFA has not discussed examples of revisions required by the elimination of international forwarder tariffs in 1979. Moreover, no party has challenged the Department's observation that international waybills are already drafted with considerable specificity to accommodate the detailed requirements of the Warsaw Convention, which governs major elements of the contract of carriage regardless of the existence of filed tariffs, as well as other important matters. Indeed, of the important general rules cited by IATA, all are governed by the Warsaw Convention and are dealt with specifically in the IATA waybill, which is a model for many carriers.[14]

There is therefore no record basis for concluding that the elimination of international cargo rules tariffs will impose significant economic or administrative burdens on carriers or shippers. However, the NPRM noted that, to the extent that tariffs might set forth certain conditions of carriage in greater detail than does the current waybill, such details could be incorporated into the contract if notice is given in conformity with the Department's alternative posting requirements in 14 CFR § 221.177, which are incorporation-by-reference standards essentially identical to those provided for domestic passenger transportation by 14 CFR Part 253.[15] In giving the carriers an alternative to the paper tariff notice requirement, which most had found difficult to comply with, it was the Department's intention to shift from a constructive to an actual notice system consonent with contract principles. To the extent that carriers wish to rely upon such an incorporation mechanism for cargo, Part 221.177 is already in place and it is likely that some, if not many, carriers are already complying with its graduated notice provisions in preference to the earlier requirement in Part 221.170 that complete paper tariffs be made available for inspection at each sales office.

While ATA, AFA, American and United support the elimination of all official tariffs in favor of an incorporation by reference mechanism, they request that the final rule make the provisions of section 221.177 more explicit in certain respects, including a specific request by ATA, AFA and United that carriers be authorized to incorporate terms and conditions of service included in a ''tariff'' published either individually or through a recognized and identified agent. All four commenters, plus IATA, emphasize a need for assurance that carrier reliance upon federal incorporation by reference requirements will be protected from challenge under possibly divergent State law requirements.

AFA questions whether the provisions of 14 CFR § 221.177 permit

[11] Moreover, when it adopted uniform rules for incorporation by reference of domestic passenger conditions in 14 CFR Part 253, the CAB found that insufficient grounds had been presented to warrant extending those rules to domestic cargo transportation.

[12] A typical domestic waybill incorporates by reference the ''rates, rules and classifications set forth in the most recent Official Airline Cargo Rate Tariff,'' an unofficial carrier document. All other terms and conditions are stated on the waybill.

[13] IATA claims that the development of ''paperless transactions'' will suffer, but does not explain how the electronic medium is any less adapted to providing information, including requisite notice, than the paper medium. The incorporation by reference rules in 14 CFR 221.177 already contemplate notice through electronic media.

[14] The IATA waybill states that carriage is subject to the Warsaw Convention, and, where not in conflict with it, to the carrier's ''general conditions of carriage,'' applicable domestic laws and regulations, and ''applicable tariffs'' of such carrier. Tariffs, which are not necessarily filed officially in many countries, are at most one of several means of supplementing the basic conditions of contract.

[15] Under section 221.177, carriers must give written notice, on or with the waybill or other contract instrument, that the contract of carriage may include terms incorporated by law from public tariffs or by reference from other sources; that the customer may inspect the full text of such terms at any carrier sales office and request a mailed copy thereof; and that the customer may receive an immediate explanation of any terms covering carrier liability limits, claims restrictions, service modification rights, or contract modification rights. In addition, direct written notice of the salient features of incorporated terms that restrict refunds, impose monetary penalties, or permit price changes must be provided on or with the waybill or other contract instrument.