the manufacturer may obtain copies upon request to McCauley Accessory Division, Cessna Aircraft Company, 3535 McCauley Drive, P.O. Box 430, Vandalia, Ohio 45377. These documents also may be examined at Rules Docket, Office of Regional Counsel, FAA, Attn: Rules Docket No. 83-ANE-27, 12 New England Executive Park, Burlington, Massachusetts 01803 and may be examined weekdays, except Federal holidays, between 8:00 am and 4:30 pm.

This amendment becomes effective December 6, 1983.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); (49 U.S.C. 106(g) revised, Pub. L. 97-449, January 12, 1983); 14 CFR 11.89)

Note.—The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule, since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

Note.—The incorporation by reference provisions of this document were approved by the Director of the Federal Register on November 22, 1983, effective December 6, 1983. The referenced Bulletin is available at the Federal Register.

Issued in Burlington, Massachusetts, on November 3, 1983.

Robert E. Whittington,

Director, New England Region.

[FR Doc. 83-32390 Filed 12-5-83; 8:45 am]

BILLING CODE 4910-13-M

CIVIL AERONAUTICS BOARD

14 CFR Part 221

[Amdt. No. 65; Docket 41219; ER-1369]

Tariffs for Foreign Air Transportation; Credit Practices

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: The CAB is removing the requirement for carriers to file their credit practices in tariffs for foreign air transportation. Since the Board does not prescribe the terms of credit plans or review them for sufficiency, placing them in tariffs provides no benefit to consumers, and can be detrimental since consumers generally are not aware of tariff contents.

DATES: Effective: January 5, 1984. Adopted: November 8, 1983.

FOR FURTHER INFORMATION CONTACT: Lawrence R. Myers, Office of the General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428; 202-673-5205.

SUPPLEMENTARY INFORMATION: The Board's tariff rules (14 CFR Part 221) now require U.S. and foreign air carriers to place in their tariffs the terms of credit plans they make available for passengers and shippers. By a notice of proposed rulemaking (EDR-454, 48 FR 3998, January 28, 1983), the Board proposed to end that requirement and to prohibit carriers from filing those matters in tariffs. No comments were filed in response to the notice. The Board has decided to adopt the rule as proposed.

The credit matters now required to be filed include carrier billing practices and rules and late payment charges. These filings have not been comprehensive. The Board has not revised any filed credit terms, set any standards for the reasonableness of those terms, or effectively reviewed these tariffs for economic sufficiency.

As of January 1, 1983, under the Airline Deregulation Act, carriers no longer file tariffs for domestic passenger transportation. They have been exempt from tariff filing for domestic cargo transportation since 1979. On the other hand, U.S. and foreign air carriers must file tariffs for foreign air transportation.

This dual status creates the situation where consumer credit plans may be made part of the travel contract by operation of tariff law in foreign air transportation, but only by notice (or incorporation) for domestic air transportation without tariffs. Elimination of the requirement to file these matters in tariffs would prevent any confusion by consumers about the applicability of credit terms as part of their air contract.

The Board continues to have responsibility under the Consumer Credit Protection Act for supervising airline credit plans and practices. Implementation of that responsibility is in no way diminished by this rule. The Board, as part of its information collection and enforcement authority under the Federal Aviation Act, has sufficient means to supervise and take action on these matters.

The rule will prohibit the filing of these tariffs, for information or any other purpose. To do otherwise could mislead the public if the carriers attempted to incorporate those "filed" terms in their contracts of carriage.

Regulation Flexibility Act

In accordance with 5 U.S.C. 605(b), as added by the Regulatory Flexibility Act Pub. L. 96-354, the Board certifies that this rule will not, if adopted as proposed, have a significant economic impact on a substantial number of small entities. The most significant number of small entities authorized to provide foreign air transportation are air taxi operators. These small carriers do not file tariffs now.

List of Subjects in 14 CFR Part 221

Air rates and fares, Credit, Explosives, Freight, and Handicapped.

PART 221—[AMENDED]

Accordingly, the Civil Aeronautics Board amends 14 CFR Part 221, *Tariffs*, as follows:

1. The authority for Part 221 is:

Authority: Sec. 102, 204, 401, 402, 404, 411, 416, 1001, 1002, Pub. L. 85-726, as amended, 72 Stat. 740, 743, 754, 757, 758, 760, 769, 771, 788; 49 U.S.C. 1302, 1324, 1371, 1372, 1374, 1381, 1386, 1481, 1482.

2. Paragraph (i) of § 221.38 is revised to read:

§ 221.38 Rules and regulations.

* * * * *

(i) *Carriers' extension of credit—passenger tariffs, property tariffs.* Air carriers and foreign air carriers shall not file tariffs that set forth charges, rules, regulations, or practices relating to the extension of credit for payment of charges applicable to the air transportation of persons or property.

§ 221.107a [Removed]

3. Section 221.107a is removed.

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 83-32487 Filed 12-5-83; 8:45 am]

BILLING CODE 6320-01-M

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14 CFR Part 253

[Economic Regulation Amdt. No. 3 to Part 253; Docket: 41542; ER-1370]

Terms of Contract of Carriage

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: The CAB changes its rules that allow incorporation of airline passenger contract terms by reference on tickets for domestic travel and that set the notice for it. The rule allows the notice to be given under certain conditions at the beginning of the domestic flight for which a ticket is sold

abroad. The rule also states that air taxi operators will not be held to be incorporating terms merely because their flights are ticketed on standard stock that includes an incorporation statement. If they do not furnish notice according to this part, however, they may not claim the benefit of incorporated terms.

DATE: Effective: January 5, 1984. Adopted: November 8, 1983.

FOR FURTHER INFORMATION CONTACT: Richard B. Dyson, Associate General Counsel, Rules and Legislation, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428, 202-673-5442.

SUPPLEMENTARY INFORMATION: The Board has established rules in 14 CFR Part 253 for the notice that airlines must give to passengers in order to incorporate travel contract terms by reference on the ticket for domestic flights. Those rules require that the notice of incorporated terms and a notice about terms affecting the value of the ticket be given with the ticket. The rules apply to all scheduled direct air carriers and to sales for domestic U.S. travel wherever sold, including foreign locations. Two practical problems arose, one for foreign ticket locations and another for air taxi operators. They both were the subject of a notice of proposed rulemaking by the Board (EDR-463, 48 FR 29707, June 28, 1983).

In EDR-463, the Board proposed that, under certain conditions, the notice concerning incorporated terms need not be given at foreign ticket locations. It also proposed that an air taxi operator not be considered to have incorporated terms by reference merely because its flight is ticketed on standard stock containing an incorporation statement. Two comments were filed in response to the notice, by the International Air Transport Association and the Regional Airline Association, both in general support of the proposal. The Board has decided to adopt the rule as proposed.

Foreign Ticket Locations

Part 253, among other things, requires that every scheduled direct air carrier ensure that each person or airline authorized to sell its tickets give the passenger the required notices with any ticket that incorporates terms by reference, wherever the ticket is sold. The Board, by Order 82-12-84, adopted December 16, 1982, waived that requirement, if certain conditions were met, for foreign ticket sales. The proposed rules included that waiver and those conditions, which were: (1) Passengers must be given notice that complies with Part 253 not later than check-in for travel in domestic air transportation, (2) the portion of the ticket for that domestic travel must be fully refundable without penalty, and (3) the passenger must be given conspicuous notice of that fact at the domestic check-in point.

The comments of the International Air Transport Association (IATA) support the Board's conclusions in EDR-463. The requirement that the incorporation notice be given with the ticket is impractical, if required at all foreign ticketing locations. IATA stated that it is not possible to devise a cost-effective method to ensure that the notice will be given to passengers for a domestic flight in every isolated foreign ticket sale. Further, as the carriers stated in their request for a waiver, only a very small percentage of tickets for domestic U.S. travel are likely to be sold abroad.

The Board also agrees with IATA that it would be in the best interests of international comity not to impose unreasonably high costs and burdens on the airlines for extraterritorial application of a requirement for domestic travel. In addition, it would be difficult for carriers to prove whether notice had been given in these unusual cases at far-flung world ticket locations. Under the final rule, application of the requirement will be within the United States. Airlines need only give the required notice at the time of check-in for the domestic flight. This will not be an unreasonable burden on those airlines or their foreign agents and interline partners.

This modified requirement will enable passengers to learn of the terms of the travel contract, and to cancel it, if they wish, before the flight begins. Further, since the passenger has already paid for the ticket, if it is cancelled because the terms of the contract are unacceptable, the airline will be required to refund the amount paid.

IATA commented that airlines have some practical problems with the refund aspect of the Board's rules. Some countries have imposed restrictions on transfers of their currency. For example, they may require that refunds be made in the local currency with which the original payment was made, or that such a refund be made only within that country. Another problem is credit plan restrictions concerning how refunds may be made. IATA has stated that airlines must make refunds within those guidelines.

The Board recognizes that these restrictions could in some cases render this refund option impracticable. It is a fundamental premise of this rule, however, that passengers may not be irrevocably bound to contract provisions of which they have no notice and no way to obtain it. It seems highly unlikely, in fact, that U.S. courts would accept such contracts as binding. To require passengers to return to a foreign country to receive a refund, or to require that they receive less than they paid because of foreign currency devaluations and restrictions, would nullify their right to avoid the contract. It should be remembered that the contracts in question are solely for domestic travel within the United States. This amendment is an attempt by the Board to allow for the occasional case where foreign travel agents wish to sell such transportation. In cases where credit plan requirements or their foreign government currency restrictions make this option impossible, they still have the reasonable option of obtaining the simple documents to give to customers that will bring them into full conformity with the rule.

Air Taxi Operators

Several small commuters had complained that the Board's notice requirement placed an unreasonable cost on them. The proposed rule included an amendment to Part 253, stating that a commuter was not required to provide its contract terms to ticket selling locations except to the extent that it wished to incorporate terms by reference. The commuter could not enforce incorporated terms, of course, if it did not provide those terms to ticket selling locations.

The Regional Airline Association (RAA) supported this change. The RAA suggested, however, a modification to the proposal. It contended that the rule change should apply to "small aircraft operators," not just to air taxi operators. The RAA believed that the Board did not intend to differentiate between certificated and non-certificated small aircraft operators.

There is a difference, however, between these two classes of carriers and their operations. Certificated carriers, even if operating small aircraft, are treated differently as a class. Their operations are more likely to be on a larger scale than commuter airlines or scheduled air taxi operators, and to be part of an interline network. This amendment to the rule is aimed especially at those small scheduled air taxi operators and commuter airlines whose interlining is only sporadic. One reason many small carriers obtain a certificate is to attract connecting interline passengers. For those reasons, the Board is not adopting RAA's suggestion.

The Board believes that the clarification adopted in the final rule will ease the burden and costs for air taxi operators, but still protect the passengers when using these small, local operators. For that reason and those set forth in EDR–463, the Board is adopting the rule as proposed. Under it, an air taxi operator will not be in violation if it does not furnish its rules to distant sales locations, but it will not be able, in such cases, to claim the benefit of any terms not included on or with the ticket.

Regulatory Flexibility Act

In accordance with 5 U.S.C. 605(b), as added by the Regulatory Flexibility Act, Pub. L. 95–354, the Board certifies that none of the adopted changes has a significant economic impact on a substantial number of small entities. Although the responsibility for ensuring compliance is on the U.S. carrier providing the domestic transportation, a few of which may be small carriers, the amount of sales abroad for tickets on those small carriers at non-U.S. air carrier ticket offices would be insignificant. The interpretation concerning incorporation by small carriers is merely a codification of a prior interpretation, whose effect was to ease the burden of the rule on small carriers. The number of non-local sales for these operators is small.

List of Subjects in 14 CFR Part 253

Advertising, Air carriers, Air transportation, Claims, Consumer protection, Law, and Travel.

PART 253—[AMENDED]

Accordingly, the Civil Aeronautics Board amends 14 CFR Part 253, *Notice of Terms of Contracts of Carriage*, as follows:

1. The authority for Part 253 is:

Authority: Secs. 204, 404, 411, Pub. L. 85–726, as amended, 72 Stat. 743, 760, 769, 49 U.S.C. 1324, 1374, 1381.

2. The introduction text of § 253.5 is revised to read:

§ 253.5 Notice of incorporated terms.

Except as provided in § 253.8, each air carrier shall include on or with a ticket, or other written instrument given to a passenger, that embodies the contract of carriage and incorporates terms by reference in that contract, a conspicuous notice that—

* * * * *

3. A new § 253.8 is added to read:

§ 253.8 Qualifications to notice requirements.

(a) If notice is not provided in accordance with § 253.5 at a ticket sales location outside of the United States that is not a U.S. air carrier ticket office, the price paid for the portion of such ticket that is for interstate and overseas air transportation shall be refundable without penalty if the passenger refuses transportation by the carrier. Each air carrier shall ensure that passengers who have bought tickets at those locations without the notice required in § 253.5 are given that notice not later than check-in for the travel in interstate or overseas air transportation, and that conspicuous notice is included on or with the ticket stating that the price for that travel is refundable without penalty.

(b) An air taxi operator (including a commuter air carrier) not operating under Subpart I of Part 298 of this chapter shall not be considered to have incorporated terms by reference into its contract of carriage merely because a passenger has purchased a flight segment on that carrier that appears on ticket stock that contains a statement that terms have been incorporated by reference. However, such an air taxi operator may not claim the benefit as against the passenger of, and the passenger shall not be bound by, any contract term incorporated by reference if notice of the term has not been provided to the passenger in accordance with this part.

4. The Table of Contents is amended to add a new § 253.8 to read:

Sec.

* * * * *

253.8 Qualifications to notice requirements.

By the Civil Aeronautics Board:

Phyllis T. Kaylor,

Secretary.

[FR Doc. 83–32488 Filed 12–5–83; 8:45 am]

BILLING CODE 6320-01-M

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14 CFR Part 291

[ER–1367; Economic Regulation Amd. No. 14 to Part 291; Docket 41510]

Domestic Cargo Transportation

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: The CAB exempts intra-Alaska and intra-Hawaii cargo carriers from the requirement to file tariffs. The exemption will reduce costs and burden on those carriers and will make government pricing policies for that service consistent with the pro-competitive freedom granted 4 years ago to the cargo service in all other domestic transportation.

DATES: Effective January 5, 1984. Adopted: November 8, 1983.

FOR FURTHER INFORMATION CONTACT: Joseph A. Brooks, Office of the General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428; 202–673–5442.

SUPPLEMENTARY INFORMATION: Carriers providing intra-Alaska and intra-Hawaii cargo service are now required to file tariffs with the Board for its review. All other direct and indirect air carriers are exempt from that requirement for domestic cargo air transportation.

By EDR–462 (48 FR 26830, June 10, 1983), the Board proposed to extend that exemption to intra-Alaska and intra-Hawaii cargo service. Comments and reply comments, all in general support, were filed by: Alaska International Air, DHL Cargo, Mid-Pacific Airlines, Reeve Aleutian Airways, Transamerica Airlines, and Wien Air Alaska. The Board has decided to adopt the rule as proposed.

Since the cargo deregulation amendments were passed in 1977 (Pub. L. 95–163), intra-Alaska and intra-Hawaii cargo services have been treated differently with respect to tariff filings, among other things, from all other domestic direct and indirect air transportation.

As the Board stated in EDR–62, tariff filing (no matter how quickly the Board speeds the process) restricts a carrier's ability to move fast and effectively to respond to changes in the market, thus inhibiting competition. Further, tariffs have been replaced as the primary means of informing shippers of the carrier's prices and rules. Several of the comments stated that simplified rate sheets and other publications are now used by the carriers as the most cost-effective means of telling shippers how much a shipment would cost and under what conditions. Shippers will also have more direct input into their shipping contract with the carrier and a more local way to enforce those contracts in the courts.

The Board does not believe the tariff exempts in this rule will cause any substantive rise in prices for shippers. Passenger carriers were relieved of tariff filing by the Airline Deregulation Act (Pub. L. 95–504) as of January 1, 1983. In looking at the prices that have changed in small communities in Alaska since that time, the Board has found no substantial increase in those prices. Where there have been increases, they have generally occurred in markets without competition, as might be expected. As competition enters those markets, fares generally decline. The Board has adopted a permissive entry policy for scheduled cargo service in Alaska. Order 80-9-149. The Board has stated that with respect to all-cargo authority in Alaska, application for that authority will be governed by the general policies and letter of the Airline Deregulation Act, including the requirement that interstate charter transportation within Alaska be authorized only as the public convenience and necessity requires, thus meeting Alaska International's concern. The Board believes that competition will continue to expand and serve as a governor on pricing policies. Entry in Hawaii has also been based on pro-competitive policies.

For those reasons, the Board believes that this exemption is in the public interest.

Alaska International Air (AIA) also stated that because of section 416(b)(5) of the Federal Aviation Act, which restricts the Board's exemption power with respect to Alaska service, the Board can exempt only those carriers holding authority from the Alaska transportation Commission (ATC). The Board does not interpret section 416(b)(5) to preclude it from exempting certificated carriers from the tariff-filing requirement of section 403. Rather, the Board believes that section 416(b)(5) modifies the statutory exemption granted to small-aircraft operators in section 416(b)(4) by making it inapplicable to carriers that do not hold ATC authority. H.R. Rep. No. 1779, 95th Cong., 2d Sess. 80 (1976). Further, AIA's interpretation would lead to the anomalous result that one set of carriers (those holding ATC authority) would be exempt from the tariff-filing requirement, while another set (those not holding ATC authority) would have to file tariffs for the same service on the same route.

Final Regulatory Flexibility Analysis

The discussion above is the Board's final regulatory flexibility analysis of the rule under the Regulatory Flexibility Act (5 U.S.C. 604). Copies of this document can be obtained from the Distribution Section, Civil Aeronautics Board, Washington, D.C. 20428, 202-673-5432, by referring to the "ER" number at the top of the document.

List of Subject in 14 CFR Part 291

Air carriers, Antitrust, Freight, Insurance, Reporting and Recordkeeping requirements.

Accordingly, the Civil Aeronautics Board amends 14 CFR Part 291, *Domestic Cargo Transportation*, as follows:

PART 291—[AMENDED]

1. The authority for Part 291 is:

Authority: Secs. 102, 204, 401, 407, 408, 416, and 418, Pub. L. 85-726, as amended, 72 Stat. 740, 743, 754, 766, 767, 771; 91 Stat. 1284; 49 U.S.C. 1302, 1324, 1371, 1377, 1378, 1386, and 1388.

2. Section 291.31 is amended by revising § 291.31(a)(1) to read:

§ 291.31 Exemptions from the Act for direct air carriers.

(a) Each direct air carrier providing domestic cargo transportation is, with respect to such transportation, exempted from the following section or subsection of the Act only if and so long as it complies with the provisions of this part and the conditions imposed herein, and to the extent necessary to permit it to conduct domestic transportation operations:

(1) Section 403.

* * * * *

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 83-32481 Filed 12-5-83; 8:45 am]

BILLING CODE 6320-01-M

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14 CFR Part 291

[ER-1368; Amendment No. 15; Docket 41498]

Domestic Cargo Transportation; Exemption From Prohibition Against Unjust Discrimination

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: The CAB exempts domestic airlines providing cargo air transportation from the statutory prohibition against unjust discrimination in cargo service. The exemption places these carriers in the same position as other domestic carriers with respect to this provision. The exemption does not apply to intra-Alaska or intra-Hawaii cargo service. The rule also clarifies the present exemption for air carriers providing cargo transportation from the statutory provision requiring approval for acquisitions and control relationships.

DATES: Effective: January 5, 1984. Adopted: November 8, 1983.

FOR FURTHER INFORMATION CONTACT: Joseph A. Brooks, Office of the General Counsel, Civil Aeronautics Board, 1825 Connecticut Ave. NW., Washington, D.C. 20428, 202-673-5442.

SUPPLEMENTARY INFORMATION: In 14 CFR Part 291, the Board has granted broad exemptions to air carriers providing domestic cargo air transportation from the Federal Aviation Act. By a notice of proposed rulemaking (EDR-459, 48 FR 24922, June 3, 1983), the Board proposed to expand those exemptions to include the provision of the Act against unjust discrimination, and to clarify the present exemption concerning mergers and other control relationships. Comments were received from the National Industrial Transportation League, DHL Cargo, and the Flying Tiger Line. All comments generally supported the proposal. The Board has decided to adopt the rule as proposed.

Section 404(b) of the Act prohibits unjust discrimination by air carriers in providing air transportation. This provision expands the common law prohibition against discrimination by common carriers. Between 1977 and 1979 the Board, following Congress' intent, substantially deregulated domestic cargo air transportation. The Board, however, did not exempt carriers providing that transportation from section 404(b).

In 1978, Congress passed the Airline Deregulation Act. Among other things, that Act stated that, as of 1983, carriers providing domestic passenger transportation are no longer subject to section 404(b). The Board does not believe that domestic cargo carriers should any longer be subject to section 404(b). There is no reason to distinguish between cargo transportation and passenger transportation. Section 404(b) is a provision that was a part of a pervasive scheme of airline economic regulation. As Congress recognized in 1978, this provision is not needed in a deregulated environment. It can hinder price competition, if airlines and their customers are inhibited from arranging the best terms possible for air transportation.

The National Industrial Traffic League supported the consistent non-application of this provision to passenger and cargo transportation. The League commented, however, that this exemption should be continually monitored, since it could result in discriminatory freight claim and loss and damage policies by the carriers. Those policies of the carriers, however, must be contained in the shipper-carrier contract. A shipper is free to bargain on these policies or not to use a carrier because of them. Anticompetitive discrimination in the application of those policies by the carriers would, of course, be subject to court challenge under the antitrust laws.