

source of profit for NYLIAC which will be added to its surplus and may be used for, among other things, the payment of distribution expenses.

15. The mortality risk borne by NYLIAC arises from its obligation to make annuity payments (determined in accordance with the annuity tables and other provisions contained in the relevant Policy), where a life annuity is selected, regardless of how long an Annuitant may live. The mortality risk under the Policy is the risk that, upon selection of an annuity payment option which has life contingencies, Annuitants will live longer than NYLIAC's actuarial projections indicate, resulting in higher than expected income payments. NYLIAC is also assuming a mortality risk as a result of its promise to pay a minimum death benefit under the Policies.

16. The expense risk borne by NYLIAC under the Policy is the risk that the charges for administrative expenses, which are guaranteed for the life of the Policies, may be insufficient to cover the actual costs of issuing and administering the Policies.

Applicants' Legal Analysis

1. Applicants request an order under Section 6(c) granting exemptions from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to permit the deduction from the assets of the Separate Accounts and the Future Accounts of mortality and expense risk charges under the Policies or Other Policies, as appropriate.

2. Section 6(c) of the 1940 Act authorizes the Commission, by order upon application, to conditionally or unconditionally grant an exemption from any provision, rule or regulation of the 1940 Act to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

3. Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act, in relevant part, prohibit a registered unit investment trust, its depositor or principal underwriter, from selling periodic payment plan certificates unless the proceeds of all payments, other than sales loads, are deposited with a qualified bank and held under arrangements which prohibit any payment to the depositor or principal underwriter except a reasonable fee, as the Commission may prescribe, for performing bookkeeping and other administrative duties normally performed by the bank itself.

4. Applicants submit that their request for an order that applies to Other Policies offered by the Separate Accounts and by Future Accounts is

appropriate in the public interest because it would promote competitiveness in the variable annuity policy market by eliminating the need for NYLIAC to file redundant exemptive applications, thereby reducing its administrative expenses and maximizing the efficient use of its resources. Investors would not receive any benefit or additional protection by requiring NYLIAC to repeatedly seek exemptive relief with respect to the same issues addressed in this Application.

5. Applicants represent that the mortality and expense risk charges under the NVA Policies and MFA Policies are within the range of industry practice for comparable variable annuity contracts. This representation is based upon Applicants' analysis of publicly available information about similar industry products, taking into consideration such factors as current charge levels, the manner in which charges are imposed, the presence of charge levels or annuity rate guarantees and the markets in which the Policies will be offered. Applicants state that NYLIAC will maintain at its headquarters and make available to the Commission, upon request, a memorandum outlining the methodology underlying this representation.

Similarly, prior to making available any Other Policies, Applicants will represent that the mortality and expense risk charges under any such Other Policies will be within the range of industry practice for comparable variable annuity contracts. NYLIAC will maintain at its headquarters and make available to the Commission, upon request, a memorandum outlining the methodology underlying such representation.

6. Applicants acknowledge that, if a profit is realized from the mortality and expense risk charge under the Policies, all or a portion of such profit may be available to pay distribution expenses not reimbursed by the CDSC. NYLIAC has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the Separate Accounts and the Policy Owners. NYLIAC will keep at its headquarters and make available to the Commission, upon request, a memorandum setting forth the basis for this representation. In addition, NYLIAC will keep at its headquarters and make available to the Commission, upon request, a memorandum setting forth the basis for the same representation with respect to Other Policies offered by the Separate Accounts and by Future Accounts.

8. Applicants represent that the Separate Account and any Future Account will invest only in underlying funds that have undertaken to have a board of directors/trustees, a majority of whom are not interested persons of any such fund, as defined in the 1940 Act, formulate and approve any plan under Rule 12b-1 under the 1940 Act to finance distribution expenses.

Conclusion

Applicants assert that for the reasons and upon the facts set forth above, the requested exemptions from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to deduct the mortality and expense risk charge under the Policies, or under Other Policies, offered by the Separate Account or by Future Accounts are necessary and appropriate in the public interest and consistent with the protection of investors and the policies and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 95-10608 Filed 4-28-95; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended April 21, 1995

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 50297

Date filed: April 18, 1995.

Parties: Members of the International Air Transport Association.

Subject: Request For Interim Approval of Amendment To The Provisions For The Conduct Of IATA Traffic Conferences.

The amendment was adopted by the IATA Executive Committee at its 159th meeting. The amendment involves Article VI, Paragraph 9 of the Provisions and reads as follows (new text underlined):

One-third of the representatives of the voting Members of a Tariff Conference, and one-fifth of the representatives of the voting Members of a Services Conference or Agency Conference *which have nominated an Accredited Representative to such Conference*, or their respective designated alternates acting in their place and stead, shall constitute the quorum at any meeting of the Traffic Conference concerned: (* * *)

(remainder of paragraph 9 unchanged)

Docket Number: 50298

Date filed: April 18, 1995.

Parties: Members of the International Air Transport Association.

Subject: TC2/TC12 Mail Vote 739, Rescission of Fare Increase from Sudan.

Proposed Effective Date: May 1, 1995.

Paulette V. Twine,

Chief, Documentary Services Division.

[FR Doc. 95-10573 Filed 4-28-95; 8:45 am]

BILLING CODE 4910-62-P

Federal Railroad Administration

Petition for Exemption or Waiver of Compliance

In accordance with Title 49 CFR 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received requests for exemptions from or waivers of compliance with a requirement of its safety standards. The individual petitions are described below, including the party seeking relief, the regulatory provisions involved, and the nature of the relief being requested.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number RSOP-95-1) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, FRA, Nassif Building, 400 Seventh Street SW., Washington, D.C. 20590. Communications received within 45 days of the date of publication of this notice, will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.-5:00 p.m.) in Room 8201, Nassif Building, 400 Seventh Street SW., Washington, D.C. 20590.

The individual petitions seeking an exemption or waiver of compliance are as follows:

American President Lines, Limited and APL Land Transport Services, Incorporated (APL) (Waiver Petition Docket Number RSOP-95-1)

The American President Lines, Limited and APL seek a permanent waiver of compliance with certain

provisions of the Railroad Operating Practices regulation (Title 49 CFR Part 218) for derail and blue signal requirements. APL is seeking relief from the requirements of § 218.29(c)(1) which states: "(c) Except as provided in paragraphs (a) and (b) of this section, when workers are on, under, or between rolling equipment on any track, other than main track: (1) A derail capable of restricting access to that portion of the track on which such equipment is located, will fulfill the requirements of a manually operated switch when positioned no less than 150 feet from the end [of] such equipment * * *"

A new container port facility and rail yard, which will be operated by an APL subsidiary, are being designed and built by the Port of Seattle. The new facility is designed to load and unload intermodal trains and is expected to be occupied by the last quarter of 1996. The yard will have the capacity to store up to 56 stack train cars with each such car being a maximum of 337 feet long. There will be 6 parallel spur tracks entering the yard from the south end with a single run-around track to the west of the working tracks. The 6 spurs are arranged in sets of 2 parallel tracks which will be serviced by gantry cranes or top-picks for loading and unloading. The 6 spurs rejoin at the north end to service a single spur which runs north to a "dead end." In the center of the yard is a 70-foot wide crossing aisle that divides each spur. On each side of the aisle, APL plans to load and unload 3 to 5 stack cars on each of the 6 tracks. The 6 tracks will each be about 3,100 feet in length, and the yard will be approximately 3,200 feet in length by about 300 feet in width. APL intends to load or unload trains on all 6 spurs simultaneously. To protect its workmen, APL plans to install blue lights and derailleurs 5 feet beyond the edge on both sides of the aisle. The 5-foot area between the edge of the aisle and the derailer and blue light signal will be a surface that will immediately dampen the progress of any car that is derailed, so that the car will stop moving before the face of the coupler reaches the aisle. The blue light, derail and red light will all be remotely and automatically controlled from a tower that is within 1,500 feet of the aisle and will have a continuous uninterrupted view of the yard. There will also be a blue light signal and derail across the aisle, 80 feet from the other blue light and derail, which would, APL claims, in essence provide dual protection for the workmen.

The facility will load and unload ships and intermodal unit trains. In a typical operation, a loaded train will

enter the yard from the south, pulling enough cars to fill the first track. The speed limit in the yard will be 5 mph. The locomotive will pull these cars onto the first track, where a cut will be made just before the aisle, and those cars to be unloaded on the southeast side of the aisle will be set out. The locomotive will then pull the rest of the cars onto the track north of the aisle where they will be set out. The locomotive will then exit the first track, proceed south on the run-around track to the west of the yard and pickup another cut of cars to fill the second track. This will continue until the incoming train is spotted or all six tracks are filled. Excess cars can be spotted in a storage yard west of and adjacent to the main yard. During the process, once each cut of cars is set out on the appropriate track, the blue lights and derails will be set.

At that point, top lifting type container handling equipment will be used to unload the railroad cars on any given spur. Tractors will move the trailers or containers either to a storage area, or directly to ships that are berthed at the facility. These tractors will use the aisle as the means of access to and from the yard with both chassis and containers. A similar process will be followed when loading unit trains from a ship or the container storage yard.

APL requests waiver of the 150-foot requirement for the blue lights and derail devices to be used in the center aisle in the yard. Each group of workmen will be protected by blue light signals 80 feet apart across the aisle. Each group of workmen will also be protected by two derail devices. The first will be within 5 feet of the coupling face, and the other will be 80 feet from the first derail device, across the aisle. Workmen will not begin working to load or unload the cars on any given spur until the cars have come to a complete stop and are protected as set out in this waiver request. They will be protected by two blue light signals and by two derail devices.

APL states that it "is working with the Port in the process of designing the yard. One important facet of this design is that workmen be able to work in close proximity to the aisle to increase efficiency. As indicated in the Notice of Proposed Rulemaking, when certain criteria are present, a railroad may safely use different approaches to afford blue signal protection." APL states they will meet those criteria. "First, slow speeds are involved since there is a 5 mph speed limit in the yard. Next, control over the movement of the equipment will be placed in the hands of individuals directly responsible for the people who need to be protected. In