

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

Puritan-Bennett Aero Systems Company

Docket No. 98-CE-29-AD

Applicability: Puritan-Bennett C351-2000 series passenger oxygen masks and portable oxygen masks, part numbers as listed below, that (1) have elastomer cure dates between September 1993 and March 1997; and (2) are installed in aircraft that are certificated in any category:

Passenger Masks

C351-2000-00
C351-2000-02
C351-2000-21
C351-2000-38
C351-2000-52
C351-2000-59
C351-2000-63
114006-01
174006-16
174006-30
174006-31
174290-21
174290-22
174290-24
174290-26
174291-21
174291-23
174291-24
174501-00
174504-01 (C351-2000-205)
174505-01 (C351-2000-201)
174506-00 (C351-2000-223)
174509-00 (C351-2000-302)
174510-01 (C351-2000-224)
174510-08 (C351-2000-231)
174510-09 (C351-2000-232)
174510-10 (C351-2000-233)
174510-11 (C351-2000-234)

Drop-Out Box Assemblies

115055-04
115055-10
175011-01
175015-00
175016-00
175105-00
175109-00
175112-10
175112-11
175112-21
175112-90
175205-00
175210-00
175215-01
175222-11
175222-13
175222-20
175222-21
175222-90
175224-00
175242-00
175242-01
175242-02
175303-00
175308-00

Emergency Oxygen Portable Assemblies

176960-13

176960-14
176980-00
176965-SMB2
176965-SCOB2
176965-SMO2
176965-SCMB2

Note 1: This AD applies to each aircraft equipped with an oxygen mask identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For aircraft that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent reduced oxygen consumption when passengers are required to use defective oxygen masks, which could result in passenger injury, accomplish the following:

(a) Within the next 90 calendar days after the effective date of this AD, inspect the passenger or portable oxygen masks for any tear in the face cushion in accordance with the Accomplishment Instructions section in Nellcor Puritan Bennett Service Bulletin No. C351-2000-35-1, Revision 2, date of original issue: July, 1996, date of first revision: February, 1997, date of current revision: February, 1998. The face cushion is adjacent to the inner mask housing. If a tear is found, prior to further flight, replace or repair the mask in accordance with the service bulletin.

(b) As of the effective date of this AD, no person may install, in any aircraft, Puritan-Bennett C351-2000 series passenger oxygen masks and portable oxygen masks that are specified in the Applicability section of this AD unless they have been inspected and found airworthy in accordance with paragraph (a) of this AD.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(e) All persons affected by this directive may obtain copies of the document referred

to herein upon request to Puritan-Bennett Aero Systems Co., 10800 Pflumm Road, Lenexa, Kansas 66215; or may examine this document at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on September 15, 1998.

Marvin R. Nuss,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98-25216 Filed 9-21-98; 8:45 am]

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DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Part 2510

RIN 1210-AA48

Plans Established or Maintained Pursuant to Collective Bargaining Agreements Under Section 3(40)(A) of ERISA

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Notice of establishment of the ERISA Section 3(40) Negotiated Rulemaking Advisory Committee, and notice of first meeting.

SUMMARY: The Department of Labor (Department) is establishing the ERISA Section 3(40) Negotiated Rulemaking Advisory Committee (Committee) under the Negotiated Rulemaking Act of 1990 and the Federal Advisory Committee Act (the FACA). The Committee will meet for the first time on Monday, October 26 through Tuesday, October 27, 1998. The Committee will develop a proposed rule implementing the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. 1001-1461 (ERISA). The purpose of the proposed rule is to establish a process and criteria for a finding by the Secretary of Labor that an agreement is a collective bargaining agreement for purposes of section 3(40) of ERISA. The proposed rule will also provide guidance for determining when an employee benefit plan is established or maintained under or pursuant to such an agreement. Employee benefit plans that are established or maintained for the purpose of providing benefits to the employees of more than one employer are "multiple employer welfare arrangements" under section 3(40) of ERISA, and therefore are subject to certain state regulations, unless they meet one of the exceptions set forth in section 3(40)(A). At issue in this regulation is the exception for plans or

arrangements that are established or maintained under one or more agreements which the Secretary finds to be collective bargaining agreements. Arrangements that are sponsored by an entity that adopts the guise of a labor organization and purports to enter into collective bargaining for the purpose of offering or providing health coverage only, with no current or prospective intention of dealing with other subjects of collective bargaining, are outside the scope of this rulemaking. It is the view of the Department that it is necessary to distinguish organizations that provide benefits through collectively bargained employee representation from organizations that are primarily in the business of marketing commercial insurance products.

If adopted, the proposed rule would affect employee welfare benefit plans, their sponsors, participants and beneficiaries, as well as service providers to plans, plan fiduciaries, unions, employer organizations, the insurance industry, and state insurance regulators.

DATES: The first meeting of the Committee will be held on Monday, October 26 through Tuesday, October 27, 1998 from 9:00 a.m. to approximately 5:00 p.m. on each day. The date, location and time for subsequent Committee meetings will be announced in the **Federal Register**.

ADDRESSES: The first Committee meeting will be held in Room C-5320, Seminar Room 6, at the U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. All interested parties are invited to attend this public meeting. Seating is limited and will be available on a first-come, first-serve basis. Individuals with disabilities wishing to attend should contact, at least 4 business days in advance of the meeting, Patricia Arzuaga, Office of the Solicitor, Plan Benefits Security Division, U.S. Department of Labor, Room N-4611, 200 Constitution Avenue, NW., Washington, DC 20210 (telephone (202) 219-4600; fax (202) 219-7346), if special accommodations are needed. These are not toll-free numbers. The date, location and time for subsequent Committee meetings will be announced in advance in the **Federal Register**.

Minutes of all public meetings and other documents made available to the Committee will be available for public inspection and copying in the Public Documents Room, Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N-5638, 200 Constitution Avenue, NW., Washington, DC from 8:30 a.m. to 5:30

p.m. Any written comments should be directed to the ERISA 3(40) Negotiated Rulemaking Advisory Committee, and sent to the Public Documents Room, Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N-5638, 200 Constitution Avenue, NW., Washington, DC, Telephone (202) 219-8771. This is not a toll-free number.

FOR FURTHER INFORMATION CONTACT: Patricia Arzuaga, Office of the Solicitor, Plan Benefits Security Division, U.S. Department of Labor, Room N-4611, 200 Constitution Avenue, NW., Washington, DC 20210 (telephone (202) 219-4600; fax (202) 219-7346). This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

I. Background

On April 15, 1998, PWBA published a notice of intent to establish a negotiated rulemaking advisory committee to develop a proposed rule implementing section 3(40) of ERISA. (63 FR 18345) (Notice of Intent). Further information on the role of the Committee and the scope of the proposed rule can be found in the Notice of Intent.

In the Notice of Intent, PWBA requested comments on the appropriateness of negotiated rulemaking for the proposed rules. The Department received twelve comments, all supporting the Department's planned use of negotiated rulemaking for developing this rule. These twelve comments included 6 applications for membership and 3 nominations for membership on the Committee. Based on this response, and for the reasons stated in the Notice of Intent, the Department has determined that establishing this Committee is necessary and in the public interest.

In accordance with the FACA, PWBA prepared a Charter for the establishment of the ERISA 3(40) Negotiated Rulemaking Advisory Committee, and the Secretary approved the Charter.

II. Committee Membership

1. Applications and Nominations

In the Notice of Intent, the Department proposed the AFL-CIO to represent the interests of labor organizations and participants and beneficiaries covered by collectively bargained plans. It nominated the National Coordinating Committee for Multiemployer Plans (NCCMP) to represent the interests of plans covering the employees of more than one employer that are subject to collective bargaining, and the National Association of Insurance Commissioners

(NAIC) to represent states that regulate multiple employer welfare arrangements. The Department also included the Entertainment Industry Multiemployer Health Plans because according to its comment on the Department's 1995 Notice of Proposed Rulemaking, entertainment industry multiemployer plans are structured differently than other multiemployer welfare plans because of the special nature of the entertainment industry.

In response to the Notice of Intent, ten additional groups applied for membership on the Committee. The National Railway Labor Conference (NRLC) nominated a representative for membership on the Committee. Because collective bargaining for MEWAs for the railway industry is covered by the Railway Labor Act, and not the National Labor Relations Act, the Department believes that the interests of the NRLC are sufficiently different from those of the existing Committee members, and so accepts the NRLC for membership on the Committee. In addition, the Department accepts the application of the National Association of Health Underwriters (NAHU), which represents the interests of independent agents, brokers and advisors providing health care products and services to plans and individuals, for Committee membership, because these interests are not already directly represented by the organizations proposed by the Department. The Department also accepts the application of the Health Insurance Association of America (HIAA), which represents the interests of insurance carriers and managed care companies that finance and deliver health care, because the perspective of insurance carriers and managed care companies within the American private health care system is not already represented by the other organizations proposed by the Department.

The Department received an application for membership from The International Corporation (TIC), a third-party administrator of multiemployer plans; this application for membership was supported by a nomination of TIC by the Society of Professional Benefits Administrators. Because the interests of third-party administrators who may be responsible for implementing the requirements of any regulation resulting from the negotiated rulemaking process are not already represented, the Department accepts TIC for membership on the Committee. Likewise, because the interests of employers participating in the collective bargaining process for multiemployer welfare plans are not already represented, the Department accepts the Associated General

Contractors of America (AGC) for membership on the Committee to represent the interests of employers involved in the collective bargaining process.

The Department does not accept for membership five applicants whose interests are already adequately represented. The United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada have interests similar to those represented by the AFL-CIO and the NCCMP. Similarly, because the distinct interests of maritime supervisory officers are already represented by the AFL-CIO, which includes maritime unions in its membership, the Department does not accept the application of the American Maritime Officers Plans. Likewise, the Department does not accept the application for membership of the National Conference of Unions and Employee Benefit Funds (NCUEBF). In its application for membership, the NCUEBF indicated that it represents self-insured, self-administered and self-funded employee benefit plans, and has an interest in any definition of "associate member" that may be included in the regulation. The AFL-CIO's and NCCMP's interests subsume the interests of the types of plans identified by NCUEBF. The comments received by these three organizations in response to the Department's 1995 Notice of Proposed Rulemaking identified the same concerns, and the AFL-CIO and NCCMP represent a broader range of interests than does NCUEBF.

Finally, the Department does not accept the applications of the National Rural Electric Cooperative Association (NRECA) and the Legal Defense Fund of the Peace Officers' Research Association of California (PORAC). Section 3(40)(A)(ii) of ERISA, 29 U.S.C. § 1002(40)(A)(ii) provides a separate statutory exception for multiple employer plans established by rural electric cooperatives. The issues regarding whether a plan is "established or maintained under or pursuant to a collective bargaining agreement" do not apply to whether a plan is established by a rural electric cooperative. The PORAC legal defense fund represents funds that are established only by employee organizations, and does not represent collectively bargained plans or any other entities that have an interest in this rulemaking. Because the provisions of section 3(40) do not apply to PORAC or to the interests it

represents, the Department does not accept its application for membership.

2. Committee Membership

Accordingly, the members of the Committee are PWBA, the NAIC, the AFL-CIO, the NCCMP, the Entertainment Industry Multiemployer Health Plans, the NLRC, TIC, NAHU, the HIAA and the AGC. These Committee members include representatives from interests that are likely to be affected by the proposed rule, including employee welfare benefit plans, their sponsors, participants and beneficiaries, service providers to plans, plan fiduciaries, unions, employer organizations, the insurance industry, and state insurance regulators. The following is the list of individual Committee members, and the interests they represent:

Labor Unions

Kathy Krieger, American Federation of Labor and Congress of Industrial Organizations (AFL-CIO)

Multiemployer Plans

Gerald Feder (James Ray—alternate), National Coordinating Committee for Multiemployer Plans (NCCMP)
Judith Mazo, Entertainment Industry Multiemployer Health Plans

Railway Labor Organization Plans

Benjamin W. Boley, National Railway Labor Conference

Third-Party Administrators

David Livingston, Ph.D., The International Corporation

Employers/Management

James Kernan, The Associated General Contractors of America (AGC)

Independent Agents, Brokers and Advisors Providing Health Care Products and Services to Plans and Individuals

Nancy Trenti, National Association of Health Underwriters

Insurance Carriers and Managed Care Companies That Finance and Deliver Health Care

R. Lucia Riddle, Health Insurance Association of America

Federal Government

Elizabeth A. Goodman, Pension and Welfare Benefits Administration

State Governments

National Association of Insurance Commissioners

III. First Meeting of Committee

The first meeting of the Committee will be held on Monday, October 26 through Tuesday, October 27, 1998 from 9:00 a.m. to approximately 5:00 p.m. on

each day in Room C-5320, Seminar Room 6, at the U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. The primary purpose of the first meeting will be to establish Committee procedures. This meeting is open to the public. Seating is limited and will be available on a first-come, first-serve basis. Individuals with disabilities wishing to attend should contact, at least 4 business days in advance of the meeting, Patricia Arzuaga, Office of the Solicitor, Plan Benefits Security Division, U.S. Department of Labor, Room N-4611, 200 Constitution Avenue, NW., Washington, DC 20210 (telephone (202) 219-4600; fax (202) 219-7346), if special accommodations are needed. These are not toll-free numbers.

Minutes of the public meetings and materials prepared for the Committee will be available for public inspection at the Public Documents Room, Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N-5638, 200 Constitution Avenue, NW., Washington, DC from 8:30 a.m. to 5:30 p.m. Any written comments should be directed to the ERISA Section 3(40) Negotiated Rulemaking Advisory Committee, and sent to the Public Documents Room, Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N-5638, 200 Constitution Avenue, NW., Washington, DC, Telephone (202) 219-8771.

IV. Authority

This document was prepared under the direction of Meredith Miller, Deputy Assistant Secretary for Policy, Pension and Welfare Benefits Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, pursuant to Section 3 of the Negotiated Rulemaking Act of 1990, 104 Stat. 4969, Title 5 U.S.C. 561 et seq.; Section 9 of the Federal Advisory Committee Act, 5 U.S.C. App. 2; and section 3(40) of ERISA (Pub. L. 97-473, 96 Stat. 2611, 2612, 29 U.S.C. 1002(40)) and section 505 (Pub. L. 93-406, 88 Stat. 892, 894, 29 U.S.C. 1135) of ERISA, and under Secretary of Labor's Order No. 1-87, 52 FR 13139, April 21, 1987.

Signed at Washington, DC, this 16th day of September, 1998.

Meredith Miller,

Deputy Assistant Secretary for Policy, Pension and Welfare Benefits Administration.

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