

any foreseeable charging or discharging condition and during any failure of the charging or battery monitoring system not shown to be extremely remote. The lithium ion battery installation must preclude explosion in the event of those failures.

(2) Design of the lithium ion batteries must preclude the occurrence of self-sustaining, uncontrolled increases in temperature or pressure.

(3) No explosive or toxic gases emitted by any lithium ion battery in normal operation or as the result of any failure of the battery charging system, monitoring system, or battery installation which is not shown to be extremely remote may accumulate in hazardous quantities within the airplane.

(4) Installations of lithium ion batteries must meet the requirements of 14 CFR 25.863(a) through (d).

(5) No corrosive fluids or gases that may escape from any lithium ion battery may damage surrounding structure or any adjacent systems, equipment, or electrical wiring of the airplane in such a way as to cause a major or more severe failure condition, in accordance with 14 CFR 25.1309 (b) and applicable regulatory guidance.

(6) Each lithium ion battery installation must have provisions to prevent any hazardous effect on structure or essential systems caused by the maximum amount of heat the battery can generate during a short circuit of the battery or of its individual cells.

(7) Lithium ion battery installations must have a system to control the charging rate of the battery automatically, so as to prevent battery overheating or overcharging, and,

(i) A battery temperature sensing and over-temperature warning system with a means for automatically disconnecting the battery from its charging source in the event of an over-temperature condition, or

(ii) A battery failure sensing and warning system with a means for automatically disconnecting the battery from its charging source in the event of battery failure.

(8) Any lithium ion battery installation whose function is required for safe operation of the airplane must incorporate a monitoring and warning feature that will provide an indication to the appropriate flight crewmembers whenever the state-of-charge of the batteries has fallen below levels considered acceptable for dispatch of the airplane.

(9) The Instructions for Continued Airworthiness required by 14 CFR 25.1529 must contain maintenance

requirements to assure that the lithium ion battery is sufficiently charged at appropriate intervals specified by the battery manufacturer to ensure that batteries whose function is required for safe operation of the airplane will not degrade below specified ampere-hour levels sufficient to power the electronic flight bag (EFB) applications that are required for continued safe flight and landing. The Instructions for Continued Airworthiness must also contain procedures for the maintenance of lithium ion batteries in spares storage to prevent the replacement of batteries whose function is required for safe operation of the airplane with batteries that have experienced degraded charge retention ability or other damage due to prolonged storage at a low state of charge. Precautions should be included in the Instructions for Continued Airworthiness maintenance instructions to prevent mishandling of the lithium ion battery which could result in short-circuit or other unintentional damage that could result in personal injury or property damage.

**Note 1:** The term, "sufficiently charged" means the charge that is applied to rechargeable lithium ion batteries, which diminishes during the life of batteries with respect to the retentive capacity of the batteries to deliver available power—where capacity is the total quantity of electricity of a cell or battery, expressed in ampere-hours. Battery life is influenced by its internal chemical reaction and by other factors, such as temperature, shock, the number of recharges, etc.

**Note 2:** These special conditions are not intended to replace 14 CFR 25.1353(c), Amendment 25-113 in the certification basis of the ABX, Air Inc supplemental type certificate. These special conditions apply only to lithium ion batteries and their installations. The requirements of 14 CFR 25.1353(c), Amendment 25-113 remain in effect for batteries and battery installations on the ABX Air supplemental type certificate that do not use lithium ion batteries.

Compliance with the requirements of this Special Condition must be shown by test or analysis, with the concurrence of the Chicago Aircraft Certification Office.

Issued in Renton, Washington, on January 25, 2008.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

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## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Part 200

[Release No. 34-57262]

#### Delegation of Authority to the Director of the Division of Corporation Finance

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final rule.

**SUMMARY:** The Securities and Exchange Commission is amending its Rules of Organization and Program Management to delegate its authority to the Director of the Division of Corporation Finance to grant or deny exemptions pursuant to Section 36 of the Securities Exchange Act of 1934 from the requirement for registrants in connection with an annual meeting of security holders to furnish an annual report to security holders that contains audited financial statements as required by rules under the Exchange Act under certain limited circumstances. The delegation of authority is intended to conserve Commission resources by permitting the staff to review and act on exemptive applications under Section 36 when appropriate.

**DATES:** *Effective Date:* February 7, 2008.

**FOR FURTHER INFORMATION CONTACT:** Celeste M. Murphy, Special Counsel, at (202) 551-3440, Office of Mergers and Acquisitions, Division of Corporation Finance, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-3628.

**SUPPLEMENTARY INFORMATION:** The Commission today announces an amendment to its Organization and Program Management Rules governing Delegations of Authority to the Director of the Division of Corporation Finance.<sup>1</sup> The amendment adds to Rule 30-1 a new paragraph (e)(18) authorizing the Director to grant or deny exemptions from the requirements of Rule 14a-3(b) and Rule 14c-3(a) under the Exchange Act, pursuant to Section 36 of the Exchange Act, for audited financial statements to be included in the annual report to be furnished to security holders in connection with an annual meeting of security holders.

A number of companies have faced the dilemma of being required to hold a meeting of security holders when they are unable to deliver current audited financial statements. These companies may be compelled to hold meetings of their security holders pursuant to the provisions of certain state corporation

<sup>1</sup> 17 CFR 200.30-1.

laws, despite the inability to comply with the requirements of Rule 14a-3(b) and Rule 14c-3(a) under the Exchange Act. Although these situations are infrequent, we recognize the need to flexibly address this conflict in limited circumstances.

Section 36(a) provides that "the Commission, by rule, regulation, or order, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of this title or of any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors."<sup>2</sup> Section 4A(a) of the Exchange Act grants the Commission "the authority to delegate, by published order or rule, any of its functions to a division of the Commission."<sup>3</sup>

The delegation of authority to the Director is intended to conserve Commission resources by permitting the staff, pursuant to Section 36(a), to review and act on applications for exemption from Rule 14a-3(b) and Rule 14c-3(a) in cases where upon examination, the matter does not appear to present significant issues that have not been addressed previously or to raise questions of fact or policy indicating that the public interest or the interest of investors warrants that the Commission consider the matter. Nevertheless, the staff may submit matters to the Commission for consideration as it deems appropriate. In addition, under Section 4A(b) of the Exchange Act, the Commission retains discretionary authority to review upon its own initiative or, pursuant to Commission Rule 430, upon application by a party adversely affected, any exemption granted or denied by the Director pursuant to delegated authority.<sup>4</sup>

The Commission finds, in accordance with Section 553(b)(3)(A) of the Administrative Procedure Act,<sup>5</sup> that this amendment relates solely to agency organization, procedure, or practice, and does not relate to a substantive rule. Accordingly, notice, opportunity for public comment, and publication of the amendment prior to its effective date are unnecessary.

<sup>2</sup> 15 U.S.C. 78mm(a).

<sup>3</sup> 15 U.S.C. 78d-1(a).

<sup>4</sup> For information concerning the filing of exemptive relief applications, see Exchange Act Release No. 39624 (February 5, 1998), 63 FR 8101 (February 18, 1998); 17 CFR 240.0-12.

<sup>5</sup> 5 U.S.C. 553(b)(3)(A).

### List of Subjects in 17 CFR Part 200

Administrative practice and procedure, Authority delegations (Government agencies), Organization and functions (Government agencies).

### Text of Amendment

■ In accordance with the preamble, the Commission hereby amends Title 17, Chapter II of the Code of Federal Regulations as follows:

### PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

■ 1. The authority citation for part 200, subpart A, continues to read in part as follows:

**Authority:** 15 U.S.C. 77o, 77s, 77sss, 78d, 78d-1, 78d-2, 78w, 78ll(d), 78mm, 80a-37, 80b-11, and 7202, unless otherwise noted.  
\* \* \* \* \*

■ 2. Section 200.30-1 is amended by adding paragraph (e)(18) to read as follows:

#### § 200.30-1 Delegation of authority to Director of Division of Corporation Finance.

\* \* \* \* \*

(e) \* \* \*

(18) To review and, either unconditionally or upon specified terms and conditions, grant or deny exemptions from the requirements of Rules 14a-3(b) and 14c-3(a) (§§ 240.14a-3(b) and 240.14c-3(a) of this chapter) under the Act pursuant to Section 36 of the Act, in cases where upon examination, the matter does not appear to the Director to present significant issues that have not been addressed previously or to raise questions of fact or policy indicating that the public interest or the interest of investors warrants that the Commission consider the matter, where an applicant demonstrates that it:

(i) Is required to hold a meeting of security holders as a result of an action taken by one or more of the applicant's security holders pursuant to state law;

(ii) Is unable to comply with the requirements of Rule 14a-3(b) or Rule 14c-3(a) under the Act for audited financial statements to be included in the annual report to security holders to be furnished to security holders in connection with the security holder meeting required to be held as a result of the security holder demand under state law;

(iii) Has made a good faith effort to furnish the audited financial statements before holding the security holder meeting;

(iv) Has made a determination that it has disclosed to security holders all

available material information necessary for the security holders to make an informed voting decision in accordance with Regulation 14A or Regulation 14C (§§ 240.14a-1-240.14b-2 or §§ 240.14c-1-240.14c-101 of this chapter); and

(v) Absent a grant of exemptive relief, it would be forced to violate either state law or the rules and regulations administered by the Commission.

\* \* \* \* \*

Dated: February 4, 2008.

By the Commission.

Nancy M. Morris,

Secretary.

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BILLING CODE 8011-01-P

## DEPARTMENT OF LABOR

### Mine Safety and Health Administration

#### 30 CFR Part 100

RIN 1219-AB57

#### Criteria and Procedures for Proposed Assessment of Civil Penalties

**AGENCY:** Mine Safety and Health Administration (MSHA), Labor.

**ACTION:** Final rule.

**SUMMARY:** The Mine Safety and Health Administration (MSHA) is revising its civil penalty assessment amounts to adjust for inflation. The Debt Collection Improvement Act of 1996 (DCIA) requires MSHA to adjust all civil penalties for inflation at least once every four years according to the formula specified in the Federal Civil Penalties Inflation Adjustment Act of 1990 (Inflation Adjustment Act). The revised penalties apply to citations and orders issued on or after the effective date of this rule.

**DATES:** This final rule is effective on March 10, 2008.

**FOR FURTHER INFORMATION CONTACT:** Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, MSHA, 1100 Wilson Blvd., Room 2350, Arlington, Virginia 22209-3939, [silvey.patricia@dol.gov](mailto:silvey.patricia@dol.gov), 202-693-9440 (telephone), or 202-693-9441 (facsimile).

#### SUPPLEMENTARY INFORMATION:

##### I. Final Rule

The Administrative Procedure Act (APA) requires that rulemakings be published in the **Federal Register** and requires generally that agencies provide an opportunity for public comment. However, notice and an opportunity for public comment are not required when