

service bulletin specifies to contact the manufacturer for an appropriate repair: Before further flight, repair in accordance with a method approved by the Manager, International Branch, ANM-116, Transport Airplane Directorate, FAA; or the DGAC (or its delegated agent).

#### Alternative Methods of Compliance (AMOCs)

(h)(1) The Manager, International Branch, ANM-116, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) Before using any AMOC approved in accordance with 14 CFR 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

#### Related Information

(i) French airworthiness directive F-2005-078, dated May 11, 2005, also addresses the subject of this AD.

Issued in Renton, Washington, on October 20, 2005.

**Kalene C. Yanamura,**

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

[FR Doc. 05-21428 Filed 10-26-05; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2005-22812; Directorate Identifier 2005-NM-134-AD]

RIN 2120-AA64

#### Airworthiness Directives; Airbus Model A330-200, A330-300, A340-200, and A340-300 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to adopt a new airworthiness directive (AD) for certain Airbus Model A330-200, A330-300, A340-200, and A340-300 series airplanes. This proposed AD would require repetitive detailed inspections for cracking in the aft web of support rib 6 between certain bottom skin stringers on both wings; high frequency eddy current inspections for cracking of the attachment holes of the fuel pipes, and repair if necessary. This proposed AD would also provide for an optional modification, which would extend a certain inspection threshold. This proposed AD results from a report of significant cracking found in the aft web

of support rib 6 on both wings. We are proposing this AD to prevent cracking in the aft web of support rib 6, which could result in overloading of adjacent ribs and the surrounding wing structure and consequent reduced structural integrity of the wing.

**DATES:** We must receive comments on this proposed AD by November 28, 2005.

**ADDRESSES:** Use one of the following addresses to submit comments on this proposed AD.

- DOT Docket Web site: Go to <http://dms.dot.gov> and follow the instructions for sending your comments electronically.

- Government-wide rulemaking Web site: Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.

- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, Room PL-401, Washington, DC 20590.

- Fax: (202) 493-2251.

- Hand Delivery: Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for the service information identified in this proposed AD.

**FOR FURTHER INFORMATION CONTACT:** Tim Backman, Aerospace Engineer, International Branch, ANM-116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-2797; fax (425) 227-1149.

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Include the docket number "FAA-2005-22812; Directorate Identifier 2005-NM-134-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to <http://dms.dot.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets,

including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78), or you may visit <http://dms.dot.gov>.

#### Examining the Docket

You may examine the AD docket on the Internet at <http://dms.dot.gov>, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647-5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

#### Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified us that an unsafe condition may exist on certain Airbus Model A330-200, A330-300, A340-200, and A340-300 series airplanes. The DGAC advises that a report was received indicating significant cracking in the aft web of support rib 6 on the left and right wings on a Model A330 series airplane. When the cracking was found, during an 8C-check, the airplane had accumulated 10,441 total flight cycles and 40,153 total flight hours. The cracking was located in the lower part of the rib 6 aft hole between bottom skin stringers 18 and 20. The cracking extended from the fuel pipe fastener holes to the lower edge of the rib 6 hole and into the refuel pipe hole where the cracking had gone through the full thickness of the rib. Subsequent inspections on several Model A330 and A340 series airplanes revealed similar cracking in the same area. These conditions, if not corrected, could result in overloading of adjacent ribs and the surrounding wing structure and consequent reduced structural integrity of the wing.

#### Relevant Service Information

Airbus has issued Service Bulletins A330-57-3085 (for Model A330 series airplanes) and A340-57-4093 (for Model A340 series airplanes), both Revision 01, both dated March 25, 2005. The service bulletins describe procedures for detailed inspections for cracking in the aft web of support rib 6 between bottom skin stringers 18 and 20 on both wings, and high frequency eddy current (HFEC) inspections for cracking

of the attachment holes of the fuel pipe (including a rototest inspection of the attachment holes of the fuel pipe mounting). The service bulletins also recommend contacting the manufacturer for repair instructions if any cracking is found, and reporting inspection information to the manufacturer. If no cracking is found, the service bulletins specify accomplishing the optional modification specified in Service Bulletin A330-57-3087 or A340-57-4095, as applicable.

The compliance thresholds for the initial inspections specified in Service Bulletin A330-57-3085 range from between 8,000 and 19,200 flight cycles or between 25,000 and 57,800 flight hours. The compliance thresholds for the initial inspections specified in Service Bulletin A340-57-4093 range from between 8,000 and 12,200 flight cycles or between 30,200 and 53,500 flight hours.

Airbus has also issued Service Bulletins A330-57-3087 (for Model A330 series airplanes) and A340-57-4095 (for Model A340 series airplanes), both dated February 15, 2005. The service bulletins describe procedures for modifying the fuel pipe connector and the fastener holes of support rib 6. The modification includes, among other things, enlarging and cold expanding certain attachment holes of the fuel pipe connector, installing interference bolts, and a HFEC inspection (rotating probe test) of the fastener holes for cracking. If no cracking is found during the inspections specified in Service Bulletin A330-57-3085 or A340-57-4093, this optional modification may be done.

The DGAC mandated the service information and issued French airworthiness directives F-2005-071 and F-2005-072, both dated April 27, 2005, to ensure the continued airworthiness of these airplanes in France.

#### **FAA's Determination and Requirements of the Proposed AD**

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. We have examined the DGAC's findings, evaluated all pertinent information, and determined that we need to issue an AD for airplanes of this type design that are certificated for operation in the United States.

Therefore, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously, except as discussed under Differences Among the Proposed AD, Service Information, and French Airworthiness Directives.

#### **Differences Among the Proposed AD, Service Information, and French Airworthiness Directives**

Service Bulletins A330-57-3085 and A340-57-4093 and the French airworthiness directives specify to contact the manufacturer for repair instructions and an inspection schedule if any crack or damage is found; this proposed AD requires you to repair any cracking (and obtain a schedule for subsequent inspections) by using a method that we or the DGAC (or its delegated agent) approve. In light of the type of repair required to address the unsafe condition, and consistent with existing bilateral airworthiness agreements, we have determined that, for this proposed AD, a repair and inspection schedule we or the DGAC approve is acceptable for compliance with this proposed AD.

Figure 4, Sheet 1, "Inspection Flow Chart," of Service Bulletins A330-57-3085 and A340-57-4093 specifies initial inspection thresholds for airplanes on which the actions in those service bulletins have been accomplished, or Airbus Modification 53882 was done during production. This proposed AD would require you to perform the initial inspection at the earliest of those thresholds or within 6 months after the effective date of the AD, whichever is later. We have included a 6-month grace period to ensure that any airplane that is close to or has passed the initial inspection threshold is not grounded as of the effective date of the AD.

#### **Clarification of Procedures for Certain Inspections**

The French airworthiness directives require certain follow-on inspections prior to next flight for airplanes above 8,000 flight cycles or 30,200 flight hours with at least one wing rib 6 not repaired or modified after a hard or overweight landing of the airplane; however, there are no procedures specified in Service Bulletins A330-57-3085 and A340-57-4093 for accomplishing those inspections. Therefore, we have determined that, for this proposed AD, inspections we or the DGAC approve are acceptable for compliance with the inspections required by the French airworthiness directives. We have provided other methods to comply, as

specified in the French airworthiness directives.

#### **Interim Action**

We consider this proposed AD interim action. The manufacturer is currently developing a modification that will address the unsafe condition identified in this proposed AD. Once this modification is developed, approved, and available, we may consider additional rulemaking.

#### **Costs of Compliance**

This proposed AD would affect about 25 airplanes of U.S. registry.

The proposed inspections would take about 4 work hours per airplane, at an average labor rate of \$65 per work hour. Based on these figures, the estimated cost of the proposed inspections for U.S. operators is \$6,500, or \$260 per airplane, per inspection cycle.

#### **Authority for This Rulemaking**

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in subtitle VII, part A, subpart III, section 44701, "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

#### **Regulatory Findings**

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative,

on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

#### The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

#### PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

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

##### § 39.13 [Amended]

2. The Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

**Airbus:** Docket No. FAA-2005-22812; Directorate Identifier 2005-NM-134-AD.

##### Comments Due Date

(a) The FAA must receive comments on this AD action by November 28, 2005.

##### Affected ADs

(b) None.

##### Applicability

(c) This AD applies to Airbus Model A330-201, -202, -203, -223, and -243; A330-301, -321, -322, -323, -341, -342, and -343; A340-211, -212, and -213; and A340-311, -312, and -313 airplanes, certificated in any category; on which Airbus Modification 41114 or 44599 was done during production.

##### Unsafe Condition

(d) This AD results from a report of significant cracking found in the aft web of support rib 6 on both wings. We are issuing this AD to prevent cracking in the aft web of support rib 6, which could result in overloading of adjacent ribs and the surrounding wing structure and consequent reduced structural integrity of the wing.

##### Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

**Note 1:** For the purposes of this AD, a detailed inspection is: "An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate.

Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required."

##### Repetitive Inspections

(f) For Model A330 series airplanes on which Airbus Modification 53882 was not done during production: At the applicable time specified in paragraph (f)(1), (f)(2), or (f)(3) of this AD; perform a detailed inspection for cracking in the aft web of support rib 6 between bottom skin stringers 18 and 20 on both wings, and high frequency eddy current inspections for cracking of the attachment holes of the fuel pipe and fuel pipe mounting, by doing all the actions in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330-57-3085, Revision 01, dated March 25, 2005. Repeat the inspections thereafter at intervals not to exceed 8,000 flight cycles or 25,000 flight hours, whichever is first.

(1) For airplanes that have accumulated 7,999 or fewer total flight cycles, and 24,999 or fewer total flight hours, as of the effective date of this AD: Do the inspections at the later of the times specified in paragraphs (f)(1)(i) and (f)(1)(ii) of this AD.

(i) Before the accumulation of 8,000 total flight cycles or 25,000 total flight hours after the effective date of this AD, whichever is first.

(ii) Within 8 months after the effective date of this AD.

(2) For airplanes that have accumulated 8,000 or more total flight cycles, but fewer than 10,000 total flight cycles; or 25,000 or more total flight hours, but fewer than 30,000 total flight hours; as of the effective date of this AD: Do the inspections at the later of the times specified in paragraphs (f)(2)(i) and (f)(2)(ii) of this AD.

(i) Before the accumulation of 10,000 flight cycles or 30,000 flight hours after the effective date of this AD, whichever is first.

(ii) Within 8 months after the effective date of this AD.

(3) For airplanes that have accumulated 10,000 or more total flight cycles or 30,000 or more total flight hours as of the effective date of this AD: Do the inspections within 3 months after the effective date of this AD.

(g) For Model A330 series airplanes on which Airbus Modification 53882 was done during production or on which Airbus Service Bulletin A330-57-3087, dated February 15, 2005, has been done: Perform the applicable inspections required by paragraph (f) of this AD at the earliest of the initial inspection thresholds specified in Figure 4, Sheet 1, "Inspection Flow Chart" of Airbus Service Bulletin A330-57-3085, Revision 01, dated March 25, 2005; or within 6 months after the effective date of this AD, whichever is later. Repeat the inspections required by paragraph (f) of this AD at the time specified in paragraph (f) of this AD.

(h) For Model A340 series airplanes on which Airbus Modification 53882 was not done during production: Perform inspections required by paragraph (f) of this AD at the applicable time specified in paragraph (h)(1), (h)(2), or (h)(3) of this AD. Perform the inspections by doing all the actions in accordance with the Accomplishment

Instructions of Airbus Service Bulletin A340-57-4093, Revision 01, dated March 25, 2005. Repeat the inspections thereafter at intervals not to exceed 8,000 flight cycles or 30,200 flight hours, whichever is first.

(1) For airplanes that have accumulated 7,999 or fewer total flight cycles and 30,199 or fewer total flight hours as of the effective date of this AD: Do the inspections at the later of the times specified in paragraphs (h)(1)(i) and (h)(1)(ii) of this AD.

(i) Before the accumulation of 8,000 total flight cycles or 30,200 total flight hours after the effective date of this AD, whichever is first.

(ii) Within 8 months after the effective date of this AD.

(2) For airplanes that have accumulated 8,000 or more but fewer than 10,000 total flight cycles or 30,200 or more but less than 43,700 total flight hours, as of the effective date of this AD: Do the inspections at the later of the times specified in paragraphs (h)(2)(i) and (h)(2)(ii) of this AD.

(i) Before the accumulation of 10,000 total flight cycles or 43,700 total flight hours after the effective date of this AD, whichever is first.

(ii) Within 8 months after the effective date of this AD.

(3) For airplanes that have accumulated 10,000 or more total flight cycles or 43,700 or more total flight hours as of the effective date of this AD: Do the inspections within 3 months after the effective date of this AD.

(i) For Model A340 series airplanes on which Airbus Modification 53882 was done during production or on which Airbus Service Bulletin A340-57-4095, dated February 15, 2005, has been done: Perform the applicable inspections required by paragraph (f) of this AD at the earliest of the initial inspection thresholds specified in Figure 4, Sheet 1, "Inspection Flow Chart" of Airbus Service Bulletin A340-57-4093, Revision 01, dated March 25, 2005; or within 6 months after the effective date of this AD, whichever is later. Repeat the inspections required by paragraph (f) of this AD at the time specified in paragraph (h) of this AD.

##### Optional Modification

(j) For airplanes on which no cracking is found during any inspection required by this AD: Accomplishing the modification of the fuel pipe connector and the fastener holes of support rib 6 on both wings by doing all the actions specified in the Accomplishment Instructions of Airbus Service Bulletin A330-57-3087, or A340-57-4095, both dated February 15, 2005, as applicable, would extend the interval for the next inspection to the applicable post-mod inspection threshold specified in Figure 4, Sheet 1, "Inspection Flow Chart" of Airbus Service Bulletins A330-57-3085 and A340-57-4093, both Revision 01, both dated March 25, 2005, as applicable. After accomplishing that inspection, repeat the applicable inspections required by paragraph (f) or (h) of this AD at the applicable repetitive inspection interval specified in Figure 4.

**Note 2:** There is currently no terminating action available for the repetitive inspections required by this AD.

### Inspections Accomplished According to Previous Issue of Service Bulletins

(k) Inspections accomplished before the effective date of this AD according to Airbus All Operator Telexes A330-57-3085 and A340-57-4093, both dated December 15, 2004; are considered acceptable for compliance with the corresponding inspections specified in this AD.

### Repair

(l) Except as required by paragraph (m) of this AD: If any cracking is found during any inspection required by this AD: Repair before further flight and get a schedule for subsequent inspections, according to a method approved by either the Manager, International Branch, ANM-116, Transport Airplane Directorate; or the Direction Générale de l'Aviation (DGAC) (or its delegated agent).

### Hard or Overweight Landing

(m) For Model A330 series airplanes with 8,000 or more total flight cycles or 25,000 or more total flight hours, and Model A340 series airplanes with 8,000 or more total flight cycles or 30,200 or more total flight hours that have not been modified in accordance with paragraph (j) of this AD: Before further flight after any hard or overweight landing of the airplane, accomplish the applicable follow-on inspections and any applicable corrective actions according to a method approved by either the Manager, International Branch, ANM-116; or the DGAC (or its delegated agent). Accomplishing the inspections in Airbus A330/A340 Airplane Maintenance Manual, Chapter 05-51-11, dated April 1, 2005, titled "Inspection After Hard/Overweight Landing—Inspection/Check," or Airbus Technical Disposition (TD) TD/J1/S3/00608/2005, dated April 26, 2005, titled "Inspections following hard landing, both wings," is considered one approved method. (Operators can obtain the TD from Airbus.)

### Reporting Requirement

(n) If any crack is found during any inspection required by this AD: Submit a report of the findings to Airbus Repair Engineering, Dept SER-1, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Submit the report at the applicable time specified in paragraph (n)(1) or (n)(2) of this AD. The report must include the inspection results, a description of any discrepancies found, the airplane serial number, and the number of landings and flight hours on the airplane. Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements contained in this AD and has assigned OMB Control Number 2120-0056.

(1) If the inspection was done after the effective date of this AD: Submit the report within 30 days after the inspection.

(2) If the inspection was done before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

### Alternative Methods of Compliance (AMOCs)

(o)(1) The Manager, International Branch, ANM-116, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) Before using any AMOC approved in accordance with 14 CFR 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

### Related Information

(p) French airworthiness directives F-2005-071 and F-2005-072, both dated April 27, 2005, also address the subject of this AD.

Issued in Renton, Washington, on October 20, 2005.

**Kalene C. Yanamura,**

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

[FR Doc. 05-21429 Filed 10-26-05; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### 18 CFR Parts 47 and 159

[Docket No. RM06-3-000]

#### Prohibition of Energy Market Manipulation

Issued October 20, 2005.

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** Pursuant to Title III, Subtitle B, and Title XII, Subtitle G of the Energy Policy Act of 2005, the Federal Energy Regulatory Commission (Commission) is proposing rules to implement new section 222 of the Federal Power Act and new section 4A of the Natural Gas Act, prohibiting the employment of manipulative or deceptive devices or contrivances. The Commission seeks public comment on the regulations proposed herein.

**DATES:** Comments are due November 17, 2005. Reply comments are due November 25, 2005.

**ADDRESSES:** Comments may be filed electronically via the eFiling link on the Commission's Web site at <http://www.ferc.gov>. Commenters unable to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street NE., Washington, DC 20426. Refer to the Comment Procedures section of the preamble for

additional information on how to file comments.

**FOR FURTHER INFORMATION CONTACT:** Frank Karabetsos, Office of General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502-8133, [Frank.Karabetsos@ferc.gov](mailto:Frank.Karabetsos@ferc.gov).

Mark Higgins, Office of Market Oversight and Investigations, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502-8273, [Mark.Higgins@ferc.gov](mailto:Mark.Higgins@ferc.gov).

### SUPPLEMENTARY INFORMATION:

#### Introduction

1. On August 8, 2005, the Energy Policy Act of 2005 (EPAct 2005)<sup>1</sup> was signed into law. Sections 315 and 1283 of EPAct 2005, amending the Natural Gas Act<sup>2</sup> and the Federal Power Act,<sup>3</sup> respectively, are virtually identical, and prohibit the use or employment of manipulative or deceptive devices or contrivances in connection with the purchase or sale of natural gas, electric energy, or transportation or transmission services subject to the jurisdiction of the Commission. These anti-manipulation sections of EPAct 2005 closely track the prohibited conduct language in section 10(b) of the Securities Exchange Act of 1934,<sup>4</sup> and specifically dictate that the terms "manipulative or deceptive device or contrivance" are to be used "as those terms are used in section 10(b)."

2. The Securities and Exchange Commission (SEC) has adopted Rule 10b-5,<sup>5</sup> which implemented section 10(b) of the Exchange Act, and has developed a significant body of legal precedent related to both section 10(b) of the Exchange Act and Rule 10b-5. Consistent with the mandate that the Commission's new authority be exercised in a manner consistent with section 10(b) of the Exchange Act, the Commission has modeled its proposed regulations on Rule 10b-5.<sup>6</sup> This approach should provide benefits to entities subject to the new rule because there is a substantial body of precedent

<sup>1</sup> Energy Policy Act of 2005, Pub. L. 109-58, 119 Stat. 594 (2005).

<sup>2</sup> 15 U.S.C. 717 *et al.* (2004).

<sup>3</sup> 16 U.S.C. 791a *et al.* (2004).

<sup>4</sup> Securities and Exchange Act of 1934, 15 U.S.C. 78j(b) (2005) (Exchange Act).

<sup>5</sup> 17 CFR 240.10b-5 (2005).

<sup>6</sup> This reliance on the use of SEC precedent is consistent with Congress' expressed intent in sections 315 and 1283 that any "manipulative or deceptive device or contrivance" is prohibited "as those terms are used in section 10(b) of the Securities and Exchange Act of 1934" and Congress' modeling sections 315 and 1283 of EPAct 2005 after section 10(b) of the Exchange Act.