

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]

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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.

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.

SUPPLEMENTARY INFORMATION:

Introduction

1. On August 8, 2005, the Energy Policy Act of 2005 (EPA 2005)¹ was signed into law. Sections 315 and 1283 of EPA 2005, amending the Natural Gas Act² and the Federal Power Act,³ 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 EPA 2005 closely track the prohibited conduct language in section 10(b) of the Securities Exchange Act of 1934,⁴ 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-5,⁵ 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-5.⁶ This approach should provide benefits to entities subject to the new rule because there is a substantial body of precedent

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

² 15 U.S.C. 717 *et al.* (2004).

³ 16 U.S.C. 791a *et al.* (2004).

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

⁵ 17 CFR 240.10b-5 (2005).

⁶ 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 EPA 2005 after section 10(b) of the Exchange Act.

applying the comparable language of Rule 10b-5.

3. In this Notice of Proposed Rulemaking (NOPR), the Commission proposes to add a Part 47 under Subchapter B (Regulations under the Federal Power Act) and a Part 159 under Subchapter E (Regulations under the Natural Gas Act) to Title 18 of the Code of Federal Regulations, and intends to issue final regulations by December 31, 2005. The Commission seeks comments on its proposals for the regulations discussed below.

Background

4. In November 2003, the Commission issued the Market Behavior Rules to fill a void in the regulation of market-based trading activity.⁷ The Market Behavior Rules emanated from the Commission's investigation of trading activity in Western markets during 2000-2001, which uncovered a number of trading schemes intended to take advantage of the then-existing electricity market in California.⁸ The Commission also discovered abuses in reporting of natural gas prices to price index publishers for purposes of manipulating price indices.⁹

5. The Market Behavior Rules were adopted to establish guidelines applicable to the conduct of jurisdictional market-based rate sellers in wholesale power markets and to jurisdictional companies engaged in wholesale sales of natural gas under blanket certificate authority.

6. An important provision of the Market Behavior Rules is Rule 2, which states that "[a]ctions or transactions that are without a legitimate business purpose and that are intended to or foreseeably could manipulate market prices, market conditions, or market rules for electric energy or electricity products are prohibited."¹⁰ In addition,

Market Behavior Rule 2(a) expressly prohibits wash trades, Rule 2(b) prohibits transactions predicated on submitting false information, Rule 2(c) prohibits creating and relieving artificial congestion, and Rule 2(d) prohibits collusion.¹¹

7. Sections 315 and 1283 of EPCA 2005 enhance the Commission's authority to prohibit manipulation of the energy markets. However, neither section 315 nor 1283 is a self-actuating provision. This rulemaking fulfills Congress' intent in adopting these provisions.

The Commission's Proposed Regulations

8. Pursuant to section 4A of the Natural Gas Act and section 222 of the Federal Power Act, as added to the statutes by EPCA 2005, the Commission proposes to add a Part 47 under Subchapter B and a Part 159 under Subchapter E to Title 18 of the Code of Federal Regulations. Under these proposed regulations, it shall be unlawful for any entity, directly or indirectly, in connection with the purchase or sale of electric energy or the purchase or sale of transmission services subject to the jurisdiction of the Commission, or in connection with the purchase or sale of natural gas or the purchase or sale of transportation services subject to the jurisdiction of the Commission, (1) to use or employ any device, scheme, or artifice to defraud, (2) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or (3) to engage in any act, practice, or course of business that operates or would operate as a fraud or deceit upon any person.

9. Sections 315 and 1283 of EPCA 2005 apply to "any entity." Indeed, section 1283 expressly includes an "entity described in section 201(f)." Accordingly, these proposed regulations apply to the conduct of "any entity," not just jurisdictional market-based rate sellers, natural gas pipelines, or holders

of blanket certificate authority. "[A]ny entity" includes not only regulated utilities but also governmental utilities and other market participants.¹²

10. As discussed in more detail below, subsections (a)(1)-(3) of these proposed regulations are patterned after the SEC's Rule 10b-5, and are intended to be interpreted consistent with analogous SEC precedent that is appropriate under the circumstances. Subsection (b) of the Commission's proposed regulations states that nothing in these provisions shall be construed to create a private right of action.¹³ This language is based expressly on sections 315 and 1283 of EPCA 2005, and reflects Congress' intent that entities will not be subject to civil actions by third parties based on alleged violations of these proposed regulations.

Securities and Commodity Law Precedent

11. The Exchange Act addresses regulation of the securities markets. One of the most important provisions of the Exchange Act is section 10(b), which prohibits the use of "any manipulative or deceptive device or contrivance" in contravention of SEC Rules.¹⁴ The SEC promulgated Rule 10b-5 to enforce section 10(b).¹⁵

12. Section 10(b) and Rule 10b-5 might "well be the most litigated provisions in the federal securities laws,"¹⁶ having been described by the Supreme Court as "a judicial oak which has grown from little more than a legislative acorn."¹⁷ The vast body of

¹² The Commission intends that the principles discussed in the Policy Statement on Enforcement that we are issuing today in Docket No. PL06-1-000 will also apply to "any entity" as defined herein.

¹³ However, subsection (b) is not intended to take away any other right that may otherwise exist.

¹⁴ 15 U.S.C. 78j(b) (2005).

¹⁵ Rule 10b-5 of the U.S. Securities and Exchange Commission reads:

It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange,

(a) To employ any device, scheme, or artifice to defraud,

(b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or

(c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security.

17 CFR 240.10b-5 (2005).

¹⁶ *SEC v. National Sec., Inc.*, 393 U.S. 453, 465 (1969).

¹⁷ *Blue Chip Stamps v. Manor Drug Stores*, 421 U.S. 723, 737 (1975); see also Louis Loss & Joel Seligman, *Securities Regulations* § 9-B-3 (3d. ed. 2004) (regarding Rule 10b-5 "[i]t is difficult to

⁷ *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations*, "Order Amending Market-Based Rate Tariffs and Authorizations," 105 FERC ¶ 61,218 (2003), *reh'g denied*, 107 FERC ¶ 61,175 (2004); Order No. 644, *Amendment to Blanket Sales Certificates*, FERC Stats. & Regs. ¶ 31,153 (2003), *reh'g denied*, 107 FERC ¶ 61,174 (2004).

⁸ See Final Report on Price Manipulation in Western Markets: Fact-Finding Investigation of Potential Manipulation of Electric and Natural Gas Prices, Docket No. PA02-2-000 (March 2003) (Final Report); see also *American Elec. Power Serv. Corp.*, 103 FERC ¶ 61,345 (2003), *reh'g denied*, 106 FERC ¶ 61,020 (2004); *Enron Power Mktg., Inc.*, 103 FERC ¶ 61,346 (2003), *reh'g denied*, 106 FERC ¶ 61,020 (2004).

⁹ Final Report, Docket No. PA02-2-000 (March 2003); *Policy Statement on Natural Gas and Electric Price Indices*, 104 FERC ¶ 61,121 at 61,404 (2003) (addressing price index reporting abuses).

¹⁰ *Investigations of Terms and Conditions of Public Utility Market-Based Rate Authorizations*, 105 FERC ¶ 61,218 at Appendix A (2003). Sections

284.288(a) and 284.403(a) of the Commission's regulations, promulgated in Order No. 644, contain substantially similar language: a pipeline that provides unbundled natural gas service under section 284.284 or any person making natural gas sales for resale in interstate commerce pursuant to section 284.402 "is prohibited from engaging in actions or transactions that are without a legitimate business purpose and are intended to or foreseeably could manipulate market prices, market conditions, or market rules for natural gas." The Market Behavior Rules are currently being appealed. See *Cinergy Mktg. & Trading, L.P. v. FERC*, Docket No. 04-1168 *et al.* (D.C. Cir. 2005).

¹¹ Order No. 644 expressly prohibits wash trades and collusion for natural gas sellers.

section 10(b) case law provides substantial certainty to entities subject to section 10(b) because it has resolved many recurring questions of interpretation that have arisen under the rule.

13. Section 4b of the Commodity Exchange Act (CEA) is the Commodity Futures Trading Commission's (CFTC) general anti-fraud rule.¹⁸ Section 4b makes it unlawful for any person to "cheat or defraud or attempt to cheat or defraud," or to make false reports or statements, or to deceive or attempt to deceive another in transactions under the CFTC's jurisdiction. Although the statutory language of section 10(b) of the Exchange Act and section 4b of the CEA are not identical, the Supreme Court stated that they are "analogous" and "[t]he language of § 4b [of the CEA] is similar to that of § 10(b) of the Securities Exchange Act of 1934."¹⁹ Lower courts have gone further, noting that "the elements of a claim under § 4(b)(A) are basically the same as those under Rule 10b-5."²⁰

14. The Commission proposes to pattern proposed sections 47.1 and 159.1 of its regulations on the text of Rule 10b-5. This is not only consistent with the clear intent of sections 315 and 1283 of EAct 2005, but also should benefit the industry because it will provide greater certainty to entities subject to the new rules because the Commission intends to rely on the large body of case law interpreting and applying section 10(b) and Rule 10b-5 when applying its new authority.²¹

The Relationship of the Proposed Rules to the Commission's Market Behavior Rules

15. Both Market Behavior Rule 2 and the proposed regulations prohibit manipulative conduct. For now, Market Behavior Rule 2 is retained, an approach consistent with that taken by both the

think of another instance in the entire corpus juris in which the interaction of the legislative, administrative rulemaking, and judicial processes has produced so much from so little."').

¹⁸ 7 U.S.C. 6b (2005).

¹⁹ *Merrill Lynch, Pierce, Fenner & Smith v. Curran*, 456 U.S. 353, 389 (1982).

²⁰ *Trustman v. Merrill Lynch, Pierce, Fenner & Smith*, 1985 U.S. Dist. LEXIS 23154 at *38; Fed. Sec. L. Rep. (CCH) P91,936 (C.D.C.A. 1985); see also, *Drexel Burnham Lambert, Inc. v. Commodity Futures Trading Comm'n*, 850 F.2d 742, 748 (D.C. Cir. 1988) (court held recklessness satisfied the scienter requirement for section 4b just as it does under section 10(b) and Rule 10b-5).

²¹ EAct 2005, with its references to Section 10(b) of the Exchange Act, provides a level of substantial certainty with respect to how the proposed regulations will operate that the Commission is not typically able to provide where a preexisting body of law and precedent is not readily available.

SEC and CFTC.²² However, the Commission will address the possibility of revising or repealing Market Behavior Rule 2, and will seek comments in the near future. Moreover, as explained in the concurrent Policy Statement on Enforcement that we are issuing today (discussed below), we will not seek duplicative sanctions for the same conduct in the event that conduct violates both Market Behavior Rule 2 and proposed section 47.1.²³

Concurrent Policy Statement on Enforcement

16. The Commission's new EAct 2005 authority under the anti-manipulation provisions coupled with expanded civil penalty authority,²⁴ provides us with more effective tools to assure workably competitive markets. The Commission is concurrently issuing a Policy Statement on Enforcement that sets out guidelines on the Commission's enforcement policies and practices and on how we will exercise our new civil penalty authority.²⁵ The Policy Statement, like these new proposed regulations, draws from the experience of other Federal agencies, including the SEC and the CFTC, in explaining the factors that will be taken into account in applying remedies for misconduct, including the imposition of civil penalties. The Policy Statement provides that the Commission will exercise its enhanced authority in a firm but fair manner, and will take mitigating

²² For example, section 10(b) and Rule 10b-5, the SEC's general anti-fraud provision (the Supreme Court described section 10(b) as a "general prohibition of practices * * * artificially affecting market activity in order to mislead investors" designed as a broad anti-fraud "catch-all clause." *Schreiber v. Burlington Northern, Inc.*, 472 U.S. 1, 6-7 (1985); *Aaron v. SEC*, 446 U.S. 680, 690 (1980)), exists alongside other, more targeted provisions, including but not limited to: section 9(a)(2) prohibiting manipulative conduct on national securities exchanges (15 U.S.C. 78i (2005)); section 14(e) prohibiting any person from making material misstatements or omissions and from engaging in fraudulent conduct in connection with any tender offer (15 U.S.C. 78n(e) (2005)); and section 17(a) prohibiting fraud in connection with the sale of securities (15 U.S.C. 77q(a) (2005)). Similarly, the CFTC's general anti-fraud provision in section 4b exists alongside other CFTC anti-manipulation provisions, including but not limited to: section 40 prohibiting fraud by commodity trading advisors and commodity pool operators (7 U.S.C. 6m (2005)); Rule 30.9 prohibiting fraud in connection with foreign futures contracts (17 CFR 30.9 (2005)); and Rule 32.9 prohibiting fraud in connection with commodity option transactions (17 CFR 32.9 (2005)).

²³ The Commission will likewise not seek duplicative sanctions from natural gas sellers for the same conduct in the event that conduct violates both the Market Behavior Rules, 18 CFR 284.288(a) or 284.403(a) (2005), and proposed section 159.1.

²⁴ Sections 314 and 1284 of EAct 2005.

²⁵ Policy Statement on Enforcement, Docket No. PL06-1-000.

factors into account in resolving violations.²⁶

Information Collection Statement

17. This proposed rule implements the existing requirements as set forth in sections 315 and 1283 of EAct 2005 and does not include new information requirements under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Environmental Analysis

18. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.²⁷ The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.²⁸ The actions proposed here fall within categorical exclusions in the Commission's regulations for rules that are clarifying, corrective, or procedural, for information gathering, analysis, and dissemination, and for sales, exchange, and transportation of electric power that requires no construction of facilities.²⁹ Therefore, an environmental assessment is unnecessary and has not been prepared in this NOPR.

Regulatory Flexibility Act

19. The Regulatory Flexibility Act of 1980 (RFA)³⁰ generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities.³¹ The Commission is not required to make such analyses if a rule would not have such an effect.

20. The Commission does not believe that this proposed rule would have such an impact on small entities. This proposed rule prohibits all entities,

²⁶ *Id.*

²⁷ Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs., Regulations Preambles 1986-1990 ¶ 30,783 (1987).

²⁸ 18 CFR 380.4 (2005).

²⁹ See 18 CFR 380.4(a)(2)(ii), 380.4(a)(5), 380.4(a)(27) (2005).

³⁰ 5 U.S.C. 601-12 (2000).

³¹ The RFA definition of "small entity" refers to the definition provided in the Small Business Act, which defines a "small business concern" as a business that is independently owned and operated and that is not dominant in its field of operation. 15 U.S.C. 632 (2000). The Small Business Size Standards component of the North American Industry Classification System defines a small electric utility as on that, including its affiliates, is primarily engaged in the generation, transmission, and/or distribution of electric energy for sale and whose total electric output for the preceding fiscal years did not exceed 4 million MWh. 13 CFR 121.201 (2004) (Section 22, Utilities, North American Industry Classification System, NAICS).

including small entities, from employing manipulative or deceptive devices or contrivances, and therefore may cause entities, including potentially small entities, to increase costs in order to comply. This prohibition, however, will improve market transparency to the economic benefit of all entities, including small entities. Therefore, the Commission certifies that this proposed rule, if finalized, will not have a significant economic impact on a substantial number of small entities.

Comment Procedures

21. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due November 17, 2005. Reply comments are due seven days thereafter. Comments must refer to Docket No. RM06-3-000, and must include the commenter's name, the organization they represent, if applicable, and their address in their comments. Comments may be filed either in electronic or paper format.

22. Comments may be filed electronically via the eFiling link on the Commission's Web site at <http://www.ferc.gov>. The Commission accepts most standard word processing formats and commenters may attach additional files with supporting information in certain other file formats. Commenters filing electronically do not need to make a paper filing. Commenters that are not able 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.

23. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

Document Availability

24. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (<http://www.ferc.gov>) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

25. From FERC's Home Page on the Internet, this information is available in the eLibrary. The full text of this document is available in the eLibrary both in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

26. User assistance is available for eLibrary and the FERC's Web site during our normal business hours. For assistance contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at (866) 208-3676, or for TTY, contact (202) 502-8659.

List of Subjects

18 CFR Part 47

Electric utilities, Electric power, Investigations, Penalties.

18 CFR Part 159

Natural Gas, Pipelines, Investigations, Penalties.

By direction of the Commission.

Magalie R. Salas,
Secretary.

In consideration of the foregoing, the Commission proposes to amend Chapter I, Title 18, *Code of Federal Regulations*, as follows:

1. Part 47 is added to read as follows:

PART 47—PROHIBITION OF ENERGY MARKET MANIPULATION

Authority: 16 U.S.C. 791–825r, 2601–2645; 42 U.S.C. 7101–7352.

§ 47.1 Prohibition of energy market manipulation.

(a) It shall be unlawful for any entity, directly or indirectly,

(1) To use or employ any device, scheme, or artifice to defraud,

(2) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or

(3) To engage in any act, practice, or course of business that operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of electric energy or the purchase or sale of transmission services subject to the jurisdiction of the Commission.

(b) Nothing in this § 47.1 shall be construed to create a private right of action.

2. Part 159 is added to read as follows:

PART 159—PROHIBITION OF ENERGY MARKET MANIPULATION

Authority: 15 U.S.C. 717–717z; 42 U.S.C. 7101–7352.

§ 159.1 Prohibition of energy market manipulation.

(a) It shall be unlawful for any entity, directly or indirectly,

(1) To use or employ any device, scheme, or artifice to defraud,

(2) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or

(3) To engage in any act, practice, or course of business that operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of natural gas or the purchase or sale of transportation services subject to the jurisdiction of the Commission.

(b) Nothing in this § 159.1 shall be construed to create a private right of action.

[FR Doc. 05–21423 Filed 10–26–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 16

RIN 1018–AG70

Injurious Wildlife Species; Black Carp (*Mylopharyngodon piceus*); Extension of Comment Period

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; extension of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service, extend the comment period on a proposed rule to add all forms of live black carp (*Mylopharyngodon piceus*), including gametes and viable eggs, to the list of injurious fish under the Lacey Act and on the draft environmental assessment and draft economic analysis prepared in association with the proposed rule.

DATES: Comments must be submitted on or before December 16, 2005.

ADDRESSES: The analyses are available from the Chief, Division of Environmental Quality, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Mail Stop 322, Arlington, Virginia 22203; FAX (703) 358–1800. They also are available on our Web page