

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

18 CFR Part 284

(Docket No. RM06-5-000)

Amendments to Codes of Conduct for Unbundled Sales Service  
and for Persons Holding Blanket Marketing Certificates

(November 21, 2005)

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is proposing to amend its regulations regarding the blanket certificates for unbundled gas sales services held by interstate natural gas pipelines and the blanket marketing certificates held by persons making sales for resale of gas at negotiated rates in interstate commerce. Specifically, the Commission proposes to repeal sections 284.288 and 284.403 of the Commission's regulations, 18 CFR 284.288 and 284.403 (2005), pertaining to codes of conduct with respect to certain sales of natural gas once we have issued final regulations implementing the anti-manipulation provisions of the Energy Policy Act of 2005 and have incorporated other aspects of such regulations in appropriate Commission orders, rules and regulations. The Commission seeks public comment on whether such regulations should be repealed as proposed herein.

DATES: Comments are due **[insert date 30 days after publication in the FEDERAL REGISTER]**. Reply comments are due **[insert date fifteen days after comment date]**.

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, N.E., Washington, D.C., 20426. Refer to the Comment Procedures section of the preamble for additional information on how to file comments.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Amendments to Codes of Conduct for Unbundled Sales      Docket No. RM06-5-000  
Service and for Persons Holding Blanket Marketing  
Certificates

NOTICE OF PROPOSED RULEMAKING

(November 18, 2005)

**Introduction**

1. In this Notice of Proposed Rulemaking (NOPR), the Commission seeks comments on whether to repeal sections 284.288 and 284.403 of its regulations,<sup>1</sup> which requires that pipelines and all sellers for resale adhere to a code of conduct with respect to certain sales of natural gas, as implemented pursuant to Order No. 644.<sup>2</sup> The central purpose of sections 284.288 and 284.403 of the Commission's regulations is to prohibit market manipulation. In the Energy Policy Act of 2005 (EPAAct 2005),<sup>3</sup> Congress enacted new section 4A of the Natural Gas Act (NGA) which specifically bars manipulation in

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<sup>1</sup> 18 CFR 284.288 and 284.403 (2005). Sections 284.288 and 284.403 of the Commission's regulations are provided in Attachment A hereto.

<sup>2</sup> Amendments to Blanket Sales Certificates, Order No. 644, 105 FERC ¶ 61,217 (2003), reh'g denied 107 FERC ¶ 61,174; 68 Fed. Reg. 66,323 (Nov. 26, 2003); 18 CFR 284.288(a) and 284.403(a) (2003) (Order No. 644). Order No. 644 is currently on appeal. See Cinergy Marketing & Trading, L.P. v. FERC, No. 04-1168 et al. (D.C. Cir., appeal filed April 28, 2004).

<sup>3</sup> Energy Policy Act of 2005, Pub. L. No. 109-58, 119 Stat. 594 (2005).

connection with the purchase or sale of natural gas or transportation services and authorizes the Commission to promulgate rules and regulations prohibiting market manipulation. In a Notice of Proposed Rulemaking issued October 20, 2005, the Commission has proposed rules to implement the new statutory anti-manipulation provisions.<sup>4</sup> We propose repealing sections 284.288 and 284.403 of the Commission's regulations once we have issued final regulations implementing the anti-manipulation provisions of EAct 2005 and have incorporated other aspects of sections 284.288 and 284.403 of the Commission's regulations in appropriate Commission orders, rules, and regulations. We are also requesting comment on whether sections 284.288 and 284.403 should be repealed prospectively.

### **Background**

2. On November 17, 2003, acting pursuant to section 7 of the NGA, we issued a final rule, Order No. 644, amending blanket certificates for unbundled gas sales services held by interstate natural gas pipelines and blanket marketing certificates held by persons making sales for resale of natural gas at negotiated rates in interstate commerce. This rule requires that pipelines that provide unbundled natural gas sales service and all sellers of natural gas for resale adhere to a code of conduct with respect to natural gas sales. The Commission determined that in order to protect and maintain the competitive natural gas

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<sup>4</sup> Prohibition of Energy Market Manipulation, 113 FERC ¶ 61,067 (2005) (Prohibition of Energy Market Manipulation NOPR).

market and to continue its light-handed regulation of the gas sales within its jurisdiction, it was necessary to place additional conditions on its grant of market-based sales certificates. In formulating such conditions to the market-based rate certificates the Commission was fulfilling its obligation to appropriately monitor markets and to ensure that market-based rates remain within the zone of reasonableness required by the NGA.<sup>5</sup>

3. Under sections 284.288(a) and 284.403(a) of the Commission's regulations, a pipeline providing unbundled natural gas sales 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 that are intended to or foreseeably could manipulate market prices, market conditions, or market rules for natural gas." Prohibited actions or transactions include wash trades and collusion for the purpose of market manipulation.<sup>6</sup>

4. Sections 284.288(b) and 284.403(b) deal with reporting of transaction information to price index publishers. They require that if a seller reports transaction data, the data be accurate and factual, and not knowingly false or misleading, and be reported in accordance with the Commission's Policy Statement on price indices.<sup>7</sup> Sections

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<sup>5</sup> 105 FERC ¶ 61,217 at P 91 (2003).

<sup>6</sup> 18 CFR 284.288(a)(1)-(2) and 284.403(a)(1)-(2) (2005).

<sup>7</sup> Policy Statement on Natural Gas and Electric Price Indices, 104 FERC ¶ 61,121 (2003).

284.288(b) and 284.403(b) also require that sellers notify the Commission of whether they report transaction data to price index publishers in accordance with the Policy Statement, and to update any changes in their reporting status.

5. Sections 284.288(c) and 284.403(c) require that sellers retain for a minimum three year period all data and information upon which they billed the prices charged for natural gas sales made under their market-based sales certificates or in transactions the prices of which were reported to price index publishers.

6. Sections 284.288(d)-(e) and 284.403(d)-(e) of the Commission's regulations are largely procedural in nature. Specifically, sections 284.288(d) and 284.403(d) deal with remedies for violations of the codes of conduct requirements set forth in preceding paragraphs (a) through (c) of sections 284.288 and 284.403. Sections 284.288(e) and 284.403(e) deal with time limits on complaints and Commission enforcement of the codes of conduct requirements.

7. At the same time that Order No. 644 was adopted for pipelines that provide unbundled natural gas sales service and holders of blanket certificate authority that make sales for resale of natural gas, the Commission also issued an order to require wholesale

sellers of electricity at market-based rates to adhere to certain behavioral rules when making sales of electricity.<sup>8</sup>

### **EPAct 2005 and Proposed New Rules**

8. As noted, section 315 of EPAct 2005 amended the NGA to add a new section 4A, which prohibits the use or employment of “any manipulative or deceptive device or contrivance” 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. In order to implement the anti-manipulation provisions of NGA section 4A, we issued the Prohibition of Energy Market Manipulation NOPR, proposing new regulations (proposed Part 159 regulations) to make it unlawful for any entity, directly or indirectly, 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

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<sup>8</sup> 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) at Appendix A.

engage in any act, practice, or course of business that operates or would operate as a fraud or deceit upon any person.<sup>9</sup>

9. In the Prohibition of Energy Market Manipulation NOPR, we recognized that sections 284.288(a) and 284.403(a) of the Commission's regulations also prohibit manipulative conduct. We noted that conduct that violates sections 284.288(a) or 284.403(a) and the proposed Part 159 regulations will be treated as one violation of anti-manipulation rules, and that we will not apply duplicative penalties for the same conduct in the event that conduct were to violate both sections 284.288(a) or 284.403(a) and the proposed Part 159 regulations. We also indicated that we would seek comment on whether sections 284.288(a) and 284.403(a) of the Commission's regulations should be revised or repealed in light of the proposed Part 159 regulations.

### **Discussion**

10. Our goal is to provide firm but fair enforcement of the statutes, orders, rules, and regulations we administer. To do so, it is important that our rules be as clear as possible so that market participants and entities subject to our rules and regulations understand what conduct is proscribed and can act accordingly.<sup>10</sup> We propose to repeal sections

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<sup>9</sup> The proposed Part 159 regulations are also provided in Attachment A hereto.

<sup>10</sup> As discussed in the Prohibition of Energy Market Manipulation NOPR (at P 14), section 4A of the NGA, as added by section 315 of EPAct 2005, and the proposed implementing rules are patterned after section 10(b) of the Securities Exchange Act of 1934 and related regulations, which provides a level of certainty as to how the proposed rules will operate that is not typically available.



284.288 and 284.403 in light of the proposed Part 159 regulations to implement the new anti-manipulation provisions contained in section 4A of the NGA and of the Commission's other rules and regulations.<sup>11</sup> All market participants subject to sections 284.288 and 284.403 are "entities" subject to EAct 2005 and therefore will be subject to the new regulations prohibiting manipulation, deceit, and fraud in connection with wholesale natural gas transactions. Other aspects of sections 284.288 and 284.403 of the Commission's regulations either reflect existing requirements or can be incorporated into other rules, making it unnecessary to retain the separate list of rules in sections 284.288(a)-(e) and 284.403(a)-(e) of the Commission's regulations.

11. We think that repeal of sections 284.288 and 284.403 of the Commission's regulations will simplify the Commission's rules and regulations, avoid confusion, and provide greater clarity and regulatory certainty to the industry. At the same time, we think that the behaviors described in sections 284.288 and 284.403 of the Commission's regulations will still be addressed through other rules and regulations. We emphasize our belief that repeal of sections 284.288 and 284.403 of the Commission's regulations is intended to take into account the passage of EAct 2005, which has provided the Commission with expanded anti-manipulation authority, and to simplify and streamline

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<sup>11</sup> Concurrently with this NOPR, we are issuing an order pursuant to section 206 of the Federal Power Act (FPA) in Docket No. EL06-16-000 to consider similar changes to the Market Behavior Rules, which are currently included in all public utility sellers' market-based rate tariffs and authorizations.

the rules and regulations sellers must follow, not to eliminate beneficial rules governing market behavior.

12. The heart of sections 284.288 and 284.403 of the Commission's regulations is subparagraph (a), prohibiting manipulation. We recognize that there is overlap between sections 284.288(a) and 284.403(a) of the Commission's regulations and the proposed Part 159 regulations. We are concerned that this could cause unnecessary confusion and regulatory uncertainty once the proposed Part 159 regulations are in place. It is our view that the scope of the new statutory prohibition on manipulation and the reach of the proposed Part 159 regulations eliminate the need for sections 284.288(a) and 284.403(a) of the Commission's regulations.

13. We recognize there are some differences, but the differences do not seem to require keeping sections 284.288 and 284.403 of the Commission's regulations once the new Part 159 regulations are final.<sup>12</sup> For instance, there is a difference in the standard of proof between sections 284.288(a) and 284.403(a) of the Commission's regulations and the proposed Part 159 regulations. In new section 4A of the NGA, Congress used the terms "manipulative or deceptive device or contrivance" and directed that they be given the same meaning as used in section 10b of the Securities Exchange Act of 1934.<sup>13</sup>

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<sup>12</sup> The timing of proposed repeal is important. We do not intend to leave any gap in our regulations prohibiting manipulation of energy markets or other requirements of sections 284.288 and 284.403 of the Commission's regulations.

<sup>13</sup> 15 U.S.C. § 78j(b) (2005).

Those terms have been interpreted to require a showing of scienter, that is, an intent to deceive, manipulate or defraud.<sup>14</sup> In other words, knowing, intentional, or reckless conduct is proscribed.<sup>15</sup> In contrast, sections 284.288(a) and 284.403(a) of the Commission's regulations do not require a showing of scienter, as they prohibit actions or transactions that "foreseeably" could manipulate market prices, conditions, or rules. The "foreseeably" requirement has generated controversy and uncertainty, however. We believe the use of a scienter standard, given the precedent in other regulatory contexts, will draw a clearer line between acceptable and prohibited behavior.

14. We also note that the new authority granted to the Commission in section 4A of the NGA and our proposed Part 159 regulations governs more transactions and more entities than is the case for sections 284.288(a) and 284.403(a) of the Commission's regulations, which covers only certain natural gas sellers. More precisely, Congress made the anti-manipulation provisions of section 315 applicable to "any entity" and in connection with both the purchase and sale of natural gas, as well as the purchase or sale of transportation services subject to our jurisdiction. Sections 284.288(a) and 284.403(a)

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<sup>14</sup> Ernst & Ernst v. Hochfelder, 425 U.S. 185, 201 (1976).

<sup>15</sup> Sundstrand Corp. v. Sun Chemical Corp., 553 F.2d 1033 (7th Cir. 1977), cert. denied, 434 U.S. 875 (1977) (defining recklessness in the section 10(b) and Rule 10b-5 context as "a highly unreasonable omission, involving not merely simple, or even inexcusable negligence, but an extreme departure from the standards of ordinary care, and which presents a danger of misleading buyers or sellers that is either known to the defendant or is so obvious that the actor must have been aware of it."); accord In Re Silicon Graphics Securities Litigation, 183 F.3d 970, 977 (9th Cir. 1999).

of the Commission's regulations, on the other hand, are applicable only to a pipeline providing unbundled natural gas sales service under section 284.284, or any person making natural gas sales for resale in interstate commerce pursuant to section 284.402, a smaller subset of the entities and types of transactions than those subject to EPart 2005 section 315 prohibition of manipulation.

15. Additionally, it is our view that it is not necessary to retain the explicit prohibitions against certain conduct set forth in sections 284.288(a)(1)-(2) and 284.403(a)(1)-(2) (wash trades and collusion for the purpose of market manipulation). These are examples of prohibited manipulation, both of which are manipulative or deceptive devices or contrivances. Thus, both would be barred by the proposed Part 159 regulations. For example, wash trades would be devices or schemes to defraud (proposed section 159.1(a)(1)). It is our view that market participants are on notice that wash trades and colluding to manipulate are prohibited activities under the proposed Part 159 regulations, subject to penalty and remedial action.

16. Turning to the other subparagraphs of sections 284.288 and 284.403 of the Commission's regulations, it appears that the requirements imposed there either are duplicative of other rules or regulations or can be incorporated into other rules of general applicability. For instance, the first part of sections 284.288(b) and 284.403(b), requiring sellers to provide accurate data to price index publishers if the seller is reporting transactions to such publishers, calls for accurate and truthful representations. It is our view that failure to do so would be a violation of the proposed Part 159 regulations.

Sections 284.288(b) and 284.403(b) of the Commission's regulations also include a requirement that sellers notify the Commission of their price reporting status and any changes in that status. This does not appear elsewhere in our current or proposed regulations. We note, however, that price transparency is also addressed by EPCA 2005, which adds new section 23 to the NGA. Section 23 gives us authority to promulgate rules and regulations necessary to facilitate price transparency. We intend to address market transparency issues in a separate proceeding, and anticipate that rules adopted in that proceeding will address the sections 284.288(b) and 284.403(b) requirements for providing transaction information to price index publishers and informing the Commission of price reporting status.

17. Sections 284.288(c) and 284.403(c) requires sellers to maintain certain records for a period of three years to reconstruct prices charged for natural gas. The Commission has a number of specific record retention requirements applicable to natural gas companies subject to the jurisdiction of the Commission in Part 225 of our regulations.<sup>16</sup> In many cases, these requirements are for time periods longer than three years. The Part 225 requirements are largely related to cost-of-service rate requirements, however. We believe it is important that all pipelines providing unbundled natural gas sales service and all persons holding blanket certificates making natural gas sales for resale in interstate commerce retain the data and information described in sections 284.288(c) and

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<sup>16</sup> 18 CFR Part 225 (2005).

284.403(c) of the Commission's regulations. We intend to address this retention requirement in the context of our rules under the NGA, such that there will be no gap in the retention requirement. We believe that doing so would eliminate the need to retain sections 284.288(c) and 284.403(c) of the Commission's regulations.

18. If the Commission decides to repeal sections 284.288(a)-(c) and 284.403(a)-(c) of its regulations, it is the Commission's view that sections 284.288(d) and 284.403(d) of the Commission's regulations, dealing with remedies, and sections 284.288(e) and 284.404(e), dealing with time limits on complaints and Commission enforcement, are largely procedural and would become superfluous without the underlying operative paragraphs and therefore should be deleted.

19. In addition to simplifying our codes of conduct rules, avoiding confusion, and providing more regulatory certainty, it is also our view that a smooth transition from the existing codes of conduct regulations to the proposed Part 159 regulations and other rules and regulations achieves our original goal in adopting sections 284.288 and 284.403 of the Commission's regulations, that is, to fulfill our obligation to ensure that market-based rates remain within the zone of reasonableness required by the NGA. In EAct 2005, Congress has provided broad and strong prohibitions of market manipulation, and reliance on rules implementing these statutory prohibitions will likewise assure that wholesale markets reflect competitive forces and produce just and reasonable rates.

20. We seek comment on whether sections 284.288 and 284.403 of the Commission's regulations should be repealed prospectively, including responses to the following questions:

- A. Are there any aspects of sections 284.288 and 284.403 of the Commission's regulations that should be retained, or can all substantive provisions of sections 284.288 and 284.403 of the Commission's regulations be reflected in the proposed Part 159 regulations and other Commission rules and regulations?
- B. Is there a need or basis for retaining existing sections 284.288(a) and 284.403(a) of the Commission's regulations in light of the anti-manipulation provisions set forth in the proposed Part 159 regulations?
- C. Should the affirmative defense of "legitimate business purpose" in existing sections 284.288(a) and 284.403(a) of the Commission's regulations be retained in any form?
- D. Is the requirement of sections 284.288(b) and 284.403(b) of the Commission's regulations to report transaction information accurately, to the extent a seller reports such information to price index publishers, necessary in light of the proposed Part 159 regulations?

21. We encourage responses to the specific questions above as well as additional relevant comments regarding whether sections 284.288 and 284.403 of the Commission's regulations should be repealed.

**Information Collection Statement**

22. This proposed rule implements the existing requirements as set forth in section 4A of the NGA 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**

23. 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.<sup>17</sup> The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.<sup>18</sup> 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 natural gas that requires no construction of facilities.<sup>19</sup> Therefore, an environmental assessment is unnecessary and has not been prepared in this NOPR.

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<sup>17</sup> 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).

<sup>18</sup> 18 CFR 380.4 (2005).

<sup>19</sup> See 18 CFR 380.4(a)(2)(ii), 380.4(a)(5), 380.4(a)(27) (2005).



**Regulatory Flexibility Act**

24. The Regulatory Flexibility Act of 1980 (RFA)<sup>20</sup> generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities.<sup>21</sup> The Commission is not required to make such analyses if a rule would not have such an effect.

25. The Commission does not believe that this proposed rule would have such an impact on small entities. The proposed rule merely repeals sections 284.288 and 284.403 of the Commission's regulations. 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**

26. 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 **INSERT DATE 30**

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<sup>20</sup> 5 U.S.C. § 601-12 (2000).

<sup>21</sup> 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 one 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).

**days from publication in the FEDERAL REGISTER**]. Reply comments are due fifteen days thereafter. Comments must refer to Docket No. RM06-5-000, 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. 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 N.E., Washington, D.C. 20426.

27. 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**

28. 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 5:00 p.m. Eastern time) at 888 First Street, N.E., Room 2A, Washington, D.C. 20426.

29. 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.

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

List of subjects

18 CFR Part 284

Natural Gas, Pipelines, Investigations, Penalties

By direction of the Commission.

Magalie R. Salas,  
Secretary.

In consideration of the foregoing, the Commission proposes to amend Part 284, Chapter I, Title 18, Code of Federal Regulations, as follows.

**PART 284 - - CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES**

1. The authority citation for part 284 continues to read as follows:

Authority: 15 U.S.C. 717-717w, 3301-3432; 42 U.S.C. 7101-7532; 43

U.S.C.1331-1356.

2. § 284.288 [removed]

Remove § 284.288.

3. § 284.403 [removed]

Remove § 284.403.

NOTE: This Attachment will not be published in the Federal Register. Please refer to the Document Availability section of this Notice of Proposed Rulemaking and the Commission's eLibrary system at [www.ferc.gov](http://www.ferc.gov) to view this Notice of Proposed Rulemaking with the Attachment.

## ATTACHMENT A

### SECTIONS 284.288 AND 284.403 OF THE COMMISSION'S REGULATIONS

#### **§ 284.288 Code of conduct for unbundled sales service.**

(a) A pipeline that provides unbundled natural gas sales service under § 284.284 is prohibited from engaging in actions 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 natural gas. Prohibited actions and transactions include but are not limited to:

(1) pre-arranged offsetting trades of the same product among the same parties, which involve no economic risk and no net change in beneficial ownership (sometimes called "wash trades"); and

(2) collusion with another party for the purpose of manipulating market prices, market conditions, or market rules for natural gas.

(b) To the extent Seller engages in reporting of transactions to publishers of electricity or natural gas indices, Seller shall provide accurate and factual information, and not knowingly submit false or misleading information or omit material information to any such publisher, by reporting its transactions in a manner consistent with the procedures set forth in the Policy Statement on Natural Gas and Electric Price Indices,

issued by the Commission in Docket No. PL03-3-000 and any clarifications thereto.

Seller shall notify the Commission within 15 days of the effective date of this regulation of whether it engages in such reporting of its transactions and update the Commission within 15 days of any subsequent change to its transaction reporting status. In addition, Seller shall adhere to such other standards and requirements for price reporting as the Commission may order.

(c) A pipeline that provides unbundled natural gas sales service under § 284.284 shall retain, for a period of three years, all data and information upon which it billed the prices it charged for natural gas it sold pursuant to its market based sales certificate or the prices it reported for use in price indices.

(d) Any violation of the preceding paragraphs may subject Seller to disgorgement of unjust profits from the date when the violation occurred. Seller may also be subject to suspension or revocation of its blanket certificate under § 284.284 or other appropriate non-monetary remedies.

(e) Any person filing a complaint against a pipeline for violation of paragraphs (a) through (c) must do so no later than 90 days after the end of the calendar quarter in which the alleged violation occurred unless that person could not have known of the alleged violation, in which case the 90-day time limit will run from the discovery of the alleged violation. The Commission will act within 90 days from the date it knew of an alleged violation of these code of conduct regulations or knew of the potentially manipulative character of an action or transaction. Commission action in this context

means a Commission order or the initiation of a preliminary investigation by Commission Staff pursuant to 18 CFR section 1b. If the Commission does not act within this time period, the seller will not be exposed to potential liability regarding the subject action or transaction. Knowledge on the part of the Commission will take the form of a call to our Hotline alleging inappropriate behavior or communication with our enforcement Staff.

**§ 284.403 Code of conduct for persons holding blanket marketing certificates.**

(a) Any person making natural gas sales for resale in interstate commerce pursuant to § 284.402 is prohibited from engaging in actions 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 natural gas. Prohibited actions and transactions include but are not limited to:

(1) pre-arranged offsetting trades of the same product among the same parties, which involve no economic risk and no net change in beneficial ownership (sometimes called "wash trades"); and

(2) collusion with another party for the purpose of manipulating market prices, market conditions, or market rules for natural gas.

(b) To the extent Seller engages in reporting of transactions to publishers of electricity or natural gas indices, Seller shall provide accurate and factual information, and not knowingly submit false or misleading information or omit material information to any such publisher, by reporting its transactions in a manner consistent with the

procedures set forth in the Policy Statement on Natural Gas and Electric Price Indices, issued by the Commission in Docket No. PL03-3-000 and any clarifications thereto.

Seller shall notify the Commission within 15 days of the effective date of this regulation of whether it engages in such reporting of its transactions and update the Commission within 15 days of any subsequent change to its transaction reporting status. In addition, Seller shall adhere to such other standards and requirements for price reporting as the Commission may order.

(c) A blanket marketing certificate holder shall retain, for a period of three years, all data and information upon which it billed the prices it charged for the natural gas sold pursuant to its market based sales certificate or the prices it reported for use in price indices.

(d) Any violation of the preceding paragraphs may subject Seller to disgorgement of unjust profits from the date when the violation occurred. Seller may also be subject to suspension or revocation of its blanket certificate under § 284.284 or other appropriate non-monetary remedies.

(e) Any person filing a complaint against a blanket marketing certificate holder for violation of paragraphs (a) through (c) must do so no later than 90 days after the end of the calendar quarter in which the alleged violation occurred unless that person could not have known of the alleged violation, in which case the 90-day time limit will run from the discovery of the alleged violation. The Commission will act within 90 days from the date it knew of an alleged violation of these code of conduct regulations or knew



of the potentially manipulative character of an action or transaction. Commission action in this context means a Commission order or the initiation of a preliminary investigation by Commission Staff pursuant to 18 CFR Section 1b. If the Commission does not act within this time period, the seller will not be exposed to potential liability regarding the subject action or transaction. Knowledge on the part of the Commission will take the form of a call to our Hotline alleging inappropriate behavior or communication with our enforcement Staff.

PROPOSED REGULATIONS IN DOCKET NO. RM06-3-000  
IMPLEMENTING EPACT 2005 SECTION 315<sup>22</sup>

**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, 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

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<sup>22</sup> The text of the proposed Part 159 regulations was modified to conform to Federal Register requirements in the “Errata Notice” issued November 9, 2005, in Docket No. RM06-3-000.

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.

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