

later than 60 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 60-day time limit will run from the discovery of the alleged violation.

Massey, Commissioner, *concurring in part*:

I wholeheartedly support conditions to all market-based tariffs that declare manipulation off limits. Such outrageous behavior has cast a pall over the promise of energy markets and has brought some companies to dire financial straits. These tariff conditions should deter bad behavior in the future. If they fail to do so, then at least the Commission will have industry wide legal tools to provide appropriate remedies. I commend Chairman Wood's strong leadership in developing this proposal.

I am writing separately to express my concern with one aspect of today's proposal. I would not limit the monetary penalty for tariff violations to disgorgement of unjust profits. Market manipulation can raise the market prices paid by all market participants and collected by all sellers. The Natural Gas Act requires that all rates and charges be just and reasonable. Where the market has been manipulated so as to affect the market price, that price is not just and reasonable and is therefore unlawful. Simply requiring that bad actors disgorge their individual profits does not make the market whole because all sellers received the unlawful price caused by the manipulation. The narrow remedy of profit disgorgement is not an adequate remedy for the adverse effect of the bad behavior on the market price, and may not be an adequate deterrent to future behavior. The appropriate remedy may be that the manipulating seller makes the market whole.¹ Unfortunately, today's order appears to take this remedy off of the table. I would prefer to tailor the remedy to the circumstances of each case. I encourage comments on this issue.

For these reasons, I concur in part with today's order.

William L. Massey,
Commissioner.

Brownell, Commissioner, *concurring*:

Today we issue a Notice of Proposed Rulemaking (NPR) to amend the blanket certificates for unbundled gas sales service held by persons making sales for resale at negotiated rates in interstate commerce to require that sellers adhere to a code of conduct. The stated purpose of the proposed revisions is to ensure the integrity of the gas market that remains within the Commission's jurisdiction. Importantly, the NPR attempts to balance three goals:

- Effective remedies on behalf of customers in the event anti-competitive behavior or other market abuses occur;
- Clearly delineated "rules of the road" to persons making sales for resale at negotiated rates in interstate commerce, at the same

time, not impairing the Commission's ability to provide remedies for market abuses whose precise form and form can not be envisioned today; and

- Reasonable bounds within which conditions on market conduct will be implemented so as not to create unlimited regulatory uncertainty for individual market participants or harm to the marketplace in general.

I appreciate the need to balance these goals but still have some fundamental concerns about the proposal, particularly Sections 284.288(a) and 284.403(a). Scarcity pricing is a market response to a supply and demand imbalance. What constitutes legitimate forces of supply and demand and what defines scarcity pricing? I also fear that as the precise definition of manipulation develops over time we will end up with overly proscriptive "rules of the road" that will dampen innovative, legitimate business tools. Finally, I am concerned the proposed regulations could lead to the segmentation of the as commodity market. The only sales of natural gas that the Commission currently has jurisdiction to regulate are sales for resale of domestic gas by pipelines, local distribution companies, or their affiliates so long as they do not produce the gas that they sell. Could blanket certificate holders face a competitive disadvantage due to compliance with the code of conduct, or could there be any negative impact on natural gas prices? I ask for your comment on whether application of the code of conduct to only part of the natural gas market will have any adverse effects on the natural gas market.

Nora Mead Brownell,
Commissioner.

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SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Regulation Nos. 4 and 16]

RIN: 0960-AF47

Federal Old-Age, Survivors and Disability Insurance; Determining Disability and Blindness; Clarification of the Education and Previous Work Experience Categories in the Medical-Vocational Rules

AGENCY: Social Security Administration.

ACTION: Proposed rules.

SUMMARY: We propose revising our regulations to clarify how we evaluate your work experience and how we evaluate illiteracy or inability to communicate in English when we decide whether you are disabled.

We propose these revisions to ensure that our regulations clearly reflect our longstanding policy that, if you have skilled or semiskilled work experience, but you cannot use your skills in other

work (*i.e.*, your skills are not transferable to other work), your ability to adjust to other work is no greater than it would be if you had only unskilled work experience.

We also propose revisions to clarify which medical-vocational rules apply if you are illiterate or unable to communicate in English; who we consider to be "illiterate or unable to communicate in English"; and how we evaluate your claim if you are illiterate, unable to communicate in English, or both.

DATES: To be sure that your comments are considered, submit them no later than September 5, 2003.

ADDRESSES: You may give us your comments by: using our Internet site facility (*i.e.*, Social Security Online) at: <http://policy.ssa.gov/pnpublic.nsf/LawsRegs>; e-mail to regulations@ssa.gov; by telefax to (410) 966-2830, or, by letter to the Commissioner of Social Security, P.O. Box 17703, Baltimore, Maryland 21235-7703. You may also deliver them to the Office of Regulations, Social Security Administration, 100 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235-6401, between 8 a.m. and 4:30 p.m. on regular business days. Comments are posted on our Internet site, at <http://policy.ssa.gov/pnpublic.nsf/LawsRegs> or you may inspect them on regular business days by making arrangements with the contact person shown in this preamble.

FOR FURTHER INFORMATION CONTACT:

Martin Sussman, Regulations Officer, Social Security Administration, Office of Regulations, 100 Altmeyer Building, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401, regulations@ssa.gov, (410) 965-1767, or TTY (410) 966-5609 for information about these rules. For information on eligibility or filing for benefits, call our national toll-free number, 1-800-772-1213 or TTY 1-800-325-0778 or visit our Internet Web site, Social Security Online, at www.ssa.gov.

SUPPLEMENTARY INFORMATION:

What Programs Would These Proposed Regulations Affect?

These proposed regulations would affect disability determinations and decisions we make under title II and title XVI of the Social Security Act (the Act). In addition, to the extent that Medicare and Medicaid eligibility are based on entitlement to benefits under title II and eligibility for benefits under title XVI, these proposed regulations would also affect the Medicare and Medicaid programs.

¹ The Commission has accepted the make the market whole remedy as part of a settlement for withholding generation from the California PX market. See 102 FERC ¶ 61,108 (2003).