

Proposed amendments to
the Gas Governance
(Compliance) Regulations
2008 – further details of
the threshold regime

Date issued: 21 December 2012
Submissions close: 1 February 2013





About Gas Industry Co.

Gas Industry Co is the gas industry body and co-regulator under the Gas Act. Its role is to:

- develop arrangements, including regulations where appropriate, which improve:
 - the operation of gas markets;
 - access to infrastructure; and
 - consumer outcomes;
- develop these arrangements with the principal objective to ensure that gas is delivered to existing and new customers in a safe, efficient, reliable, fair and environmentally sustainable manner; and
- oversee compliance with, and review such arrangements.

Gas Industry Co is required to have regard to the Government's policy objectives for the gas sector, and to report on the achievement of those objectives and on the state of the New Zealand gas industry.

Gas Industry Co's corporate strategy is to 'optimise the contribution of gas to New Zealand'.

Submissions close: 5pm 1 February 2013

Submit to: www.gasindustry.co.nz

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Executive summary

In May 2012 Gas Industry Co issued a Statement of Proposal setting out proposed amendments to the Gas Governance (Compliance) Regulations 2008 (the Regulations). A link to that proposal can be found at: <http://gasindustry.co.nz/work-programme/consultation/statement-proposal-amendments-gas-governance-compliance-regulations-2008>

The amendments are designed to:

- (a) tidy up the Compliance Regulations to clarify and enhance their operation, and rectify drafting errors and anomalies; and
- (b) change the mandatory breach reporting requirements on the Allocation Agent and Registry Operator under regulation 11¹ to ensure that the compliance costs of alleging breaches of the type that are unlikely to raise a material issue do not outweigh the benefits (referred to as the threshold regime).

Seven submissions were received from industry participants broadly supporting the proposals. However there was some discussion as to how the proposal to enable Gas Industry Co to issue a determination exempting the Registry Operator or the Allocation Agent from the mandatory reporting requirements under regulation 11 of the Compliance Regulations (the threshold regime) would work in practice. Therefore Gas Industry Co is issuing this further short consultation paper, setting out in more detail how the regime will work by identifying the relevant provisions in the Gas (Switching Arrangements) Rules 2008 and Gas (Downstream Reconciliation) Rules 2008 that the threshold regime would initially apply to, and providing a sample draft of the empowering provision.

Based on an analysis of historical breaches and their materiality determinations, the rules identified as being suitable for inclusion in the threshold regime are as follows:

Gas governance arrangements	Rules suitable for threshold regime
Gas (Switching Arrangements) Rules 2008	67.3, 69.1, 69.2, 70.2, 72.2
Gas (Downstream Reconciliation) Rules 2008	31, 32, 33, 37, 41 ²

Gas Industry Co invites submissions on the application of the threshold regime and answers to the specific question contained in Appendix B. Submissions are sought by **5pm 1 February 2013**. A word version of the submission template can be found [here](#)

¹ Regulation 11 contains the mandatory reporting requirements on service providers. It refers to the Registry Operator, Allocation Agent, Critical Contingency Operator and auditors appointed to carry out audits under the Gas (Downstream Reconciliation) Rules 2008 or Gas Governance (Critical Contingency Management) Regulations 2008. For the purposes of the proposed amendments, only the Registry Operator and Allocation Agent will be subject to the threshold regime. Mandatory reporting requirements will still apply to the Critical Contingency Operator and auditors.

² Rules 31, 32, 33 and 41 of the Reconciliation Rules will become redundant if the Minister of Resources approves amendments to the Rules as per a Recommendation made by Gas Industry Co.

After considering any submissions, and making any changes as a result, Gas Industry Co expects to make a Recommendation to the Minister of Energy and Resources to amend the Compliance Regulations.³

³ The timing of any Recommendation will be dependent on whether there are any consequential changes required to the Compliance Regulations following Gas Industry Co's review of the Gas Governance (Critical Contingency Management) Regulations 2008.

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1

Introduction

1.1 Background

The first set of gas governance rules that were introduced following a recommendation from Gas Industry Co were the Gas (Switching Arrangements) Rules 2008. One outcome sought by the April 2008 Government Policy Statement on Gas Governance (GPS) is that gas governance arrangements are supported by appropriate compliance and dispute resolution processes. Accordingly, at the same time as it recommended rules for switching, Gas Industry Co recommended regulations to provide for the enforcement of those and other gas governance rules and regulations recommended by Gas Industry Co.

The Gas Governance (Compliance) Regulations 2008 (the Compliance Regulations) came into effect on 11 September 2008. In accordance with section 43(G)(2)(k) of the Gas Act 1992 (the Act), they provide for the monitoring and enforcement of the following gas governance arrangements:

- the Gas (Switching Arrangements) Rules 2008 (the Switching Rules); and
- the Gas (Processing Facilities information Disclosure) Rules 2008; and
- the Gas (Downstream Reconciliation) Rules 2008 (the Reconciliation Rules); and
- the Gas Governance (Critical Contingency Management) Regulations 2008 (the CCM Regulations).

The Compliance Regulations allow for a range of persons to allege breaches of the above gas governance arrangements by industry participants (and end users in the case of the CCM Regulations).⁴ 'Persons' includes participants, service providers, Gas Industry Co, consumers and any other persons.

The Compliance Regulations establish:

- a Market Administrator, who has the responsibility for receiving notices of alleged breaches of the rules; attending to administrative tasks; determining whether or not alleged breaches raise a material issue; and attempting to resolve any alleged breaches that do not raise

⁴ Subject to proposed changes to the CCM Regulations Gas Industry is currently consulting on.

material issues with the agreement of parties. Gas Industry Co currently performs the function of Market Administrator.

- One or more Investigators, who investigate breach allegations that are unresolved or raise a material issue; endeavour to settle the matter; and refer settlements and unresolved breach allegations to the Rulings Panel.
- A one member Rulings Panel appointed by the Minister of Energy and Resources, who approves or rejects settlements; determines unresolved breach allegations; and may order remedies.

Gas Industry Co, the Market Administrator, Investigators, the Rulings Panel and industry participants have now had four years' experience of operating under the Compliance Regulations. In Gas Industry Co's view the Compliance Regulations generally work well and according to their purpose. Partly as a result of earlier enforcement activity, there is also now a high level of compliance with the existing gas governance rules and regulations.

In May 2012 Gas Industry Co issued a Statement of Proposal setting out proposed amendments to the Compliance Regulations designed to:

- (a) tidy up the Compliance Regulations to clarify and enhance their operation, and rectify drafting errors and anomalies; and
- (b) change the mandatory breach reporting requirements on the Allocation Agent and Registry Operator under regulation 11⁵ to ensure that the compliance costs of alleging breaches of the type that are unlikely to raise a material issue do not outweigh the benefits (referred to as the threshold regime).

A recommendation for changes to rules or regulations is subject to the same requirements and processes as apply to proposed new rules as set out in section 43N of the Act. These requirements are set out fully in the Statement of Proposal. .

1.2 Purpose

The Statement of Proposal identified the changes recommended to satisfy (a) and (b) above, and satisfied the requirements of section 43N of the Act. The purpose of this consultation paper is to provide further details of the proposed threshold regime, including an analysis of the specific rules to which the threshold should be applied and indicative drafting of the empowering provision.

⁵ Regulation 11 contains the mandatory reporting requirements on service providers. It refers to the Registry Operator, Allocation Agent, Critical Contingency Operator and auditors appointed to carry out audits under the Gas (Downstream Reconciliation) Rules 2008 or Gas Governance (Critical Contingency Management) Regulations 2008. For the purposes of the proposed amendments, only the Registry Operator and Allocation Agent will be subject to the threshold regime. Mandatory reporting requirements will still apply to the Critical Contingency Operator and auditors.

1.3 Submissions

Gas Industry Co invites submissions on the implementation framework for the threshold regime and answers to the specific question contained in Appendix B. Comments are sought by **5pm 1 February 2013**. A word version of the submission template can be found [here](#).

After considering any submissions Gas Industry Co expects to make a recommendation to the Minister of Energy and Resources to amend the Compliance Regulations.

2

Application of threshold to the Switching and Reconciliation Rules

2.1 Rules for which determinations may be made

The purpose of the proposed threshold regime is to remove frequent, non-material breaches to increase the efficiency of the compliance process. Following feedback on the May 2012 Statement of Proposal, Gas Industry Co has decided to explicitly identify the rules to which the threshold regime may be applied, for inclusion in the recommendation to the Minister of Energy and Resources. The following analysis identifies those rules, based on the frequency of breaches of each rule since the arrangements went live, the materiality decisions associated with the breaches and the suitability of a threshold regime to the specific rules. The full text of the identified rules is set out in Appendix A.

The application of a threshold to any of these rules is not mandatory. Gas Industry Co will decide, following consultation, any or all of the rules it selects out of the list in Appendix A.

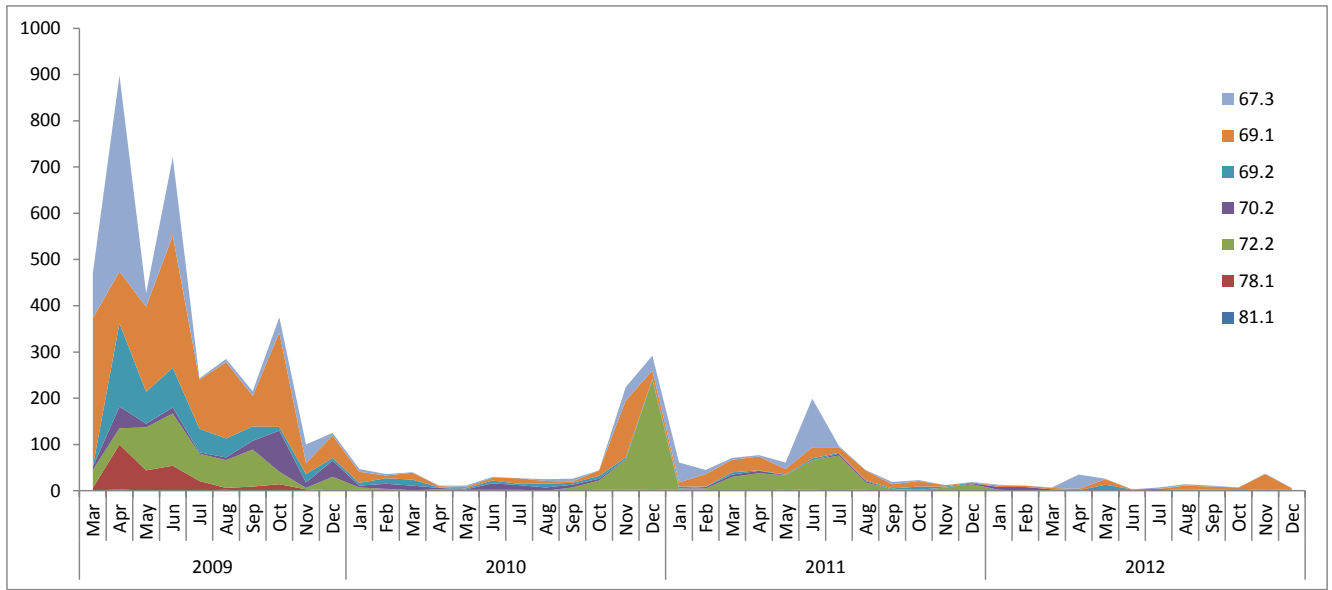
2.2 Switching Rules

Chart 1 illustrates all breaches of the Switching Rules that have been alleged by the Registry Operator to date, categorised by the rule that has been allegedly breached. A substantial amount of the non-compliance in 2009 can be explained by the adjustment of industry participants to the new switching regime, although there were instances of deliberate breaching of the switching arrangements. The bulk of breaches in 2009 are not representative of the type of recurrent non-compliance for which the threshold regime is intended to apply so have been disregarded for the sake of this analysis.

Table 1 Switching breaches alleged by Registry Operator by rule and year, 2009 to 2012

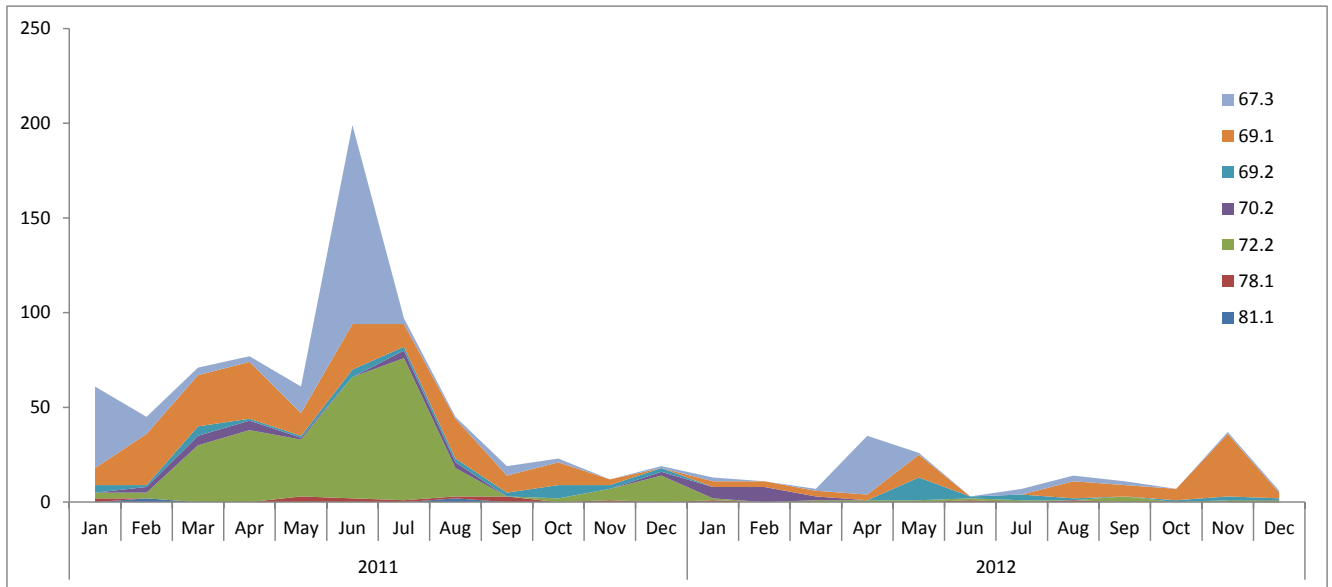
Year	67.3	69.1	69.2	70.2	72.2	78.1	81.1	Total
2009	818	1516	490	239	538	250	8	3859
2010	87	231	67	72	337	16	3	813
2011	190	186	33	23	280	13	4	729
2012	45	81	21	16	11	3	0	177
Total	1140	2014	611	350	1166	282	15	5578

Chart 1 Switching breaches alleged by Registry Operator, March 2009 to December 2012



After 2009, the number of breaches dropped significantly, with current levels around 10 to 20 breaches alleged per month. Chart 2 isolates the 2011 and 2012 statistics as an example of the rules commonly breached and to which Gas Industry Co is proposing the threshold regime should initially apply.

Chart 2 Switching breaches alleged by Registry Operator, January 2011 to December 2012



With the exception of rules 78.1 and 81.1, which are not routinely breached, the rules in the above chart appeared in breach statistics with relative frequency over the last two years. Rules 67.3, 69.1 and 72.2 appear most regularly.

Rule 67.3 relates to the requested switch date and is most often breached when retailers attempt to backdate a standard switch or request a switch date more than 23 business days in the future.

Rule 72.2 relates to the actual switch date and is most often breached when a retailer completes a switch before the date requested by the new retailer. Both of these scenarios are generally consistent with giving effect to the customer's wishes and there have been no instances of a material breach of either rule since 2009.

Rules 69.1 and 69.2 set out the timeframes for responding to a switch request and completing a switch (within two business days and 23 business days respectively). In the last three years no breaches of rule 69 have been found material. It is also noteworthy that 80% of breaches of rule 69.1 were only one day overdue and 70% of rule 69.2 breaches were three or less days overdue. This points to the suitability of the threshold regime being applied to these rules to eliminate the frequent, non-material breaches.

Rule 70.2 is breached when the expected switch date supplied by the old retailer does not fall within the required timeframes. Again the threshold regime is suitable for breaches of this rule as it is breached twice monthly on average but there has not been a material breach since 2009. It is perhaps even less likely that breaches of this rule would be found material, compared to rules 67.3 and 72.2, as the expected switch date does not have any particular status under the switching rules (it is the actual switch date which is more important).

On the basis of the above analysis it is proposed to initially apply the threshold regime to rules 67.3, 69.1, 69.2, 70.2 and 72.2 of the Switching Rules.

2.3 Reconciliation Rules

Chart 3 shows all breaches of the Reconciliation Rules alleged by the Allocation Agent since the beginning of 2009. Although the reconciliation arrangements went live in October 2008 there were no significant trends in breach activity before 2009. The statistics do not include breaches alleged by other parties (such as auditors) as the focus of the threshold regime is on the mandatory reporting requirements on the Allocation Agent and Registry Operator.

Table 2 Reconciliation breaches alleged by Allocation Agent by rule and year, 2009 to 2012

Year	9	26	31-33	37	39	40	41	43-45	52	Total
2009		3	146	129 ⁶	20	1	1		34	334
2010			260	1803	28	3	3	2	24	2123
2011	2	4	269	1694	9	6	24	5	1	2014
2012		6	250	2241	8	6	41	1		2553
Total	2	13	925	5867	65	16	69	8	59	7024

⁶ Rule 37 breaches would only have been triggered and alleged late in 2009, explaining volume outlier in subsequent years.

Breaches of rule 37 are clearly the most frequent. In determining the materiality of rule 37 breaches, the Market Administrator has issued a guideline applying a volume threshold, such that any breach under 200 gigajoules will generally be considered non-material. The guideline sets out the weighting of factors applied to the materiality decision. Gas Industry Co is proposing to incorporate the volume threshold for rule 37 within the threshold regime set out in this paper.⁷

Chart 3 Reconciliation breaches alleged by Allocation Agent, January 2009 to October 2012

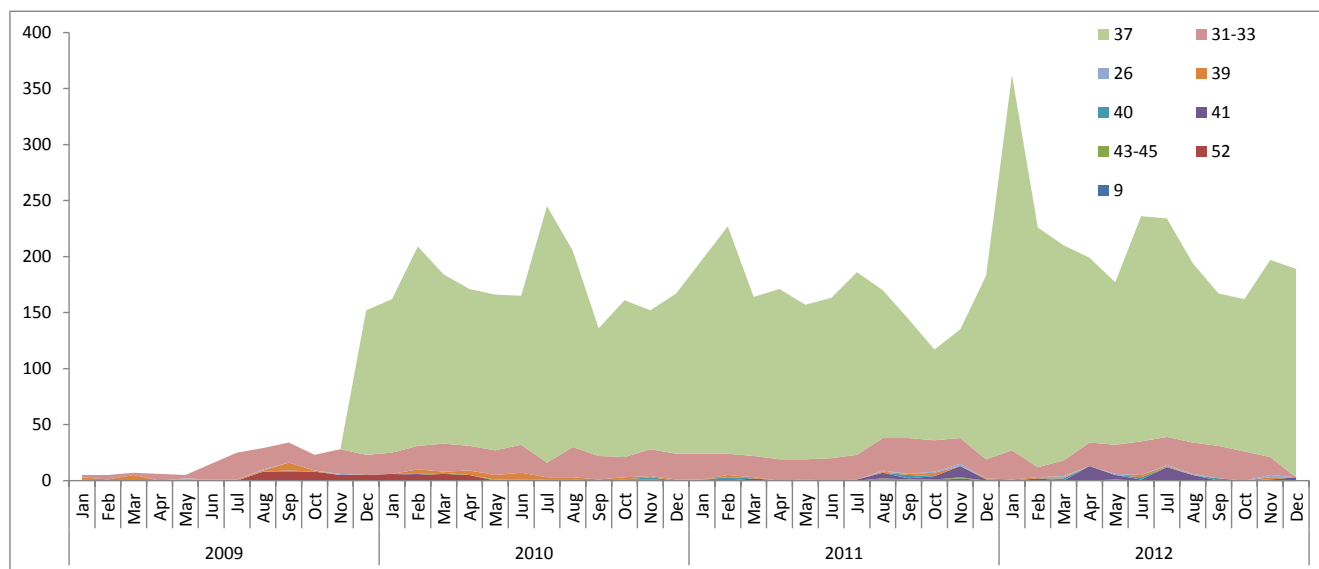


Chart 4 Reconciliation breaches alleged by Allocation Agent, Jan-11 to Oct-12 (excl. rule 37)

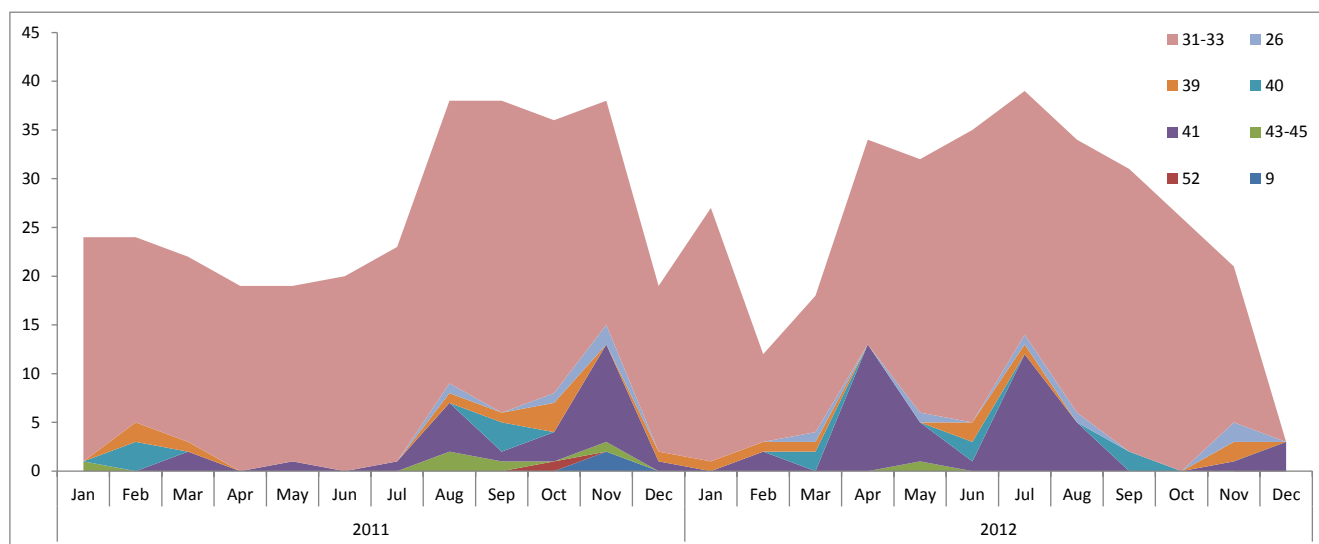


Chart 4 focuses on the rule breaches alleged in 2011 and 2012, with the rule 37 breaches removed to highlight the other rules. The majority of the remaining non-compliance (around 80%) is due to breaches of rules 31 to 33, which cover the obligations on retailers to submit consumption

⁷ The difference between the market administrator guideline for rule 37 is that breaches still need to be alleged and determined, hence not addressing the compliance cost issue that the threshold regime is aimed at.

information to the Allocation Agent for the initial, interim and final allocations. These rules can be breached by missing the submission deadlines (providing a late submission) but they are more commonly breached due to retailers providing estimated rather than actual data for TOU-metered ICPs.

Given the tight timeframes around receiving consumption information, performing allocations and publishing the results, it is not proposed that a threshold be applied to the timeframes in rules 31 to 33. On the other hand, it is feasible to have a threshold on the quantity of estimates provided in the submission files. The performance metric for the threshold could be the proportion of the retailer's ICPs for which estimated data is provided, or an ICP-days measure which would take into account the number of days for which actuals were not available.

A similar threshold could be applied to breaches of rule 41, which covers the transmission system owners' obligation to provide gas gate injection information for each allocation. Again, as the provision of this information is dependent on downloading telemetry data and running validation checks, the transmission system owner is not always able to provide actual daily values for every gas gate by the required deadline(s).

Breaches of rules 31 to 33 and 41 are seldom found to be material however they are subject to substantial scrutiny given that they can potentially impact on allocation results. When applying the threshold regime to these rules it would be sensible to incorporate a volume threshold so that any estimation or correction that involves a material change is still flagged to the Market Administrator.

The next most common breach is of rule 39 which requires that retailers provide the Allocation Agent with trading notifications indicating the gas gates where they have active customers (or more accurately where they begin or cease to supply customers). This rule is usually breached due to backdated switching or switches completed at the end of the month, where the responsible retailer may not be aware at the time of submitting to the Allocation Agent that they have gained the customer. There does not appear to be a suitable metric for applying a threshold to these breaches.

The remaining rule breaches in 2011 to 2012 are either not frequent enough to justify a threshold (rules 9, 44 to 45 and 52) or do not lend themselves to having a threshold applied, such as rules 26 to 29 (general obligations on allocation participants and/or retailers). These latter rules can be breached in a variety of ways so there is no simple heuristic for determining which are likely to be material and which are not.

On the basis of the above analysis it is proposed to initially apply the threshold regime to rules 31, 32, 33, 37 and 41 of the Reconciliation Rules.⁸

⁸ Rules 31, 32, 33 and 41 of the Reconciliation Rules will become redundant if the Minister of Resources approves amendments to the Rules as per a Recommendation made by Gas Industry Co.

2.4 Reporting and monitoring

As set out in the May 2012 Statement of Proposal, notwithstanding any threshold determination participants, consumers, other persons and Gas Industry Co will still be able to allege a breach at any time.

Further the Allocation Agent and Registry Operator will still be required to provide monthly reports to Gas Industry Co of breaches of the rules to which a threshold determination applies. Gas Industry Co will monitor trends carefully to ensure any pattern of de-facto rule change behaviour is addressed, including revocation of any determination.

3

Indicative drafting of the empowering provisions

We set out below an indicative draft of an empowering provision enabling Gas Industry Co to issue a determination exempting the Registry Operator or the Allocation Agent from the mandatory reporting requirements under regulation 11 of the Compliance Regulations. This is for illustrative purposes only, and the final drafting of any provision is the responsibility of the Parliamentary Counsel Office.

Definition

Mandatory breach reporting exemption means a determination issued by the industry body under regulation 11A exempting the Registry Operator or the Allocation Agent from notifying the Market Administrator of alleged breaches of specified rules [or regulations] under regulation 11.

Regulation 11 - Registry Operator or Allocation Agent must notify Market Administrator of alleged breach

[.....]

- (3)(A) Notwithstanding regulation 11, the Registry Operator and Allocation Agent are not required to allege breaches of any rules set out in a mandatory breach reporting exemption determination issued by the industry body in accordance with regulation 11A.

Regulation 11A – Industry body may determine mandatory breach reporting exemptions

- (1) The industry body may, after consulting with participants, issue a determination setting out mandatory breach reporting exemptions for the rules listed in Schedule [x].
- (2) In making its determination under regulation 11A the industry body must have regard to the following matters:
 - (a) Whether the mandatory breach reporting exemption is consistent with the objectives set out in section 43ZN of the Act;

- (b) Whether the mandatory breach reporting exemption is consistent with the [relevant] gas governance rules or regulations;
 - (c) Any determinations of the Market Administrator on alleged breaches of the rule to which the mandatory breach reporting exemption relates;
 - (d) Any other matters the industry body considers relevant to its determination.
- (3) The industry body may, at its discretion, impose terms and conditions on mandatory breach reporting exemptions.
 - (4) The industry body may, at its discretion, revoke a determination made under regulation 11A with [x] days' notice.
 - (5) The Registry Operator and Allocation Agent must provide monthly reports to the industry body of breaches of the rules [covered by] a mandatory breach reporting exemption determination.

Schedule x

In accordance with regulation 11A the industry body may issue a determination setting out mandatory breach reporting exemptions for the following rules.

Gas (Switching Arrangements) Rules 2008

Rules 67.3, 69.1, 69.2, 70.2 and 72.2.

Gas (Downstream Reconciliation) Rules 2008

Rules 31, 32, 33, 37 and 41.

4

Next steps

Following consideration of any submissions Gas Industry Co proposes to make a recommendation to the Minister of Energy and Resources to amend the Compliance Regulations, as set out in the May 2012 Statement of Proposal.

Appendix A

Switching Rules

The following rules have been selected on the basis that they are allegedly breached most frequently and have rarely been found material by the Market Administrator.

Rule 67 What gas switching notice must contain

- 67.3** If the new retailer includes a requested switch date for a standard switch, that date must not pre-date the date the gas switching notice is given to the registry and must not be more than 23 business days after the date the gas switching notice is given to the registry.

Rule 69 Response to a gas switching notice

- 69.1** Within 2 business days after receiving a gas switching notice from the registry, the responsible retailer must give to the registry –

69.1.1 A gas acceptance notice in accordance with rule 70; or

69.1.2 A gas transfer notice in accordance with rule 72; or

69.1.3 A gas switching withdrawal notice in accordance with rule 75.

- 69.2** The responsible retailer must ensure that within 23 business days after receiving a gas switching notice from the registry it completes the switch by the giving of a gas transfer notice, unless the switch is withdrawn during that period in accordance with rule 78.3.2.

Rule 70 What gas acceptance notice must contain

A gas acceptance notice must state –

- 70.2** An expected switch date which –

70.2.1 Except as required under rule 72.2, is not limited to any requested switch date in the gas switching notice; but

70.2.2 Must be no later than 23 business days after the date the responsible retailer

Rule 72 What gas transfer notice must contain

- 72.2** Subject to rules 72.3 and 72.4, if the gas switching notice included a requested switch date that complied with rule 67.3 or 67.3A, the responsible retailer must use the requested switch date as the switch date and provide switch readings applicable to that date.

Reconciliation Rules

The following rules have been selected on the basis that they are allegedly breached most frequently and have never, to date, been found material by the Market Administrator.

Rule 31 Provision of consumption information for initial allocation

To enable the Allocation Agent to perform an initial allocation for each consumption period, every retailer must provide, in respect of the consumer installations for which it is the responsible retailer, the following consumption information to the Allocation Agent by 0800 hours on the 4th business day of the month that immediately follows the consumption period to which the information relates:

- 31.1** Actual daily energy quantities for each consumer installation in allocation groups 1 and 2:
- 31.2** Estimated daily energy quantities for each consumer installation in allocation group 3:
- 31.3** The aggregate estimated daily energy quantities by gas gate by profile for consumer installations in allocation group 5 and the number of consumer installations included:
- 31.4** The aggregate estimated energy quantities by gas gate for all consumer installations in allocation groups 4 and 6.

Rule 32 Provision of consumption information for interim allocation

To enable the Allocation Agent to perform an interim allocation for each consumption period, every retailer must provide, in respect of the consumer installations for which it is the responsible retailer, the following consumption information to the Allocation Agent by 0800 hours on the 9th business day of the 4th month that follows the consumption period to which the information relates:

- 32.1** Actual daily energy quantities for each consumer installation in allocation groups 1 and 2:
- 32.2** Estimated daily energy quantities for each consumer installation in allocation group 3:
- 32.3** The aggregate estimated daily energy quantities by gas gate by profile for consumer installations in allocation group 5 and the number of consumer installations included:
- 32.4** The aggregate estimated energy quantities by gas gate for all consumer installations in allocation groups 4 and 6.

Rule 33 Provision of consumption information for final allocation

To enable the Allocation Agent to perform a final allocation for each consumption period, every retailer must provide, in respect of the consumer installations for which it is the responsible retailer, the following consumption information to the Allocation

Agent by 0800 hours on the 14th business day of the 13th month that follows the consumption period to which the information relates:

- 33.1** Actual daily energy quantities for each consumer installation in allocation groups 1 and 2:
- 33.2** Estimated daily energy quantities for each consumer installation in allocation group 3:
- 33.3** The aggregate estimated daily energy quantities by gas gate by profile for consumer installations in allocation group 5 and the number of consumer installations included:
- 33.4** The aggregate estimated energy quantities by gas gate for all consumer installations in allocation groups 4 and 6.

Rule 37 Accuracy of consumption information for initial allocation

- 37.2** For a consumption period, the accuracy of the consumption information provided by a retailer under rule 31 for initial allocation must, when compared with the consumption information provided by that retailer under rule 33 for final allocation, fall within the percentage of error determined and published by the industry body under rule 37.3.

Rule 41 Provision of daily injection information

- 41.1** Every transmission system owner must provide to the Allocation Agent by 1200 hours on the 4th business day of the month that immediately follows a consumption period the actual daily energy quantities injected at each gas gate connected to its transmission system for that consumption period.
- 41.2** For each interim allocation and final allocation, every transmission system owner must provide to the Allocation Agent, by the times and on the days specified in rule 32 and 33 respectively, actual daily energy quantities injected at each gas gate connected to its transmission system for the relevant consumption period.

Appendix B Template for Submissions

To assist Gas Industry Co in the orderly and efficient consideration of submitters' responses, a suggested format for submissions has been prepared, an electronic copy of which is available on our website.

Submission prepared by: (company name and contact)

QUESTION	COMMENT
Do you have any comments on the proposed application of the threshold regime?	