



## **Gas Governance (Compliance) Amendment Regulations 2013**

Jerry Mateparae, Governor-General

### **Order in Council**

At Wellington this 11th day of December 2013

Present:  
His Excellency the Governor-General in Council

Pursuant to sections 43G and 43S of the Gas Act 1992, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council and on the recommendation of the Minister of Energy and Resources made in accordance with sections 43J to 43O of that Act, makes the following regulations.

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## Regulations

**1 Title**

These regulations are the Gas Governance (Compliance) Amendment Regulations 2013.

**2 Commencement**

These regulations come into force on 1 March 2014.

**3 Principal regulations**

These regulations amend the Gas Governance (Compliance) Regulations 2008 (the **principal regulations**).

**4 Regulation 4 amended (Interpretation)**

(1) In regulation 4(1), definition of **participant**, paragraph (c), replace “consumer, industry expert, expert adviser,” with “industry expert, expert adviser, technical expert.”

(2) In regulation 4(1), insert in its appropriate alphabetical order:  
**“reporting participant** means any of the following persons:  
“(a) the registry operator;

- “(b) the allocation agent;
  - “(c) the critical contingency operator;
  - “(d) any other participant that, under an agreement between that participant and the market administrator, is required to notify the market administrator of an alleged breach of the rules”.
- (3) In regulation 4(1), definition of **rules**, revoke paragraph (b).

**5 Regulation 10 amended (Voluntary reporting of alleged breaches)**

Replace regulation 10(2) with:

- “(2) If the industry body becomes aware of an alleged breach of the rules by a participant, the industry body may notify the market administrator of that alleged breach at any time.”

**6 Regulation 11 replaced (Registry operator or allocation agent must notify market administrator of alleged breach)**

Replace regulation 11 with:

**“11 Reporting participants must notify market administrator of alleged breaches**

- “(1) If a reporting participant believes on reasonable grounds that any other participant has breached the rules, the reporting participant must, subject to regulation 11A, notify the market administrator of the alleged breach as soon as possible.
- “(2) A notice under subclause (1) must be in writing and must specify—
  - “(a) the participant that is alleged to have breached the rules; and
  - “(b) the rule or rules that are alleged to have been breached; and
  - “(c) the alleged circumstances relating to the alleged breach; and
  - “(d) the estimated date and time that the alleged breach occurred.
- “(3) The reporting participant may include notices under subclause (1) in regular reports to the market administrator as agreed between that reporting participant and the market administrator.

- “(4) If, during the course of an audit carried out under Part 4 of the Gas (Downstream Reconciliation) Rules 2008 or regulation 42, 65A, or 83 of the Gas Governance (Critical Contingency Management) Regulations 2008, the auditor determines that there may have been an alleged breach of those rules or regulations, the auditor must notify the market administrator of that alleged breach at the same time it provides the final audit report to the industry body.

**“11A Exception to regulation 11 for certain rule breaches**

- “(1) Regulation 11(1) does not apply to the extent that—
- “(a) the rules that a reporting participant believes to have been breached are 1 or more of the following:
    - “(i) rule 37 of the Gas (Downstream Reconciliation) Rules 2008;
    - “(ii) rules 67.3, 69.1, 69.2, 70.2, and 72.2 of the Gas (Switching Arrangements) Rules 2008; and
  - “(b) the reporting participant is satisfied that, if it were to notify the market administrator of the alleged breach of any rule specified in paragraph (a), there is no likelihood that the market administrator would determine under regulation 18 that the alleged breach raises a material issue on the basis of information known to the reporting participant.
- “(2) In making a decision for the purpose of subclause (1)(b), a reporting participant must have regard to—
- “(a) any determinations published by the market administrator under regulation 22; and
  - “(b) any guidelines issued by the market administrator under regulation 19(2) or 19A.
- “(3) Each reporting participant must ensure that the market administrator receives a monthly report detailing any alleged breaches that the reporting participant, in reliance on this regulation, does not notify under regulation 11(1).
- “(4) This regulation does not limit regulations 9 and 10 (voluntary reporting of alleged breaches).”

**7 Regulation 13 amended (Alleged breach must be notified and affected participants may join as parties)**

- (1) Replace regulation 13(1) and (2) with:
- “(1) At the same time as the market administrator notifies a participant under regulation 12(1)(b) of the information specified in that paragraph (the **information**), the market administrator must—
- “(a) notify the industry body of the information; and
- “(b) use reasonable endeavours to identify all other participants and notify them of the information.
- “(2) Within 5 business days after the market administrator notifies participants under subclause (1)(b), any participant may notify the market administrator that the participant considers that it is affected by the alleged breach and wishes to become a party to the matter.”
- (2) In regulation 13(3), replace “breach notice” with “matter”.

**8 Regulation 14 amended (Market administrator may request further information)**

- (1) In regulation 14(1)(d), replace “breach notice” with “matter”.
- (2) After regulation 14(1)(d), insert:
- “(e) the industry body.”

**9 New regulation 14A inserted (Market administrator may amend or consolidate breach notices)**

- After regulation 14, insert:
- “14A Market administrator may amend or consolidate breach notices**
- “(1) The market administrator may, at any time prior to determining, under regulation 18, the materiality of an alleged breach,—
- “(a) amend a breach notice to correct a typographical or factual error; or
- “(b) if the market administrator considers that 2 or more breach notices relate to substantially the same matter or have substantially the same factual basis, consolidate those notices into 1 breach notice.

- “(2) Within 5 business days after taking any action under subclause (1) (the **action**), the market administrator must—  
“(a) notify the following parties in writing of the action:  
“(i) the notifying participant or other person that gave the breach notice; and  
“(ii) each participant that is allegedly in breach; and  
“(iii) any other participant that has joined as a party to the matter under regulation 13, 26A, or 40A; and  
“(iv) the industry body; and  
“(b) use reasonable endeavours to identify all other participants and notify them of the action.”

**10 Regulation 15 amended (Market administrator must keep information confidential)**

- (1) In regulation 15(2), replace “Participants that provide or disclose” with “Any person that provides or discloses”.  
(2) In regulation 15(2), replace “participant” with “person”.

**11 Regulation 19 amended (Factors to be taken into account when determining materiality)**

In regulation 19(1)(k), after “other orders”, insert “made by the Rulings Panel”.

**12 New regulation 19A inserted (Market administrator may publish guidelines on how it will determine materiality)**

After regulation 19, insert:

**“19A Market administrator may publish guidelines on how it will determine materiality**

- “(1) The market administrator may publish guidelines, in addition to any guidelines published under regulation 19(2), to assist reporting participants to assess, for the purpose of regulation 11A, the likelihood that the market administrator would determine under regulation 18 that an alleged breach raises a material issue.  
“(2) The market administrator must consult participants before publishing guidelines under this regulation.

- “(3) The market administrator may amend or revoke guidelines published under this regulation at any time after consulting participants.
- “(4) The market administrator must revoke guidelines published under this regulation if the market administrator considers that participants’ reliance on the guidelines is contributing to an increase in the number of breaches of the rules.”

**13 Regulation 20 amended (Determination to be made expeditiously and in fair and reasonable manner)**

Replace regulation 20(2)(c) with:

- “(c) any other participant that has joined as a party to the matter under regulation 13, 26A, or 40A; and
- “(d) the industry body.”

**14 Regulation 21 amended (Market administrator to use informal resolution process)**

(1) Replace regulation 21(1)(c) with:

- “(c) any other participant that has joined as a party to the matter under regulation 13, 26A, or 40A.”

(2) After regulation 21(1), insert:

- “(1A) However, the agreement of the notifying participant under subclause (1)(a) is not required if—
  - “(a) the notifying participant is a reporting participant; and
  - “(b) the notifying participant has notified the market administrator in writing that it does not want to be involved in endeavouring to resolve an alleged breach under this regulation.”

(3) In regulation 21(4), after “market administrator”, insert “, unless subclause (1A) applies”.

**15 Regulation 23 amended (Market administrator to refer alleged breaches to investigator)**

Replace regulation 23(2)(b)(iii) with:

- “(iii) any other participant that has joined as a party to the matter under regulation 13, 26A, or 40A; and
- “(iv) the industry body; and”.

**16 Regulation 24 amended (Right to refer alleged breach to investigator directly)**

Replace regulation 24(2)(c) with:

- “(c) any other participant that has joined as a party to the matter under regulation 13, 26A, or 40A.”

**17 New regulation 26A inserted (Investigator may amend or consolidate breach notices or join affected participants as parties)**

After regulation 26, insert:

**“26A Investigator may amend or consolidate breach notices or join affected participants as parties**

- “(1) The investigator may, at any time before effecting a settlement under regulation 32, do any of the following:
  - “(a) amend a breach notice to correct a typographical or factual error;
  - “(b) if the investigator considers that 2 or more breach notices relate to substantially the same matter or have substantially the same factual basis, consolidate those notices into 1 breach notice;
  - “(c) allow a participant to join as a party to the matter if the investigator is satisfied that—
    - “(i) the participant considers that it has been affected by the alleged breach; and
    - “(ii) at the time the participant was notified of the alleged breach under regulation 13(1), the participant did not anticipate how it could be affected by the alleged breach.
- “(2) Within 5 business days after taking any action under subclause (1) (the **action**), the investigator must—
  - “(a) notify the following parties in writing of the action:
    - “(i) the notifying participant or other person that gave the breach notice; and
    - “(ii) each participant that is allegedly in breach; and
    - “(iii) any other participant that has joined as a party to the matter under regulation 13, 26A, or 40A; and
    - “(iv) the industry body; and
  - “(b) use reasonable endeavours to identify all other participants and notify them of the action.”

- 18 Regulation 27 amended (Investigator must keep information confidential)**  
(1) In regulation 27(2), replace “participants that provide or disclose” with “any person that provides or discloses”.  
(2) In regulation 27(2), replace “participant” with “person”.
- 19 Regulation 32 amended (Settlement process)**  
(1) Replace regulation 32(1)(c) with:  
“(c) any other participant that has joined as a party to the matter under regulation 13, 26A, or 40A.”  
(2) After regulation 32(2), insert:  
“(3) However, the agreement of the notifying participant under subclause (1)(a) and consultation with the notifying participant under subclause (2) are not required if—  
“(a) the notifying participant is a reporting participant; and  
“(b) the notifying participant has notified the investigator in writing that it does not want to be involved in endeavouring to effect a settlement under this regulation.”
- 20 Regulation 33 amended (Settlement must be written, etc)**  
In regulation 33(2), after “investigator”, insert “, unless regulation 32(3) applies”.
- 21 Regulation 38 amended (Process if Rulings Panel to determine alleged breach)**  
Replace regulation 38(5)(c) with:  
“(c) any other participant that has joined as a party to the matter under regulation 13, 26A, or 40A; and  
“(d) the industry body.”
- 22 Regulation 39 amended (Rulings Panel to set date for considering alleged breach)**  
Replace regulation 39(2)(c) with:  
“(c) any other participant that has joined as a party to the matter under regulation 13, 26A, or 40A;  
“(ca) the industry body.”

- 23 Regulation 39A amended (Interim injunctions in respect of actions in breach of Gas Governance (Critical Contingency Management) Regulations 2008)**  
(1) In regulation 39A(1)(a) and (b), (3)(a) and (b), and (4), after “participant”, insert “or consumer”.  
(2) After regulation 39A(4), insert:  
“(5) In this regulation, **consumer** has the same meaning as in regulation 5 of the Gas Governance (Critical Contingency Management) Regulations 2008.”
- 24 New regulation 40A inserted (Rulings Panel may allow affected participants to join as parties)**  
After regulation 40, insert:  
**“40A Rulings Panel may allow affected participants to join as parties**  
The Rulings Panel may allow a participant to join as a party to a matter if the Rulings Panel is satisfied that—  
“(a) the participant considers that it has been affected by the alleged breach; and  
“(b) at the time the participant was notified of the alleged breach under regulation 13(1), the participant did not anticipate how it could be affected by the alleged breach.”
- 25 Regulation 46 amended (Rights of persons entitled to be heard at hearing)**  
After regulation 46(2), insert:  
“(2A) Despite subclause (2), the Rulings Panel must allow another investigator to speak to the report and recommendation if the investigator who has investigated the alleged breach is not available for any reason.”
- 26 Regulation 47 amended (Rulings Panel may request further information)**  
In regulation 47(3), after “Participants”, insert “and the industry body”.

- 27 Regulation 49 amended (Participant may make written submissions)**  
Replace the heading to regulation 49 with “**Written submissions**”.
- 28 Regulation 76 amended (Rulings Panel may prohibit publication of information)**  
(1) In regulation 76(3)(a), after “any participant or”, insert “the industry body, or”.  
(2) In regulation 76(3)(b)(i), after “notifying”, insert “the industry body and”.  
(3) In regulation 76(3)(b)(ii), after “any views that”, insert “the industry body or”.
- 29 Regulation 81 amended (Funding of market administrator, investigator, and Rulings Panel)**  
In regulation 81(4), delete “on its Internet site”.
- 30 Regulation 82 amended (How and when estimated compliance ongoing fees payable)**  
(1) In regulation 82(2), delete “on its Internet site”.  
(2) In regulation 82(4)(a), delete “on its Internet site”.
- 31 Regulation 83 amended (How and when actual compliance ongoing fees payable)**  
In regulation 83(2), delete “on its Internet site”.

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Rebecca Kitteridge,  
Clerk of the Executive Council.

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### **Explanatory note**

*This note is not part of the regulations, but is intended to indicate their general effect.*

These regulations, which come into force on 1 March 2014, amend the Gas Governance (Compliance) Regulations 2008 (the **principal**

**regulations).** The main change made by these regulations is to the arrangements for reporting breaches, by industry participants, of the Gas (Downstream Reconciliation) Rules 2008, the Gas Governance (Critical Contingency Management) Regulations 2008, the Gas (Processing Facilities Information Disclosure) Rules 2008, and the Gas (Switching Arrangements) Rules 2008.

Currently, regulation 11 of the principal regulations requires the registry operator, the allocation agent, and the critical contingency operator to report breaches by other participants by lodging a breach notice with the market administrator. If the market administrator receives a breach notice, it must determine whether the alleged breach raises a material issue and may attempt to resolve the matter with the agreement of the parties or may refer the matter to an investigator. *New regulation 11A* is inserted to create an exception to mandatory reporting of certain rule breaches where the person required to report considers, on the basis of information known to the person, that there is no likelihood that the market administrator would find that the alleged breach raises a material issue. The market administrator may publish guidelines on how it will determine materiality (*new regulation 19A*).

If a person, in reliance on *new regulation 11A*, does not lodge a breach notice for an alleged breach, the person is still required to report the alleged breach by way of a monthly report to the market administrator, and *new regulation 11A* does not prevent another person or the industry body from lodging a breach notice under regulation 9 or 10 in respect of the alleged breach.

In addition, these regulations—

- remove consumers from the definition of participant (because section 43X of the Gas Act 1992 limits the jurisdiction of the Rulings Panel to allegations of breaches by industry participants);
- make various other changes to processes;
- make a number of minor and technical amendments.

**Gas Governance (Compliance) Amendment  
Regulations 2013**

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Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*: 12 December 2013.

These regulations are administered by the Ministry of Business, Innovation, and Employment.

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