Wholesale Market Monitoring and Reporting

Draft Market Monitoring
Information Order-GAS-2025-01
Explanatory Statement

November 2024



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Amendment record

Version	Date	Pages
1.0	November 2024	21

Request for Submissions

Interested parties are invited to make a written submission to the Australian Energy Regulatory (AER) on the draft Market Monitoring Information Order accompanying this statement.

Submissions should be made via email to ContractMarketMonitoring@aer.gov.au, with the subject line 'Wholesale Market Monitoring and Reporting – Draft Order MMIO-GAS-2025-01 submission' by close of business, Friday, 20 December 2024.

Alternatively, submissions can be mailed to:

Fiona Hooymans
General Manager, Market Surveillance Branch
Australian Energy Regulator
GPO Box 3131
Canberra ACT 2601

Submissions should be in PDF, Microsoft Word or another text readable document format. Due to timing constraints, late submissions may not be considered.

The AER prefers that all submissions be publicly available to facilitate an informed and transparent consultative process. Submissions will be treated as public documents unless marked confidential. Parties wishing to submit confidential information are requested to:

- clearly identify the information that is the subject of the confidentiality claim; and
- provide a non-confidential version of the submission in a form suitable for publication.

All non-confidential submissions will be placed on the AER's website. For further information on the AER's use and disclosure of information provided to it, see the <u>ACCC/AER</u> <u>Information Policy, June 2014.</u>

Enquiries about this Explanatory Statement, or about lodging submissions, should be directed to the ContractMarketMonitoring@aer.gov.au with the subject line 'Wholesale Market Monitoring and Reporting Guideline – Draft Order enquiry'.

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Definitions and shortened forms

Term	Definition
ACCC	Australian Competition and Consumer Commission
ACCC/AER Information Policy	ACCC and AER information policy: collection, use and disclosure of information, available on the AER's website
AER	Australian Energy Regulator
National Gas Law	National Gas Law as laid out in the Schedule to the <i>National Gas (South Australia) Act 2008</i> (SA) and as applied by the relevant implementing legislation
National Gas Rules	National Gas Rules as made under Chapter 9 of the National Gas Law and given force of law by section 26 of the National Gas Law
Order	Market Monitoring Information Order

1 Introduction

We recently published our <u>Wholesale Market Monitoring and Reporting Guideline</u>. The Guideline sets out our general approach to our enhanced functions in monitoring, and reporting on, the wholesale gas markets and electricity and gas contract markets.¹

The next milestone in the implementation of our enhanced functions is the making of Market Monitoring Information Orders (Orders) and Market Monitoring Information Notices (Notices) ² to collect information, where we believe that information to be reasonably necessary for the performance of our wholesale energy market monitoring and reporting functions.

Accordingly, we have published for consultation a draft Order (MMIO-GAS-2025-01) (the draft Order), in accordance with section 30AM of the National Gas Law (NGL).

The draft Order requires a class of persons to provide information to the Australian Energy Regulator (AER), to prepare, maintain and keep information in a specified form. It will establish regular and consistent reporting of information, building transparent and predictable reporting cycles.³ We expect over time this should minimise burden on both participants and us by enabling predictable allocation of resourcing for information submission and analysis. We will nevertheless regularly reevaluate the information we require and may adjust our collection accordingly, including by ceasing collecting certain information if it is no longer relevant to our functions.

Covered gas service providers are subject to reporting requirements under Parts 10 and 18A of the National Gas Rules (NGR). For the purposes of our wholesale market monitoring and reporting functions, we require additional information (counterparty names and contract documents) related to this reporting, which is the subject of the draft Order.

The draft Order includes information on:

- the specified class of persons the Order applies to;
- information required to be provided;
- dates for submitting information to the AER and process for extension requests;
- reasons that the AER requires each type of information to be provided;
- general requirements including compliance, variation, exemptions, resubmission and confidentiality; and
- assurance requirements.

¹ Under section 18EO of the National Electricity Law and 30AT of the National Gas Law.

² We have also prepared draft Notices for the collection of information. The draft Notices have been provided to named persons with the opportunity for them to make a submission, in accordance with the consultation requirements under section 18EJ of the National Electricity Law and 30AO of the National Gas Law.

³ There is also some information that will be required to be provided as a one-off.

This Explanatory Statement accompanies the draft Order. Information contained in this Explanatory Statement is to support the requirements detailed in the draft Order and should not be read to qualify or replace any requirement stated therewithin.

This Explanatory Statement also discusses feedback received from stakeholders to date related to the development of the draft Order, approaches we have taken to minimise burden and detail on other matters including data storage and security protocols. We are keen to continue to receive input from stakeholders in this stage of engagement to help shape the final Order.

1.1 Consultation process

We are committed to undertaking meaningful stakeholder engagement to develop well designed Orders, in the least burdensome manner for industry.

Hearing from those affected by our work helps us make better decisions, provides greater transparency and predictability, and builds trust and confidence in our reporting.

The invitation to submit responses to the draft Order is the next step in our engagement process.⁴ We are also open to engaging with stakeholders through one-on-one meetings to gather feedback and input. We encourage engagement by all interested members of the public and any interested parties, including following the conclusion of our formal consultation period.

The feedback on the draft Order will shape the final Order, which we are aiming to publish in early March 2025. Table 1 sets out the key milestones planned for publication of our Order.

Table 1: Key dates for the Market Monitoring Information Orders

Milestone	Date
Informal targeted consultation	September-October 2024
AER publication of draft Order	11 November 2024
Submissions on the draft Order due	20 December 2024
AER publication of final Order	Early March 2025
Commencement of information submission under the Order	Q2-Q3 2025 depending on particular information.

⁴ We are required under section 30AM of the National Gas Law to consult with the public before making an Order.

Questions for consultation

We are interested in stakeholder feedback on the content of the draft Order. We are also interested in stakeholder views in respect of:

- the burden and cost the Order is likely to impose, and any estimated actual costs of complying with the Order;
- the clarity of the Order's requirements;
- the proposed information required;
- the proposed response timeframes;
- additional approaches that could be adopted to minimise burden; and
- the overview of our proposed data portal and our approach to data management.

To assist stakeholder responses, we have included some specific questions throughout the paper in feedback boxes, though we welcome feedback on any aspect of the draft Order. For ease of review, we have collated these questions below:

The AER would appreciate feedback on:

- 1) The burden the Order is likely to impose. This could include whether:
 - a) the required information is readily available, and in the required format.
 - b) any system changes would be required to efficiently provide the information required by the Order.
- 2) Any estimated costs of complying with the Order and where they are attributed (for example, system changes).
- 3) Any suggestions on further approaches to minimise participant burden and/or costs while maintaining the integrity of the information required.
- 4) Whether participants' internal systems record counterparty names alongside the information they are required to publish under Parts 10 and 18A of the NGR.
- 5) Whether supplying contract documents is low burden.
- 6) Whether the proposed two-week timeframe for ongoing submissions is reasonable.
- 7) Our approach to the AER Portal and data management, and any considerations relevant to the external user experience, including the burden or cost of using the portal as shown in Appendix A.
- 8) Whether the requirements of the data portal are clear, and any suggestions for improvement.

2 Approaches adopted to minimise burden

During the Guideline development process, stakeholders expressed an interest in detailed engagement on the development of the draft Orders. In response, we provided stakeholders with informal engagement opportunities (including via one-on-one meetings and accepting email feedback) beyond our legislative requirements to inform the development of the draft Order. We also considered feedback received in response to the consultation on our Issues Paper and Draft Guideline,⁵ where relevant to our information collection.

In designing the draft Orders, we have undertaken a preliminary assessment of the burden likely to be incurred by stakeholders relative to the insights that the information will deliver for our monitoring and reporting functions.⁶ This was informed by the stakeholder engagement received to date. This section discusses the approaches we have taken to minimise burden, including in response to stakeholder feedback.

We are interested in any additional stakeholder feedback on the likely burden that the draft Order would impose, and any estimates of the costs of complying with the Order. We will consider this feedback prior to making the final Order.

The AER would appreciate feedback on:

- 1) The burden the Order would likely impose. This could, for example, include whether:
 - a) the required information is readily available, and in the required format; and/or
 - b) any system changes would be required to efficiently provide the information required by the Order.
- 2) Any estimated costs of complying with the Order and where they are attributed (for example, system changes).
- 3) Any suggestions for further approaches to minimise burden and/or cost while maintaining the integrity of the information required.

Format and timing of reporting

To minimise the burden of reporting, the draft Order includes the following approaches:

- No standardised template:
 - Stakeholders advised that imposing a standardised template would add substantial burden as it would likely require significant adjustment of systems to match a new format.
 - We understand from some stakeholders that their internal records include the counterparty names alongside the information published under Parts 10 and 18A of

⁵ Enhanced Wholesale Market Monitoring and Reporting Guideline – Issues paper for stakeholder feedback, March 2024; Wholesale Market Monitoring and Reporting Draft Guideline, July 2024.

⁶ Per section 30AL of the National Gas Law.

the NGR, and that this information could be submitted to us with minimal additional burden.

- Collecting the full transportation, compression and storage contract documents associated with the above reporting to provide information on non-standard terms and conditions.
 - Stakeholders indicated that providing contract documents is relatively low burden compared to extracting standardised data from contracts, particularly in the initial process and system set up.
 - We consider that obtaining full contract documents, which are often complex, will complement the above data collection and enable us to explore more detail where necessary.
- Providing two weeks for the additional information to be submitted to us following relevant publication of information under Part 10 and 18A of the NGR.
- Providing a transition period following the Order being issued, with reporting requirements under the Order proposed to commence 1 April 2025.

The AER would appreciate feedback on:

- 4) Whether participants' internal systems record counterparty names alongside the information they are required to publish under Parts 10 and 18A of the NGR;
- 5) Whether supplying contract documents is low burden; and
- 6) Whether the proposed two-week timeframe for ongoing submission is reasonable.

<u>Limiting historical information collection</u>

We are proposing to only collect historical data from December 2023 in alignment with the commencement of reporting under Parts 10 and 18A of the NGR. We appreciate that, prior to this time, participants were not required to collate and store the relevant information and that it would be highly burdensome to collect further historical information.

Assurance requirements

We have several avenues available to us to attest to the quality and completeness of information provided to us, including a statutory declaration. However, we acknowledge that statutory declarations can present additional burden for participants. Accordingly, we instead propose to ask respondents to the Order to submit a signed proforma for certification.

⁷ National Gas Law, section 30AR.

3 Other matters

3.1 Amending orders

We may amend or replace any part of the Order in accordance with the process outlined in the draft Order.

Circumstances that may warrant amending or replacing part of an Order include, but are not limited to:

- If there are material changes that alter our wholesale market monitoring and reporting functions or the information we can collect.
- If we identify that certain information is no longer reasonably required to perform our wholesale market monitoring and reporting functions.
- If we identify additional information which we consider is reasonably required to perform our wholesale market monitoring and reporting functions.
- If there are significant technological developments that alter how we propose to collect information.

We generally expect that the process of amending an Order will take a minimum of 3 months, depending on the complexity of the change. This allows for the minimum public consultation requirements associated with making an Order and appropriate consideration of any feedback received.⁸

3.2 Compliance framework

Section 30AQ(1) of the NGL requires a person who is a member of a class of persons specified in an Order to comply with that Order.

This section of the NGL is a Tier 1 civil penalty provision.⁹ Tier 1 civil penalty provisions carry the most severe penalties for non-compliance, reflecting the importance of the obligations to the regulatory framework.

We have a range of options available to address non-compliance with an Order, including administrative resolutions, guidance notes/compliance bulletins, infringement notices and court action. More information on our Compliance and Enforcement Policy is available on the AER website.¹⁰

Our general approach for new obligations is to work with participants to assist them to understand their obligations so they can put in place robust systems and processes to achieve compliance. Our approach to non-compliance is informed by our Compliance and Enforcement Policy, which sets out the principles we apply when taking a risk-based approach to our compliance and enforcement work.

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⁸ Section 30AM of the National Gas Law requires the AER to undertake public consultation in accordance with rule 138D of the National Gas Rules.

⁹ Part 1 of Schedule 3 to the National Gas (South Australia) Regulations provides that section 30AQ(1) is a Tier 1 civil penalty provision.

¹⁰ AER Compliance & Enforcement Policy, July 2021.

3.3 AER portal and data management

All data submitted in response to the final Order must be submitted through our secure data portal. Appendix A provides a practical overview of the expected operation of our data portal, including screen captures to illustrate the process for Order recipients to submit data. We have systems and frameworks in place to ensure collected data and information is managed effectively, and necessary security frameworks are applied.

We acknowledge that collecting information that is highly commercially sensitive and/or confidential introduces risk. We are committed to ensuring the effectiveness of our information access and management arrangements to mitigate this risk.

Our portal is routinely subjected to rigorous penetration and security testing, and documents submitted to us are stored in our official document management repository. Documents are ingested and automatically routed to the appropriate workspaces where role-based access controls can be applied to ensure data and information is accessed on a need-to-know basis. Data is encrypted both in motion and at rest.

When accessing the portal, users will be required to agree to our standard terms and conditions. A range of information will be logged during use and stored including login ID and source IP address. This may include:

- file name
- file size
- date and time of upload
- portal user details such as email address, phone number, names and entity information.

We note all information must not be submitted with password protection or other security measures that may prevent us being able to use and access that information. Password-protected template files cannot be ingested or validated into our secure data platform.

We encourage stakeholders to reach out should they have any concerns regarding our approach to data security.

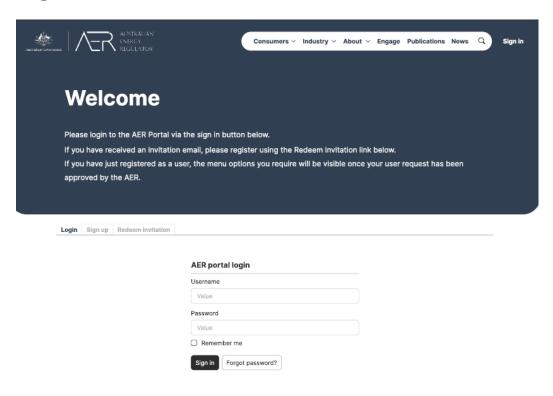
The AER would appreciate feedback on:

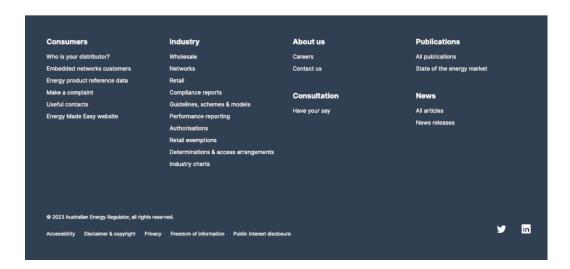
- 7) Our approach to the AER Portal and data management, and any considerations relevant to the external user experience, including the burden or cost of using the portal as shown in Appendix A.
- 8) Whether the requirements of the data portal are clear, and any suggestions for improvement.

Appendix A: AER Portal

The AER Portal will be accessible via https://portal.aer.gov.au.

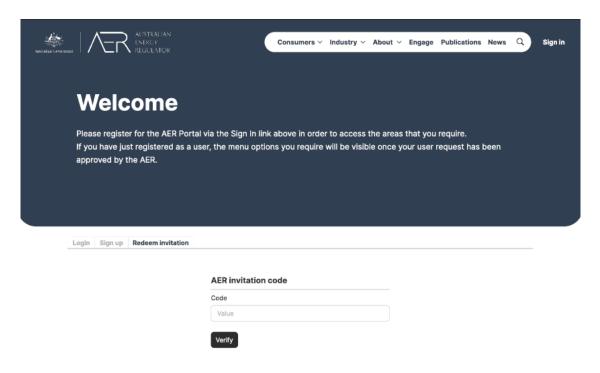
Login

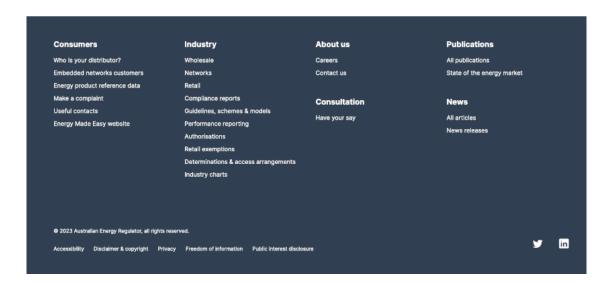




 Participants will receive an invitation email from the AER and be able to go through the registration process to access the AER Portal for data submission.

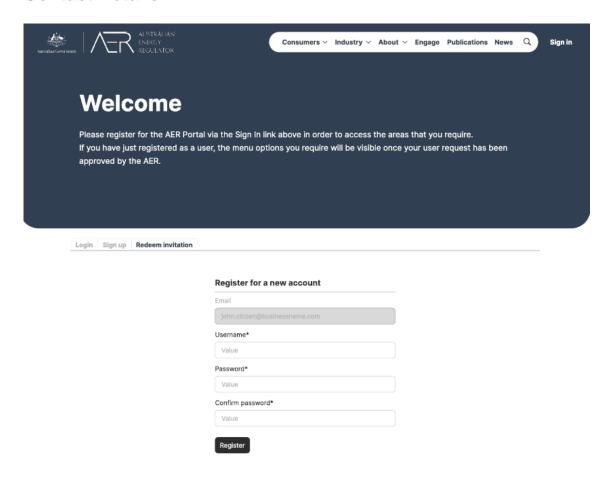
Redeem Invitation





• This screen shows part of the invitation process.

Contact Details

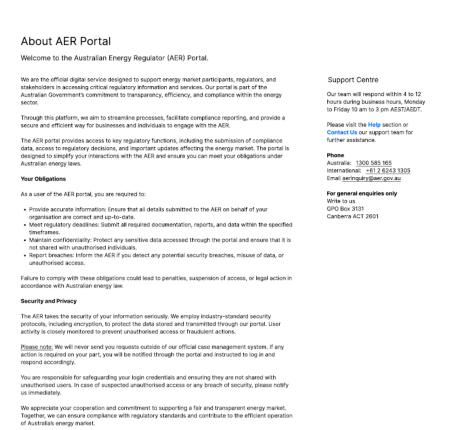




• This screen shows part of the invitation process.

AER Homepage

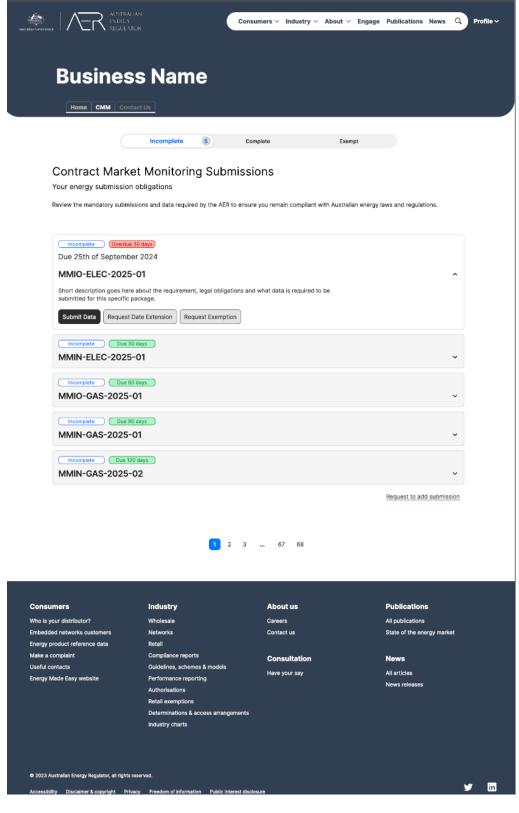






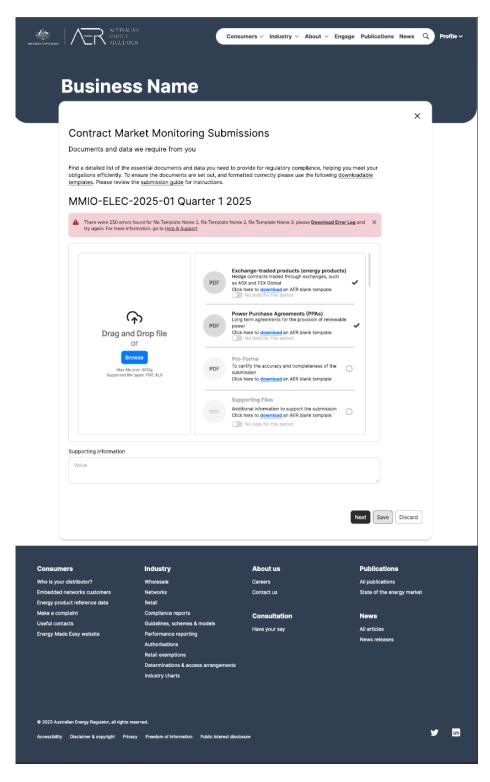
After successful registration, participants will be taken to the Homepage.

AER Submission List



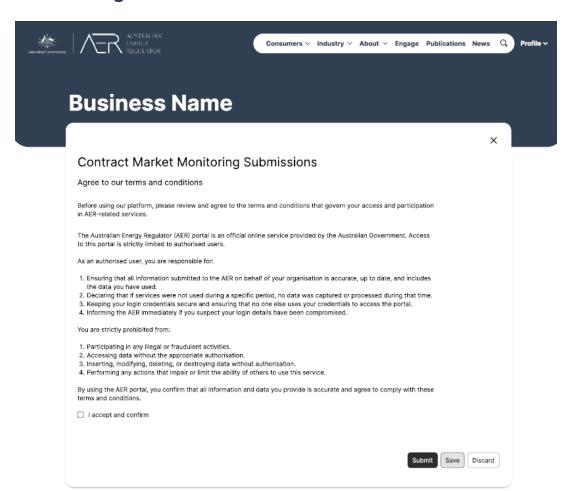
- The CMM tab on the top menu will take the participant to the CMM landing page, where they will be able to see all due reporting requirements.
- The dropdown icon will expand the view to show submission details.
- The 'Submit Data' button will take the participant to the file upload page.

AER Package Upload



- The participant can view a list of files they have to upload. These can be dragged and dropped or uploaded via the 'Browse' button.
- Each submission will require mandatory files, and include the opportunity for optional supporting files.
- The Portal will conduct a validation check for uploaded documents. Details of any validation errors will be provided in a downloadable error log.

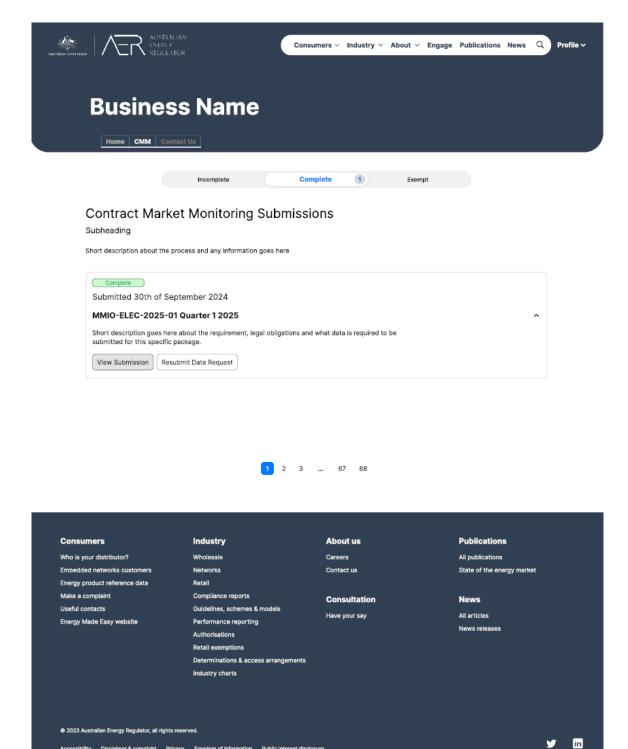
AER Package Submit





- Once all files are uploaded the participant will be taken to the final submission page, where they will be provided with the relevant terms and conditions.
- The participant can click 'Submit' to finalise the submission process.

AER Submission List



Once the response is submitted, the participant will be redirected to a page showing a list of all completed responses.

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Annex 1: Summary of proposed requirements for the Market Monitoring Information Order

The below table provides a broad summary of information proposed to be collected by the AER using the Gas Market Monitoring Information Order subject to this consultation. The proposed information will be finalised following a period of consultation, as required prior to the AER making final Order.

The obligations of persons captured by an Order are outlined within that Order. The below table is provided for reference only and does not substitute or replace the contents of the relevant Order. Persons should refer to Order for details on how to provide the information, and the required format.

Table 1: Draft MMIO-GAS-2025-01

Quantitative information	Classes of persons	Frequency	Initial due dates
Gas Transportation Agreements	Pipeline operators	Whenever new contract	Historic information: 31 May 2025
(GTAs)		information is reported under	
		Part 10 or Part 18A	Current information: Within 2 weeks publication on
Gas compression – standalone	Pipeline operators	requirements	companies' websites, starting 1 April 2025
beyond GTAs	 Compressor operators 		
Gas storage agreements	Pipeline operators		
Cas storage agreements	 Storage operators 		
	o otorage operators		