

Supporting Statement for Paperwork Reduction Act Submissions
30 CFR Part 291, Subpart A,
Open and Nondiscriminatory Movement of Oil and Gas
OMB Control Number 1010-XXXX
Expiration Date: None

General Instructions

A Supporting Statement, including the text of the notice to the public required by 5 CFR 1320.5(a)(i)(iv) and its actual or estimated date of publication in the Federal Register, must accompany each request for approval of a collection of information. The Supporting Statement must be prepared in the format described below, and must contain the information specified in Section A below. If an item is not applicable, provide a brief explanation. When Item 17 of the OMB Form 83-I is checked “Yes,” Section B of the Supporting Statement must be completed. OMB reserves the right to require the submission of additional information with respect to any request for approval.

Specific Instructions

A. Justification

1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.

The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), Section 5 (Administration of Leasing of the Outer Continental Shelf) authorizes the Secretary of the Interior (Secretary) to prescribe rules and regulations to administer leasing of the OCS. Such rules and regulations will apply to all operations conducted under a lease. Operations on the OCS must preserve, protect, and develop oil and natural gas resources in a manner that is consistent with the need to make such resources available to meet the Nation’s energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition. Section 1334(f)(1) states “Except as provided in paragraph (2), every permit, license, easement, right-of-way, or other grant of authority for the transportation by pipeline on or across the outer Continental Shelf of oil or gas shall require that the pipeline be operated in accordance with the following competitive principles: (A) The pipeline must provide open and nondiscriminatory access to both owner and nonowner shippers. . . .”

The Outer Continental Shelf Lands Act (OCSLA) requires pipelines to provide open and nondiscriminatory access to shippers of production. The Federal Energy Regulatory Commission (FERC) has historically assured this access through its application of the Natural Gas Act (NGA) and the Interstate Commerce Act. Beginning in the 1990’s, the FERC began relinquishing NGA jurisdiction over some gas pipelines. The FERC contended it had authority under the OCSLA to determine whether pipelines were providing open and nondiscriminatory access; however, the Court of Appeals for the District of Columbia has ruled that this authority lies with the Secretary of the Interior (*Williams Cos. v. FERC*, 345 F.3d 913-14 (D.C. Cir. 2003)). According to the Court’s decision, FERC’s authority does

not include the regulatory oversight described in FERC Orders 639 and 639A. Based on the Court's decision, MMS believes that the OCSLA provides the Secretary of the Interior the authority to issue and enforce rules to assure open and nondiscriminatory access to pipelines. In order to provide shippers with a methodology to file complaints alleging denial of access or that access is discriminatory access, the MMS is proposing new regulations.

The MMS proposes that entities who believe they have been denied pipeline access or believe they have been discriminated against regarding pipeline access submit a complaint. The complaint should include certain minimal data in order for the MMS to begin an investigation. Upon completion of an investigation, the MMS will propose a remedial action.

The rule (§§ 291.106(b) and 108) proposes a nonrefundable processing fee of \$7,500 that a shipper must pay when filing a complaint to MMS. Federal policy and statute require us to recover the cost of services that confer special benefits to identifiable non-Federal recipients. The Independent Offices Appropriation Act (31 U.S.C. 9701) and the Office of Management and Budget (OMB) Circular A-25 authorize the MMS to collect these fees to reimburse us for the cost to process applications or claims.

This information collection request (ICR) concerns the proposed regulations at 30 CFR 291, Subpart A, on assuring open and nondiscriminatory access to pipelines.

2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection. [Be specific. If this collection is a form or a questionnaire, every question needs to be justified.]

The MMS intends to use the submitted information to initiate a more detailed investigation into the specific circumstances associated with a complainant's allegation of denial of access or discriminatory access to pipelines on the Outer Continental Shelf. The complaint information will be provided to the alleged offending party. Informal resolution of the complaint is an option via a hotline or alternative dispute resolution. The MMS may request additional information upon completion of the initial investigation.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden [and specifically how this collection meets GPEA requirements].

The MMS believes that *automated* electronic submission is not readily applicable to this information collection because the Notice of Complaint and statement of reasons are unique to each complaint. However, the Notice of Complaint may be emailed to MMS. The complainant determines whether or not to use electronic submission and is not required to do so. We would expect about 80% of the notices to be submitted electronically.

The rule specifies that the processing fee be paid by electronic funds transfer using the Federal Reserve Communications System, unless an alternative payment method is requested and approved.

4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.

The Federal Energy Regulatory Commission contended it had authority under the OCSLA to determine whether pipelines were providing open and nondiscriminatory access. The FERC issued Orders 639 and 639A in an attempt to collect OCS pipeline movement data from all service providers on the OCS. The FERC intended to make this information available to the public. They intended that the information would provide transparency and help assure that the open and nondiscriminatory access provisions of the OCSLA were being complied with. However, the Court of Appeals for the District of Columbia has ruled that the authority to assure the open and nondiscriminatory access provisions of the OCSLA are complied with lies with the Secretary of the Interior (*Williams Cos. v. FERC*, 345 F.3d 913-14 (D.C. Cir. 2003)). Since each instance of denial of open access or discriminatory access is unique, the MMS believes that the information requested is not available from any other source. The information is readily available only in the files of the complainant.

5. If the collection of information impacts small businesses or other small entities (Item 5 of OMB Form 83-I), describe any methods used to minimize burden.

This collection of information does not have a significant economic effect on a substantial number of small entities. Leasehold and pipeline operations in the OCS are relatively large in scale and technically complex. Many of the companies operating on the OCS may have less than 500 employees and would be considered small businesses as defined by the Small Business Administration. However, MMS believes the economic effect will be minimal based on the expectation of roughly five formal complaints and the availability of an informal "hotline." MMS estimates were based on oral comments received at public meetings, discussions with personnel at FERC, past litigation, and the number of similar complaints received via the FERC "hotline." The alternative of requiring new, more detailed reporting does not appear to be justified based upon the comments received by the MMS in the advanced notice of proposed rulemaking (69 FR 19137, April 12, 2004). Therefore, the hour burden on any small entity subject to these regulations cannot be reduced to accommodate them without significantly increasing the burden on all entities operating on the OCS. Also, the collection of information is not mandatory, but required in order to obtain or retain benefits.

6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.

If we did not collect the information, MMS could not carry out the mandate of the OCS Lands Act, to ensure open and nondiscriminatory access to pipelines. The MMS intends for the complaint filing requirements to provide entities who believe they are being denied their rights regarding the open and nondiscriminatory access provisions of the OCSLA with a mechanism for bringing those instances to MMS's attention. The MMS does not routinely collect significantly detailed information related to the movement of oil and gas through pipelines on the OCS in order to make determinations of when the open and nondiscriminatory access provisions of the OCSLA have not been satisfied. Respondents would generally submit complaints as a result of situations encountered and not at any fixed interval; therefore, the frequency of submission is generally on occasion and not subject to change.

7. Explain any special circumstances that would cause an information collection to be conducted in a manner:

(a) requiring respondents to report information to the agency more often than quarterly.

The collection of information does not require respondents to report information more often than quarterly. Respondents would generally submit complaints as a result of situations encountered and not at a fixed interval; therefore, submission is generally on occasion.

(b) requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it.

In the rulemaking, MMS states that it retains the right to make the determination with regard to any claim of confidentiality for the submitted information. MMS will notify the complainant if it has denied the claim. In such a case, MMS affords the complainant the chance to respond no less than 5 days before the public release of the information because the MMS is concerned that resolution of complaints should not be a long drawn-out affair.

(c) requiring respondents to submit more than an original and two copies of any document.

Respondents are required to submit their complaint information to MMS and to all the persons/parties named in the complaint. There may be some instances where there are more than two persons/parties named. Therefore, in order for each named party to receive the complaint against them at the same time, respondents may be required to submit more than an original and two copies of their complaint.

(d) requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records, for more than 3 years.

Not applicable in this collection.

(e) in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study.

Not applicable in this collection.

(f) requiring the use of statistical data classification that has been reviewed and approved by OMB.

There are no special circumstances with respect to 5 CFR 1320.5(d)(2)(v) through (viii) as the collection is not a statistical survey and does not use statistical data classification.

(g) that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use.

This collection does not include a pledge of confidentiality not supported by statute or regulation.

(h) requiring respondents to submit proprietary trade secrets or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.

This collection does not require proprietary, trade secret, or other confidential information not protected by agency procedures.

8. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice [and in response to the PRA statement associated with the collection over the past 3 years] and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.

Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported. [Please list the names, titles, addresses, and phone numbers of persons contacted.] Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 years – even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.

To determine whether there was a need to assure open and nondiscriminatory access, the MMS issued an Advance Notice of Proposed Rulemaking (69 FR 19137) on April 12, 2004. Subsequently, the MMS held public meetings in Houston, Washington D.C., and New Orleans to hear oral comments.

Most of the comments received dealt with the Department of the Interior's authority under the OCS Lands Act. Some comments questioned MMS's authority to require reporting; while others believed that MMS should implement the same type of information collection that the FERC had mandated in their Orders 639 and 639A. The MMS believes that without knowing the specifics of the number and type of instances of violations of access requirements, the routine submittal of information is not justified at this time. The MMS will consider comments on this submitted with the proposed rule.

After considering all comments and oral presentations, the MMS is proceeding with the proposed rulemaking. Based upon the oral comments received at the public meetings and discussions with personnel at the FERC, the MMS believes that the number of complaints will be small. As required in 5 CFR 1320.11, MMS is providing the 60-day review and comment process in the preamble of the proposed rule. We will address comments in the final rulemaking process.

9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.

We will not provide payment or gifts to respondents in this collection.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.

Commercial or financial information submitted to the Department of the Interior relative to minerals removed from the Federal OCS may be proprietary. Trade secrets and proprietary information are protected in accordance with the Federal Oil and Gas Royalty Management Act of 1982, as amended (30 U.S.C. 1733), the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR 2), as well as documents protected by the Trade Secrets Act, 18 U.S.C. 1905.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.

The collection does not include sensitive or private questions.

12. Provide estimates of the hour burden of the collection of information. The statement should:

(a) Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.

(b) If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens in Item 13 of OMB Form 83-I.

(c) Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included in Item 14.

There are approximately 220 potential respondents (companies that pay royalties on the OCS). The MMS estimates the total annual hour burden for reporting and recordkeeping is 255 hours total. We estimate that the number of formal complaints will be about five on the basis of two factors—past litigation related to the open and nondiscriminatory access provisions of the OCSLA and the number of similar complaints the FERC has received via its “hotline” in the past year. Refer to the chart below for a break out of the complete burden. We estimate the total annual cost to industry is \$12,750 ($\50×255 hours = \$12,750). Responses are generally on occasion.

Some of the information required in this rulemaking is submitted after MMS has officially opened a case file; therefore, these hour burdens do not require OMB approval under the PRA (5 CFR 1320.4(c)).

The circumstances leading to the filing of a denial of open access or nondiscriminatory access complaint began to develop in the early 1990’s when the FERC began relinquishing jurisdiction over certain pipelines on the OCS that it previously regulated under the Natural Gas Act or the Interstate Commerce Act. Since that time, there has been one court case related to the open and nondiscriminatory access requirements of the OCSLA. The comments received at the public meetings and responses to the Advance Notice of Proposed Rulemaking MMS published indicated that the MMS could expect more complaints in the initial years following the publication of the rule. However, the MMS expects that many of these complaints will be submitted informally through a “hotline” and the number of formal complaints will be approximately five, as stated above.

SECTION A.12 BURDEN BREAKDOWN

Citation 30 CFR 291	Reporting & Recordkeeping Requirement	Hour Burden	Average No. Annual Responses	Annual Burden Hours
105, 106, 108, 110	Submit complaint (with fee) to MMS and affected parties. Request confidential treatment and respond to MMS decision.	50	5	250
108(a)	Request alternative payment method.	0.5	2	1
108(b)	Request waiver or reduction of fee.	1	4	4
107	Submit answer to a complaint.	Information required after an investigation is opened against a specific entity is exempt under the PRA (5 CFR 1320.4)		0
109	Submit required information for MMS to make a decision.			
113, 114(a)	Submit appeal on MMS final decision.			
TOTAL BURDEN			11	255

13. Provide an estimate of the total annual [non-hour] cost burden to respondents or recordkeepers resulting from the collection of information. (Do not include the cost of any hour burden shown in Items 12 and 14).

(a) The cost estimate should be split into two components: (1) a total capital and start-up cost component (annualized over its expected useful life) and (2) a total operation and maintenance and purchase of services component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information [including filing fees paid]. Include descriptions of methods used to estimate major cost factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software; monitoring, sampling, drilling and testing equipment; and record storage facilities.

(b) If cost estimates are expected to vary widely, agencies should present ranges of cost burden and explain the reasons for the variance. The cost of purchasing or contracting out information collection services should be a part of this cost burden estimate. In developing cost burden estimates, agencies may consult with a sample of respondents (fewer than 10), utilize the 60-day pre-OMB submission public comment process and use existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.

(c) Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government, or (4) as part of customary and usual business or private practices.

We have identified a “non-hour” cost burden of \$37,500. MMS proposes that shippers pay a nonrefundable fee of \$7,500 for a complaint submitted to MMS. The fee is required to recover the Federal Government’s processing costs (\$7,500 fee x 5 annual responses = \$37,500).

14. Provide estimates of annualized cost to the Federal Government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information. Agencies also may aggregate cost estimates from Items 12, 13, and 14 in a single table.

To analyze and review the information required by 30 CFR Part 291 Subpart A, we estimate the government will spend an average of approximately 144 hours per complaint (5) for a total of 720 hours. Additional indirect costs and overhead amount to \$2,131 per complaint. Based on a cost factor of \$80 per hour,* the cost to the government would be \$68,255; however, this cost is offset by the revenue received from the processing fees discussed in A.13. The total estimated cost to the Government is \$30,755 (\$68,255- \$37,500 fees = \$30,755).

720 hours x \$80	=	\$57,600
5 x \$2,131	=	\$10,655
Total	=	\$68,255

* MMS anticipates that the work described here will be performed by high grade Federal employees (attorneys); therefore, in this instance, MMS believes that \$80 per hour would be more representative than \$50.

15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB Form 83-I.

This ICR is a new submission to obtain information associated with the rulemaking. The hour burden for this collection constitutes a program increase of 255 hours; the cost burden is estimated at \$37,500.

16. For collections of information whose results will be published, outline plans for tabulation and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.

MMS will not publish the data.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

Not applicable, as this collection of information concerns requirements in regulations.

18. Explain each exception to the certification statement identified in Item 19, "Certification for Paperwork Reduction Act Submissions," of OMB Form 83-I.

To the extent that the topics apply to this collection of information, we are not making any exceptions to the "Certification for Paperwork Reduction Act Submissions."

B. Collection of Information Employing Statistical Methods

The agency should be prepared to justify its decision not to use statistical methods in any case where such methods might reduce burden or improve accuracy of results. When Item 17 on the OMB Form 83-I is checked "Yes," the following documentation should be included in the Supporting Statement to the extent that it applies to the methods proposed.

This section is not applicable for this collection. We will not employ statistical methods in this information collection.