

## **Supporting Statement for Import and Export of Natural Gas (Form FE-746-R)**

OMB No. 1901-0294

The Department of Energy (DOE) requests OMB clearance for a 3-year extension of approval to its form FE-746R, “Natural Gas Import and Export Application” information collection associated with applications filed by persons seeking authorization to import and export natural gas (both long-term and blanket/short-term authorizations). DOE further requests a 3-year extension of its existing information monthly reporting requirements for import/export transactions under an approved application. The information collected on the monthly reports enables DOE to monitor such trade under the North American Free Trade Agreement (NAFTA), as well as other trade falling outside the parameters of NAFTA. Applications to import and export natural gas are required by statute and provide the decision maker and general public with basic information used in issuing import/export authorizations and in monitoring compliance and trade.

The information collection proposed in this supporting statement has been reviewed in light of applicable information quality guidelines. It has been determined that the information will be collected, maintained, and used in a manner consistent with the Office of Management and Budget (OMB), DOE, and EIA information quality guidelines.

### **A. Justification**

#### **1. Legal Justification**

The authority to regulate imports and exports of natural gas is derived from section 3 of the Natural Gas Act (NGA) of June 21, 1938 (Ch. 556.52 Stat. 821, 15 U.S.C. 717). Section 3 states in part that:

“...no person shall export any natural gas from the United States to a foreign country or import any natural gas from a foreign country without first having secured an order of the Commission authorizing it to do so. The Commission shall issue such order upon application, unless, after opportunity for hearing, it finds that the proposed exportation or importation will not be consistent with the public interest.

Until the 1977 passage of the Department of Energy Organization Act, Pub. L. 95-91 (the DOE Act), the NGA section 3 authority was exercised by the former Federal Power Commission (FPC). Sections 301(b) and 402(f) of the DOE Act transferred this authority to the Secretary of Energy who delegated it to the Assistant Secretary for Fossil Energy (FE) on February 7, 1989. From October 1977 through December 1988, these responsibilities were performed by the Economic Regulatory Administration within DOE.

On October 24, 1992, the Energy Policy Act of 1992 (EPACT) was signed into law. Section 201 of EPACT amended section 3 by eliminating DOE’s need for making a public interest finding for natural gas imports and exports from or to, “a nation with which there is in effect a free trade agreement requiring national treatment for trade in natural gas...” and for imports of liquefied

natural gas (LNG) generally. The practical impact of this provision is that trade that falls into this new category of trade requires significantly less information from the applicant and the time needed by FE to process these applications has been reduced dramatically.

FE's administrative rules establish the procedures for filing applications to obtain natural gas import and export authorizations and are found in 10 CFR, Part 590. However, because of case precedent and the passage of EPACT in 1992, the applicability of these administrative rules varies, depending on the type of authorization sought. For applicants seeking long-term authorizations (greater than 2 years) to import or export natural gas from or to a country with which the United States does not have a free trade agreement, all of the information and procedures contained in the administrative rules continue to be applicable. For applicants seeking short-term authorizations (2 years or less) to import or export natural gas, much of the information provided by the applicant is no longer required, i.e., purchase contract, identification of suppliers and purchasers, and detailed project description. Finally, applicants seeking authorizations (long and short-term) to import from and export to countries with whom the United States has in effect a free trade agreement requiring national treatment for trade in natural gas, much of the information filed by the applicant is no longer required; e.g., evidence that a project is not inconsistent with public interest, and many of DOE's procedures have been eliminated; i.e., public comment period, and hearings.

## 2. How, by whom, and for what purpose is the information used

As stated above, FE still must make a public interest finding on the natural gas import/export applicants not covered by EPACT. Because such decisions are subject to review in the Federal courts, FE's decision must be fully supported by the record of the case. The information and data provided in an application are essential to that record. In addition, further information and data are needed from the applicant if FE is required to perform an environmental analysis of the proposed project. The information and data also are necessary to enable affected parties to properly evaluate the impact of a proposal on them. Information contained in these applications or supplements thereto, are not compiled, or published by FE or DOE. All applications become part of the public record and are available for inspection and copying, but are not otherwise disseminated.

For those applications that do not require public interest determinations from FE as discussed in section 1, the information and data contained in the applications have been scaled back considerably. Applications that fall into this category must be granted by FE. As a consequence, FE's action of issuing an authorization is ministerial in nature. Inasmuch as FE's action is ministerial in nature for these cases, FE also is no longer required to perform an environmental analysis of the proposed import/export project.

In addition to information collected pursuant to import and export applications, FE requires, as a condition to granting an authorization, monthly reports from prospective importers and exporters of natural gas. These reports are used by FE to monitor North American natural gas trade, ensure that importers and exporters are in compliance with the terms and conditions of their authorizations, and ensure that certain individual import and export arrangements continue to be in the public interest. FE is the only official source of this trade information and, therefore,

publishes its compilations in various formats in the *Natural Gas Imports and Exports Quarterly Report*, as well as making it available to the public via the Internet (<http://www.fe.doe.gov>). The trade data are used extensively by other offices within DOE (i.e., Energy Information Administration (EIA), Policy, and Emergency Planning), the Federal Energy Regulatory Commission (FERC), other Federal agencies (i.e. Treasury, State, Commerce, Central Intelligence Agency, Federal Trade Commission, and Department of Homeland Security), State public service commissions, Congress, industry, trade publications, and investment/financial groups.

### 3. Use of Improved Information Technology

Blanket or short-term import and export applications can be filed electronically on the FE's Internet site (<http://www.fe.doe.gov>). Long-term application filings cannot be filed electronically at this time. At present, companies can file the monthly reports by e-mail or fax. FE is near completion of a new data system that will enable the electronic filing of these reports. In addition, all of FE's regulatory decisions, statistical reports, and analyses, are located on the office's Internet site.

### 4. Efforts to Identify Duplication/Similar Information

Each application requesting authority to import or export natural gas is unique. There are no other sources, either public or private, that collect such comprehensive information on the North American natural gas trade.

### 5. Impact on Small Business or Other Small Entities

This collection of information does not involve small businesses or other small entities.

### 6. Consequences of Less Frequent Collection

These applications and on occasion, supplements thereto, and reports submitted by the respondents on their own initiative are of indeterminate frequency, as are application supplements submitted at the direction of FE. Without this data, respondents would be unable to import or export natural gas and FE would be unable to carry out its duties under the law. With regard to the monthly reports of activities, less frequent reports on international natural gas trade would greatly impair the ability of DOE to monitor and analyze the rapid changes in the North American natural gas marketplace. Moreover, the usefulness of the data to other users, both public and private, would be significantly diminished.

### 7. Special Circumstances of the Information Collection

Data are collected consistent with the guidelines in 5 CFR 1320.5 except for the number of copies required for applications not electronically submitted. Multiple copies of non-electronic applications are required to provide for full dissemination within DOE/FE, DOE/Office of General Counsel, parties to a regulatory proceeding, and the general public.

#### 8. FR. Notice Soliciting Comments on Data Collection

On November 30, 2009, the *Federal Register* published the notice (74 FR 62567) soliciting comments on the proposed extension of form FE-746R, "The Natural Gas Import and Export Monthly Report," prior to submission to OMB. No comments were filed.

#### 9. Payment of Gifts to Respondents

No gifts or other remuneration are made to respondents.

#### 10. Disclosure Information

Unless confidential treatment is requested, the information reported on the Form FE-764R will not be treated as confidential and may be publicly released in identifiable form. In addition to the use of the information by DOE for statistical purposes, the information may be used for any nonstatistical purposes such as administrative, regulatory, law enforcement, or adjudicatory purposes.

If confidential treatment is requested, the information reported on the Form FE-764R will not be disclosed to the public to the extent that it satisfies the criteria for exemption under the Freedom of Information Act (FOIA), 5 U.S.C. §552, the DOE regulations, 10 C.F.R. §1004.11, implementing the FOIA, and the Trade Secrets Act, 18 U.S.C. §1905.

#### 11. Questions of a Sensitive Nature

No information of a sensitive nature is requested.

#### 12. Information Collection Burden

The public reporting burden for preparing applications and reports to be submitted to FE is estimated to range between 2 hours (for short-term authorizations which have 2-year terms) and 16 hours (for long-term authorizations which have terms of over 2 years). The public reporting burden of the monthly reports is estimated to range from 0.25 hours to 5 hours per response, with an overall average burden of 3 hours per response for the short-term applications, long-term applications and the monthly reports.

Based on prior years, DOE expects to receive 125 short-term applications per year, 10 long-term applications per year and 3,900 monthly reports each year (325 currently active authorizations times 12 months per year). Based on this information, DOE expects the total burden for this

information will be 12,110 hours (see the table below). The burden estimate includes time for follow-up on survey responses to clarify any questions about information reported. Given this, DOE estimates the total annual cost to the respondents to be \$756,875 (12,110 hours times \$62.50/hour).

An average cost of \$62.50 is used because that is the average loaded (salary plus benefits) cost for a DOE employee. DOE assumes that the survey respondent workforce completing surveys for DOE is comparable with the DOE workforce.

	<b>Respondents per year</b>	<b>Frequency of reporting</b>	<b>Total Estimated Number of Responses per Year</b>	<b>Estimated Average Burden Hours per Response</b>	<b>Total Annual Burden Hours</b>
<b>Short-Term Applications</b>	125	1	125	2	250
<b>Long-Term Applications</b>	10	1	10	16	160
<b>Monthly Reports<sup>1</sup></b>	325	12	3900	3	11,700
<b>TOTAL</b>	325		4035	3*	12,110

<sup>1</sup> The estimated number of monthly reports is based on the actual number of currently active authorizations (325) times 12 monthly reports per year for each authorization.

\*"3" is the total weighted average burden per response for all three types of submissions.

### 13. Costs to Respondents

The information requested as part of the applications and monthly reports is expected to be available as part of a company's business records. Therefore, DOE envisions no additional start-up or on-going costs to be incurred as a result of this information collection other than the costs associated with the hours to complete the reporting requirements.

### 14. Costs to the Federal Government

The estimated annual cost to the Federal Government associated with the FE-746 information collection is \$1,004,000.

### 15. Reason for Changes in Burden

The previous burden of 10,080 hours is increased by 2,030 hours to 12,110 hours. This estimated change is due to several reasons, as illustrated in the table below. The electronic filing option, when available for use, will also reduce the time required for filing monthly reports.

	<b>Short-Term Applications<sup>1</sup></b>	<b>Long-Term Applications<sup>2</sup></b>	<b>Monthly Reports<sup>3</sup></b>
<b>Estimated Number of Respondents</b>			
2007	110	20	3,180
2010	125	10	3,900
Change	+15	-10	+720
<b>Estimated Number of Burden Hours</b>			
2007	220	320	9,540
2010	250	160	11,700
Change	+30	-160	+2,160
<b>Reason for Change</b>	Adjustment in number of short-term applications. (Estimate based on actual number filed in preceding years.)	Adjustment in number of long-term applications. (Estimate based on actual number filed in preceding years.)	Adjustment in actual number of active authorizations.

<sup>1</sup> Estimated burden for short-term applications is 2 hours per response.

<sup>2</sup> Estimated burden for long-term applications is 16 hours per response.

<sup>3</sup> Estimated burden for monthly reports is 3 hours per response.

**Correction NOTE:** A number for total annual responses was erroneously entered into the Rocis database for this OMB number. In 2004, the total annual responses was entered as 6,150, but should have been entered as 4,950. In the 2007 ICR extension, the ROCIS showed again 6,150 total annual responses, when the supporting statement showed, 3,310. The 2010 submission for annual responses will be 4,035.

1901-0294	According to information in supporting statement	Change according to EIA supporting statement	According to Rocis/OMB	Change according to ROCIS
	<b>Annual responses</b>		<b>Annual Responses</b>	
2002 package	1,370	+20	1,370	+20
2004 package	4,950	+3,520	<b>6,150</b>	+4,780
2007 package	3,310	-1,640	<b>6,150</b>	0
2010 package	4,035	+725	Not submitted yet	

16. Plans for Tabulation and Publication

The application information is not tabulated or published. It is made available through publicly-available docket files. The monthly reports of import/export activities are due 30 calendar days after the end of each calendar month. The data are tabulated and published approximately 60 days after the date of submission.

17. Display of Expiration Date and OMB Approval Number

The OMB number is published in the orders issued to the authorization holders and on the sample forms. The expiration date will be published on the forms.

18. Exceptions to Certification

DOE takes no exception to the certification statements on the OMB 83-I.

B. Statistical Methods

The FE-746R information collection is not a statistical information collection. It is applicable to all firms that wish to import or export natural gas. Firms receiving approval are currently required to file monthly reports of activities. (If this proposed change in reporting requirements is approved by OMB, only monthly reports will be required.)

The information collection has been in place in its current form for over 2 years. Changes are proposed to the information collection, as detailed above.

Questions on this information collection should be directed to the collection manager, Ms. Yvonne Caudillo, at 202-586-4587. General questions about the agency's clearance process for energy information and statistical collections should be directed to Grace Sutherland at 202-586-6264.