

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

OMB No. 1901-0294

Part A: Justification

The Department of Energy (DOE) requests Office of Management and Budget (OMB) clearance for a 3-year extension of its existing information collection associated with applications for authorization to import and export natural gas (both long-term and blanket/short-term authorizations), and monthly import/export transaction reporting requirements by approved authorization holders, through Form FE-746R, “Natural Gas Imports and Exports.” Reporting on Form FE-746R is mandatory. Applications to import and export natural gas are required by statute for any entity wishing to engage in such transactions, and provide the decision-maker and general public with basic information used in issuing import/export authorizations and in monitoring compliance and trade. In addition to information collected pursuant to import and export applications, FE requires, as a condition to granting an authorization, monthly reports from prospective and actual importers and exporters of natural gas. 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. Additionally, the trade data collected on FE-746R serves as the official source of statistics used in natural gas supply and demand data DOE publishes. The information collected on Form FE-746R is directly linked to DOE’s approval of an entity’s request to import or export natural gas. All entities that apply for and are awarded the right to import and export natural gas by DOE must respond to this information collection in order to retain their authorization.

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 OMB, DOE, and Energy Information Administration (EIA) information quality guidelines.

Changes

This information collection request is for a three-year extension with changes to Form FE-746R. FE proposes to add the following reporting sections. These sections will serve only to clarify the reporting and will not add data elements to the reporting burden. The current forms authorization holders use to report their data do not properly align with the modes of transportation used, or the products being exported and imported. While there are new forms being added, these forms will be a direct substitute for the current forms for applicable authorization holders. These sections are for the collection and identification of new types of natural gas transactions related to:

- Exports/imports of compressed natural gas by vessel;
 - Current form does not cover compressed natural gas
- Exports/imports of compressed natural gas by rail;
 - Current form does not cover compressed natural gas
- Exports/imports of compressed natural gas by waterborne transport;

- Current form does not cover compressed natural gas
- Exports/imports of liquefied natural gas by rail;
 - Current form does not cover exports/imports by rail
- Exports/imports of liquefied natural gas by waterborne transport;
 - Current form does not cover exports/imports by waterborne transport,
- Other exports and imports of natural gas by rail, truck, vessel, and waterborne transport;
 - Current form does not cover non-liquefied natural gas or pipeline gas exports/imports,
- Re-export of liquefied natural gas by vessel; and
 - Current form does not cover re-export of liquefied natural gas
- Exports/Imports of liquefied natural gas by vessel in International Standards Organization (ISO) containers.
 - Current form also does not cover ISO containers

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 15 U.S.C. 717b(a) 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 717b 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 717b of the NGA 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..." (FTA nations) and for imports of liquefied natural gas (LNG) generally. The practical impact of this provision is that trade that falls into this category requires significantly less information from the applicant and the time needed by FE to process these applications is reduced dramatically. For example, these types of applications do not require the applicant to provide evidence that the proposed import or export will not be inconsistent with the public interest. Thus, many of DOE's procedures in FE's administrative rules (e.g., public comment period, opportunity for hearings) have been eliminated for these applications.

FE's administrative rules establish the procedures for filing applications for natural gas import and export authorizations and are found in 10 CFR, Part 590. However, because of the enactment of EPACT in 1992, the applicability of these administrative rules varies, depending on

the type of authorization sought. For example, for applicants seeking to import or export natural gas, including LNG, from and to FTA nations (on a short-term basis), much of the information in the administrative rules is no longer required by DOE (e.g., purchase contract, identification of suppliers and purchasers, detailed project description). However, for applicants seeking to export natural gas, including LNG, to countries with which the United States does not have a free trade agreement (non-FTA nations), all of the information and procedures contained in the administrative rules continue to be applicable. In summary, the complex nature of applications for export authority to non-FTA nations necessitates a greater level of effort by the applicant and DOE than for those applications that seek authority to import or export natural gas from and to FTA nations, or for those applications requesting the import of LNG from various international sources.

Sections 301(b), 402(b), and 402(f) of the DOE Organization Act, Public Law 95-91 (Aug. 4, 1977) transferred to DOE the authority to exercise any function within the jurisdiction of the former Federal Power Commission under sections 3, 8, 9, 13 through 17, and 21 of the Natural Gas Act.

Section 15 U.S.C 717b(a) provides authorization for DOE to require reports as a condition of approving applications from importers and exporters and states as follows:

“(a)MANDATORY AUTHORIZATION ORDER

After six months from June 21, 1938, 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. The Commission may by its order grant such application, in whole or in part, with such modification and upon such terms and conditions as the Commission may find necessary or appropriate, and may from time to time, after opportunity for hearing, and for good cause shown, make such supplemental order in the premises as it may find necessary or appropriate.”

Section 3 of the Natural Gas Act, and 15 U.S.C. 717b(c) shown below in particular requires that importers and exporters of natural gas obtain an authorization from DOE and permits DOE to grant applications for import and export authority “with such modification and upon such terms and conditions as the Commission [DOE] may find necessary and appropriate authorized under 15 U.S.C. 717b(a).

“(c)EXPEDITED APPLICATION AND APPROVAL PROCESS

For purposes of subsection (a), the importation of the natural gas referred to in subsection (b), or the exportation of natural gas to a nation with which there is in effect a free trade agreement requiring national treatment for trade in natural gas, shall be deemed to be consistent with the public interest, and applications for such importation or exportation shall be granted without modification or delay.”

The reports required under our authorizations are an exercise of this conditioning authority. In addition, DOE has independent authority under section 16 of the Natural Gas Act, 15 U.S.C. 717o “to perform any and all acts, and to prescribe, issue, make, amend, and rescind such orders, rules, and regulations as it may find necessary or appropriate to carry out the provisions” of the Act.

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

As stated above, FE still must make a public interest finding on the natural gas import/export applicants not automatically deemed to be in the public interest by statute. Because such decisions are subject to review in the Federal courts, FE's decision must be fully supported by the record in each 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, is not compiled or published by FE or DOE. All applications become part of the public record and are available for inspection and copying (including availability on FE's website).

For those applications that do not require public interest determinations from FE as discussed in section 1, the information and data collected in the applications has been reduced 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 and actual 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, including the *Natural Gas Imports and Exports Quarterly Report*, as well as making it available to the public via the Internet (<http://www.fossil.energy.gov>). The trade data are used extensively by other offices within DOE (e.g., Energy Information Administration, Office of 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 Information Technology

Companies can file the monthly reports by email or fax, in addition to regular mail. FE provides 30 different formatted worksheets in Excel file format for respondent to use for filing their reports. Also, all of FE's regulatory decisions, statistical reports, and analyses are available on its website.

4. Efforts to Identify Duplication/Similar Information

Each application requesting authority to import or export natural gas is unique, as is each report made on import and /or export transactions. The International Trade Data System (ITDS) operated by the U.S. Census Bureau collects some data on imports and exports of natural gas. However, ITDS does not track volumes, location of export/import, or other categories critical to our analysis. It only tracks dollar figures of the commodity. There are no other sources, either public or private, that collect such comprehensive information specific to import/export authorizations on the North American natural gas trade.

5. Impact on Small Business or Other Small Entities

This collection of information does not have a significant economic impact on a substantial number of small entities.

6. Consequences of Less Frequent Collection

Applications, including 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 related to applications, 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 DOE's ability to monitor and analyze changes in North American natural gas trade, monitor compliance with the terms of authorizations, and ensure that certain individual import and/or export arrangements continue to be in the public interest. 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. In 2007, DOE/FE was authorized to require monthly reporting.

8. FR Notice Soliciting Comments on Data Collection

On December 29, 2015, the *Federal Register* published the notice (80 FR 81303) soliciting comments on the proposed extension of approval of Form FE-746R, "Natural Gas Imports and Exports," with changes. No comments were received.

FE personnel are in frequent contact with companies filing applications and reports using FE-746R. FE accepts the companies' views on applications, data collection, and data availability; and answers questions and provides guidance, at the request of these companies, about how to complete applications and reports, when they need to be filed, and related issues. Consultations occur with different companies at different intervals, but consultations in general with companies occur on a monthly basis, and often more frequently.

9. Payment of Gifts to Respondents

No gift or other remuneration is made to respondents.

10. Disclosure Information

Information reported on Form FE-746R will be considered public information and may be publicly released in company identifiable form.

11. Questions of a Sensitive Nature

No information of a sensitive nature is requested.

12. Information Collection Hour Burden

The public reporting burden of the monthly reports is estimated to range from 0.25 hours to 5 hours per response (averaging 3 hours).

Based on 2014 data, DOE expects to receive 4,452 monthly reports each year (371 currently active authorizations times 12 months per year). DOE expects the total burden for this information collection to be 13,356 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 \$961,899 (13,356 hours times \$72.02/hour, rounded to the nearest dollar).

An average cost of \$72.02 per hour is used because that was the average loaded (salary plus benefits) cost for an EIA employee at the time of this writing. DOE assumes that the survey workforce at companies completing applications and reports is comparable to the EIA workforce.

TABLE 1

| | Respondents per year | Frequency of reporting | Total Estimated Number of Responses per Year | Estimated Average Burden Hours per Response | Total Annual Burden Hours |
|--|-----------------------------|-------------------------------|---|--|----------------------------------|
| FE-746R Monthly Reports^a | 371 | 12 | 4,452 | 3 | 13,356 |

^a The estimated number of monthly reports is based on the actual number of currently active authorizations (371) times 12 monthly reports per year for each authorization. Respondents submitting applications would also be submitting monthly reports; therefore, the number of application respondents is not added to the number of active authorizations (371) in the total number of respondents, as displayed in column two of this table.

13. Cost Burden to Respondents

Information requested as part of 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. The cost of burden hours to the respondents is estimated to be \$961,899 (13,356 burden hours times \$72.02 per hour, which is the current employee hourly rate).

14. Costs to the Federal Government

The estimated annual cost to the Federal Government associated with the FE-746R information collection is \$1,098,800. This figure is calculated based on salary and percentage of time spent on data collection activities for a total of fourteen federal employees and support contractor staff.

15. Reason for Changes in Burden

The previous burden of 12,978 hours is increased by 378 hours to 13,356 hours. This estimated change is due to several reasons, as illustrated in the table below. A reduction in long-term applications (respondents) coupled with an increase in both short-term applications (respondents) and monthly respondents resulted in a net increase of 378 burden hours. The burden remains 3 hours because FE is not requiring additional information from any respondent; rather, FE is amending Form 746R to provide greater specificity to the exported/imported/re-exported commodity, and the method by which the commodity is exported/imported/re-exported. Current forms do not allow for the reporting of compressed natural gas, or proprietary compounds which contain natural gas. Further, current forms do not reflect imports or exports by rail, or non-vessel waterborne transport, such as a barge. Current forms also fail to reflect re-export of LNG by vessel.

| | | FE-746R Monthly Reports⁺ |
|------------------------------------|--------|---|
| Number of Responses Per Year | 2013 | 3,912 |
| | 2016 | 4,452 |
| | Change | +540 |
| Burden Hours Per Year | 2013 | 11,736 |
| | 2016 | 13,356 |
| | Change | +1,620 |
| Reason for Change | | Adjustment in actual number of active authorizations. |

[◇] Estimated burden for short-term applications is 2 hours per response.

^{*} Estimated burden for long-term applications is 30 hours per response for non-FTA export applications and 16 hours per response for others.

⁺ Estimated burden for monthly reports is 3 hours per response, on average.

16. Plans for Tabulation and Publication

The application information is not tabulated or published. It is made available through publicly-available docket files (including availability on FE's website). 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 within approximately 60 days of the date of submission.

17. Display of Expiration Date and OMB Approval Number

The OMB number is published in the orders issued to authorization holders and on the monthly report form. The expiration date is published on the monthly report form.

18. Exceptions to Certification

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

Questions on this information collection should be directed to the collection manager, Benjamin Nussdorf at 202-586-7893. General questions about the agency's clearance process for energy information and statistical collections should be directed to Alethea Jennings at 202-586-5879.