



*Independent Statistics & Analysis*

U.S. Energy Information  
Administration

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

## **Part A: Justification**

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*Form FE-746R, Import and Export of Natural Gas*

**OMB No. 1901-0294**

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## Introduction

The U.S. Energy Information Administration requests a 3-year extension, with changes, of Form FE-746R, “Natural Gas Imports and Exports” from the Office of Management and Budget (OMB). The collection supports DOE’s Office of Fossil Energy (FE) in the collection of critical information on U.S. natural gas trade 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. The data are used to monitor natural gas trade, assess the adequacy of energy resources to meet near and longer term domestic demands, and support various market and regulatory analyses done by FE.

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 Form 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 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 to Form FE-746R.** FE will collect heat content in Btu per cubic foot for LNG imports and exports, by vessel and other waterborne transport modes, to account for variations in the heat content of gas being imported from and exported to various countries. FE will collect heat content for the following eight transportation modes: LNG Imports (Vessel), LNG Imports (Other), LNG Exports (Vessel), LNG Exports (Other), LNG Imports (Waterborne), LNG Exports (Waterborne), Other Imports (Waterborne), and Other Exports (Waterborne). This change improves the quality of the import and export volume data by applying an objective standardized unit of measurement. Also, FE will use the exemptions under the Freedom of Information Act (FOIA) to protect certain information reported on Form FE-746R, including the heat content of LNG imported and exported, prices of natural gas imported and exported, including LNG, as well as the specific purchaser and end-user.

## A.1. Legal Justification

The authority to regulate imports and exports of natural gas is derived from 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.”

**(b) FREE TRADE AGREEMENTS**

With respect to natural gas which is imported into the United States from a nation with which there is in effect a free trade agreement requiring national treatment for trade in natural gas, and with respect to liquefied natural gas—

- (1) the importation of such natural gas shall be treated as a “first sale” within the meaning of section 3301(21) of this title; and
- (2) the Commission shall not, on the basis of national origin, treat any such imported natural gas on an unjust, unreasonable, unduly discriminatory, or preferential basis.

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 15 USC 717b(a), the importation of the natural gas referred to in 15 USC 717b(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 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.

## A.2. Needs and Uses of Data

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 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.

## A.3. Use of Technology

Companies can file the monthly reports via an online portal, by email or fax, in addition to regular mail. FE provides 30 different worksheets, one for each transportation mode by import and export activity, in Excel file format for respondents to use for filing their reports. Also, all of FE's regulatory decisions, statistical reports, and analyses are available on its website.

## A.4. Efforts to Identify Duplication

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 United States' natural gas trade.

### **A.5. Provisions for Reducing Burden on Small Businesses**

EIA determined that businesses that engage in the import and export of natural gas products are not small businesses. There are no small businesses reporting on this survey.

### **A.6. Consequences of Less-Frequent Reporting**

In 2007, DOE/FE was authorized to require monthly reporting. 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 the United States' natural gas trade, monitor compliance with the terms of authorizations, and ensure that certain individual import 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.

### **A.7. Compliance with 5 CFR 1320.5**

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.

### **A.8. Summary of Consultations Outside of the Agency**

On August 30, 2018 the Federal Register published the notice (83 Fed. Reg. 44,266) soliciting comments on the extension of approval of Form FE-746R, "Natural Gas Imports and Exports," with changes. The changes were:

- 1) A change to the confidentiality policy for select information reported on Form FE-746R, where FE proposes to publish only volume-weighted average import and export prices for liquefied natural gas (LNG) and by point of entry or exit, as is currently the practice for pipeline imports and exports. Thus, instead of a price being published for each LNG cargo imported or exported, a monthly volume-weighted average price will be published for each point of LNG import or export.



Based on comments filed in support of this change related to publishing the price of LNG cargoes in an aggregated form at the point of export, DOE's final proposal is to maintain the change as discussed in the August 2018 proposal.

- 2) A change in the confidentiality policy for Form FE-746R. The current statement "Information reported on Form FE-746R will be considered public information and may be publicly released in company identifiable form" will be replaced with the new data confidentiality statement that will read: "The following information that is reported on Form FE-746R will be protected and not disclosed to the public to the extent that it satisfies the criteria for exemption under the Freedom of Information Act (FOIA), 5 USC §552, as amended, and the Department of Energy (DOE) regulations, 10 CFR §1004.11, implementing the FOIA."
  - The Price at Import or Export Point
  - In the case of natural gas imports and exports for all modes of transportation except pipeline, the name of the Specific Purchaser/End User.

All other information reported on Form FE-746R will be considered public information and may be publicly released in company identifiable form." Data protection methods will not be applied to the aggregate statistical data published from submissions on Form FE-746R. There may be some statistics that are based on data from fewer than three import or export transactions. In these cases, it may be possible for a knowledgeable person to closely estimate the information reported by a specific respondent."

Transaction-level price information for natural gas and LNG imports and exports, including prices for individual LNG import and export cargoes, and the name of the Specific Purchaser/End User, will not be publicly released. No information related to natural gas specific customers/end users is currently published. Natural gas import and export price information, including prices for LNG imports and exports, will be aggregated and published by point of entry or exit in FE's and EIA's data publications featuring natural gas import/export information, including the Office of Fossil Energy's LNG Monthly and EIA's Natural Gas Monthly.

Based on comments filed in support of the protection of individual submissions of price and customer data submitted on Form FE-746R, DOE's final proposal is to maintain the protection of submissions of price and customer/end-user data as discussed in the August 2018 proposal to the extent that it satisfies the criteria for exemption under the Freedom of Information Act (FOIA), 5 USC §552, as amended, and the Department of Energy (DOE) regulations, 10 CFR §1004.11, implementing the FOIA.

- 3) FE also proposed to collect heat content in Btu per cubic foot for LNG imports and exports to account for variations in the heat content of gas being imported from and exported to various countries, so that import and export volume data may be analyzed

according to objective standardized units of measurement. The heat content information reported for LNG imports and exports on Form FE-746R will not be protected and may be publicly released in company identifiable form.

Based on comments filed in related to this new data item, DOE's final version of FE-746 will retain the collection of heat content of LNG imported or exported from the U.S., but include that data as information to be protected to the extent that it satisfies the criteria for exemption under the Freedom of Information Act (FOIA), 5 USC §552, as amended, and the Department of Energy (DOE) regulations, 10 CFR §1004.11, implementing the FOIA. DOE is also revising the data requested to clarify that the heat content should be provided for LNG on gaseous, not liquid, basis.

Four unique comments were received. Commenters were generally in favor of FE's changes to Form FE-746R. Points raised include:

- 1) Sempra LNG concurred with the proposed changes as they relate to protection of portions of the reported data and also encouraged DOE/FE clarification on what types of commercial agreements authorized LNG holders must file and the degree of detail required for the reporting of LNG deliveries.

DOE Response to Sempra: DOE has since provided further guidance on the reporting of contracts by LNG authorization holders, in a separate, subsequent proceeding, a proposed interpretive rule posted in 83 FR 65111 on December 19, 2018. DOE also clarified the destination reporting requirements in a separate proceeding a policy statement on LNG destination reporting, in 83 FR 65078 on December 19, 2018. Form FE-746R instructions on the reporting of destinations have been clarified in the final form to comport with the guidance issued in the December 2018 Policy Statement that states that DOE will now require LNG authorization holders to report, in relevant part, the country (or countries) into which the exported LNG or natural gas was actually delivered instead of tracking the destinations the natural gas was delivered for end-use.

- 2) MC Global supported the DOE proposal to protect the price and purchaser information and only report the aggregated price information. They also supported the additional collection of heat content data but encouraged that information to also be protected as well, and suggested DOE update the form to clarify the basis of reporting, believing DOE wished to obtain the heat content of the natural gas in gaseous form instead of liquid form.

DOE Response to MC Global: DOE agrees that heat content reported per cubic foot on natural gas in its gaseous form is what is sought. Form FE-746R reflects this change.

- 3) The LNG Market Group, a consortium of three natural gas and LNG market participants, JERA Energy America, CFE International LLC, and Exelon Corporation, support the proposed form changes as it relates to making reporting price and purchase/end-user information confidential as they believe the information to be commercially sensitive. They also disagree with the proposed required reporting of heat content of LNG being exported because it should not vary from the quality of U.S. natural gas from pipelines with required heat content specifications.

DOE Response to The LNG Market Group: DOE is pursuing the collection of heat content of the gaseous form of LNG both imported and exported since variation can occur due to the unique specifications of both buyers of U.S. LNG being exported and sellers of LNG imported into the U.S. With this information, DOE will be better able track volumes imported and exported on a consistent volumetric basis after being able to adjust for differences in heat content of the natural gas entering and exiting the United States as LNG.

- 4) An anonymous commenter submitted comments relating to greenhouse gas emissions that were not relevant to the FE-746R.

FE personnel are in frequent contact with companies filing applications and reports using Form 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.

### **A.9. Payments or Gifts to Respondents**

Payments or gifts will not be provided to respondents as incentives to report data to EIA.

### **A.10. Provisions for Protection of Information**

Form FE-746R will use the following data protection statement:

Information reported on Form FE-746R is considered public information and may be publicly released in company identifiable form except that the following information will be protected and not disclosed to the public to the extent that it satisfies the criteria for exemption under the Freedom of Information Act (FOIA), 5 USC §552, as amended, and the Department of Energy (DOE) regulations, 10 CFR §1004.11, implementing the FOIA.

- Price at Import or Export Point for all forms of natural gas imported and exported, including LNG

- Name of the Specific Purchaser/End User for all forms of natural gas imports and exports, including LNG for all modes of transportation except by pipeline.
- Heat content for all forms of natural gas imported and exported.

Data protection methods will not be applied to the aggregate statistical data published from submissions on Form FE-746R. There may be some statistics that are based on data from fewer than three import or export transactions. In these cases, it may be possible for a knowledgeable person to closely estimate the information reported by a specific respondent.

### A.11. Justification for Sensitive Questions

There are not any questions of a sensitive nature in the Import and Export of Natural Gas data collections.

### A.12. Estimate of Respondent Burden Hours and Cost

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 2018 data, DOE expects to receive a total of 4,452 monthly reports each year (371 currently active authorizations times 12 months per year). DOE expects the annual total burden for this information collection to be 13,356 hours annually (see Table A1 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 \$988,611 (13,356 hours times \$74.02/hour, rounded to the nearest dollar).

An average cost of \$74.02 per hour is used because that was the average loaded (salary plus benefits) cost for an EIA employee as of January 1, 2019. DOE assumes that the survey workforce at companies completing applications and reports is comparable to the EIA workforce.

**Table A1. Estimated Respondent Burden**

EIA Form Number/Title	Annual Reporting Frequency	Annual Number of Respondents	Annual Number of Responses	Burden Hours Per Response	Annual Burden Hours
Form FE-746R*	12	371	4,452	3.00	13,356
<b>TOTAL</b>		<b>371</b>	<b>4,452</b>		<b>13,356</b>

\* 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.

### A.13. Annual Cost to the Federal Government

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 government is estimated to be \$988,611 (13,356 burden hours times \$74.02 per hour, which is the current employee hourly rate).

### A.14. Changes in Burden

**Table A2. Changes in Burden**

Annual Reporting Frequency	Number of Respondents (Previously Approved)	Number of Respondents (Requested)	Annual Number of Responses (Previously Approved)	Annual Number of Responses (Requested)	Burden Hours Per Response (Previously Approved)	Burden Hours Per Response (Requested)	Annual Burden Hours (Previously Approved)	Annual Burden Hours (Requested)	Annual Number of Responses			Annual Burden Hours		
									Change Due to Agency Discretion	Change Due to Adjustment in Agency Estimate	Adjustment	Change Due to Agency Discretion	Change Due to Adjustment in Agency Estimate	Adjustment
12	371	371	4,452	4,452	3.0	3.0	13,356	13356	0	0	0	0	0	0

### **A.15. Reasons for Changes in Burden**

FE will collect heat content in Btu per cubic foot for certain LNG imports and exports. Since this information is kept in the normal course of business and is readily available, there are no changes in the reporting burden for Form FE-746R.

### **A.16. Collection, Tabulation, and Publication Plans**

The application information is not tabulated or published. It is made available through publicly-available docket files (including availability on FE's website (<https://www.energy.gov/fe/downloads/electronic-docket-room-e-docket-room>)). 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.

### **A.17. OMB Number and Expiration Date**

The OMB control number is published in the orders issued to authorization holders. The OMB control number and the expiration date are shown on the front page of the monthly report form (Form FE-746R).

### **A.18. Certification Statement**

This information collection request complies with the certification requirements under 5 CFR 1320.9