

Supporting Statement A
30 CFR Part 291

Open and Nondiscriminatory Access to Oil and Gas Pipelines Under the OCS Lands Act

OMB Control Number 1014-0012

Expiration Date: July 31, 2020

Terms of Clearance: None

General Instructions/

A completed Supporting Statement A 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 below. If an item is not applicable, provide a brief explanation. When the question, "Does this information collection request (ICR) contain surveys, censuses, or employ statistical methods?" is checked "Yes," then a Supporting Statement B must be completed. The Office of Management and Budget (OMB) reserves the right to require the submission of additional information with respect to any request for approval.

Specific Instructions

Justification

1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection.

The Outer Continental Shelf (OCS) Lands Act (OCSLA) at 43 U.S.C. 1334 authorizes the Secretary of the Interior to prescribe rules and regulations necessary for the administration of the leasing provisions of that Act related to mineral resources on the OCS. Such rules and regulations will apply to all operations conducted under a lease, right-of-way, or a right-of-use and easement. 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.

The OCSLA requires open and nondiscriminatory access to oil and gas pipelines. The OCSLA provides the Secretary of the Interior the authority to issue and enforce rules to assure open and nondiscriminatory access to pipelines. These regulations provide a mechanism for entities who believe they have been denied open and nondiscriminatory access to pipelines on the OCS. The Bureau of Safety and Environmental Enforcement (BSEE) established a process, via the subject regulations, to submit complaints alleging denial of access or discriminatory access for a shipper transporting oil or gas production from Federal leases on the OCS. The complaint should include a comprehensive written brief stating the legal and factual basis for the allegation that a shipper was denied open and nondiscriminatory access, together with supporting material. Upon completion, the BSEE Director will review the complaint, answer, and other information, and will serve all parties with a written decision that may include remedial action.

The Independent Offices Appropriations Act (31 U.S.C. 9701), the Omnibus Appropriations Bill (Pub.

L. 104-133, 110 Stat. 1321, April 26, 1996), and OMB Circular A-25, authorize Federal agencies to recover the full cost of services that confer special benefits. Under the Department of the Interior's implementing policy, BSEE is required to charge fees for services that provide special benefits or privileges to an identifiable non-Federal recipient above and beyond those which accrue to the public at large. Regulations at §§ 291.106(b) and 291.108 require a nonrefundable processing fee of \$7,500 that a shipper must pay when filing a complaint to BSEE.

On November 2, 2015, the President signed into law the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Sec. 701 of Pub. L. 114-74) (FCPIA of 2015). The OCSLA directs the Secretary of the Interior to adjust the OCSLA maximum civil penalty amount at least once every three years to reflect any increase in the Consumer Price Index (CPI) to account for inflation (43 U.S.C. 1350(b)(1)). The FCPIA of 2015 requires Federal agencies to adjust the level of civil monetary penalties with an initial "catch-up" adjustment, if warranted, through rulemaking and then to make subsequent annual adjustments for inflation. The purpose of these adjustments is to maintain the deterrent effect of civil penalties and to further the policy goals of the underlying statutes. Regulations at §§ 291.110 and 291.113 address civil penalties for failure to provide BSEE additional requested information, and/or to comply with a BSEE order to provide open access or nondiscriminatory access.

This authority and responsibility are among those delegated to BSEE. The regulations at 30 CFR 291 concern open and nondiscriminatory access to pipelines, and are the subject of this collection. This request also covers any related Notices to Lessees and Operators (NTLs) that BSEE issues to clarify, supplement, or provide additional guidance on some aspects of our regulations.

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 BSEE uses the submitted information to initiate a more detailed review into the specific circumstances associated with a complainant's allegation of denial of access or discriminatory access to pipelines on the OCS. The complaint information will be provided to the alleged offending party. Alternative dispute resolution may be used either before or after a complaint has been filed to informally resolve the dispute. The BSEE may request additional information upon completion of the initial review.

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.

BSEE believes that an 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. BSEE has received one formal complaint via hard copy mailed. Regulations state that industry may attempt to resolve an allegation by calling the BSEE Hotline; however, the Notice of Complaint may be emailed to BSEE. The complainant determines whether or not to use electronic submission and is not required to do so.

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.

Since each instance of denial of open access or discriminatory access is unique, BSEE 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, describe any methods used to minimize burden.

This collection of information could have a significant economic effect on a substantial number of small entities. Any direct effects primarily impact the OCS lessees and operators. However, many of the OCS lessees and operators may have less than 500 employees and would be considered small businesses as defined by the Small Business Administration. However, BSEE believes the economic effect will be minimal based on the experience of one formal complaint and the availability of an informal hotline. This is further based on oral comments received at public meetings, discussions with personnel at the Federal Energy Regulatory Commission, and the number of similar allegations received via the Federal Energy Regulatory Commission hotline prior to 2008. Therefore, the hour burden on any small entity subject to these regulations and associated collection of information cannot be reduced to accommodate them.

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, BSEE could not carry out the mandate of the OCSLA to ensure open and nondiscriminatory access to pipelines. Complaint requirements 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 BSEE's attention. BSEE 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;

Not applicable in this collection.

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

In § 291.111, BSEE states that it retains the right to make the determination with regard to any claim of confidentiality for the submitted information. The BSEE will notify the complainant if it has denied the claim. In such a case, BSEE affords the complainant the chance to respond at least 10 days before the

public release of the information because BSEE 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 BSEE and to all the persons/parties named in the complaint (§ 291.106). 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;

(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;

(f) requiring the use of statistical data classification that has not been reviewed and approved by OMB;

(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; or Not applicable in this collection.

(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.

The BSEE protects information considered confidential commercial or proprietary according to the Freedom of Information Act (5 U.S.C. 552) and DOI's implementing regulations (43 CFR 2); 30 CFR 291.111, *How does BSEE treat the confidential information I provide.*

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 three 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.

Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every three 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.

As required in 5 CFR 1320.8(d), BSEE provided a 60-day notice in the **Federal Register** on February 10, 2020 (85 FR 7587). Also, 30 CFR 291.1 explains that BSEE will accept comments at any time on the information collection requirements and burdens of our 30 CFR 291 regulations. We display the OMB control number and provide the address for sending comments to BSEE. We received one comment in response to the **Federal Register** notice; however, it was not germane to this collection.

The last time BSEE received a formal complaint of open access violations was in 2015 from Arena Energy. They contracted a law firm to compile the complaint:

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The representative had no concerns regarding the availability of data, frequency of collection, clarity of instructions, and elements being collected at the time; as well as confirmed the burden estimates that are reflected in Section A.12.

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

BSEE 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.

The BSEE protects information considered confidential commercial or proprietary according to the Freedom of Information Act (5 U.S.C. 552) and DOI's implementing regulations (43 CFR 2); 30 CFR 291.111, *How does BSEE treat the confidential information I provide.*

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.

This collection does not include questions of a sensitive nature.

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.

Potential respondents include companies that ship or transport oil and gas production across the OCS; as well as, Federal OCS oil, gas, or sulfur lessees and/or operators and holders of pipeline rights-of-way. There are approximately 220 companies that pay royalties on the OCS. We estimate the total annual hour burden for reporting and recordkeeping is 51 hours based on knowledge and experience with similar appeals processes in DOI. Also, because regulations require that a formal complaint process is available to producers, we will assume the minimum of one formal complaint per year for this renewal. Refer to the chart below for a breakdown of the complete burden. Some of the information required in these regulations is submitted after BSEE has officially opened a case file; therefore, these hour burdens do not require OMB approval under the PRA (5 CFR 1320.4(a)(2), (c)). Section 291.103 provides for alternative dispute resolution to informally resolve an allegation that access was denied. The request has the appearance of information collection, but because there is no structure required for the request process, a burden hour is not assigned. Submissions are generally on occasion; furthermore, responses are voluntary, but are required to obtain or retain benefits.

BURDEN BREAKDOWN

Citation 30 CFR 291	Reporting & Recordkeeping Requirements	Hour Burden	Average No. of Annual Responses	Annual Burden Hours
		Non-Hour Cost Burden		
105, 106, 108, 109, 111	Submit complaint (with fee) to BSEE and affected parties. Request confidential treatment and respond to BSEE decision.	50	1	50
		\$7,500 fee x 1 = \$7,500		
106(b), 109	Request waiver or reduction of fee.	1	1	1
104(b), 107, 111	Submit response to a complaint. Request confidential treatment and respond to BSEE decision.	Information required after an investigation is opened against a specific entity is exempt under the PRA (5 CFR 1320.4(a)(2), (c)).		0
110	Submit required information for BSEE to make a decision.			
114, 115(a)	Submit appeal on BSEE final decision.			
TOTAL BURDEN			2 Responses	51 Hours
			\$7,500 Non-Hour Cost Burden	

(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.

The average respondent cost is \$159/hour (rounded). This cost is broken out in the following table using the Society of Petroleum Engineers (SPE) data updated 2019. See SPE document/website:

<https://www.spe.org/en/industry/oil-and-gas-salary-survey/>

Position	Hourly Pay Rate (\$/hour estimate)	Hourly Rate Including Benefits (1.4 x \$/hour)*	Percent of Time Spent on Collection	Weighted Average (\$/hour)

General Office Clerk (College/University/Academic)	\$72.59	\$101.63	10%	\$10.16
Paralegal (Professional Training)	\$111.31	\$155.83	35%	\$54.54
Lawyer (Other or Combination of Above)	\$122.92	\$172.09	55%	\$94.65
Weighted Average (\$/hour)				\$159.35

* A multiplier of 1.4 (as implied by BLS news release USDL-20-0451, March 19, 2020) was added for benefits. <http://www.bls.gov/news.release/ecec.nr0.htm>

Based on a cost factor of \$159 per hour, we estimate the hour burden as a dollar equivalent is \$8,109 (\$159 x 51 hours = \$8,109).

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 already reflected in item 12.)

(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 for form processing). 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 burdens 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 one non-hour cost burden of \$7,500. The BSEE requires that shippers pay a nonrefundable fee of \$7,500 for a complaint submitted to BSEE (§ 291.106). The fee is required to recover the Federal Government's processing costs (\$7,500 fee x 1 annual response = \$7,500).

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.

The average government cost is \$93/hour. This cost is broken out in the below table using the current Office of Personnel Management salary data for the REST OF THE UNITED STATES (<https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/>).

Position	Grade	Hourly Pay Rate (\$/hour estimate)	Hourly Rate Including Benefits (1.6 x \$/hour)*	Percent of Time Spent on Collection	Weighted Average (\$/hour)
Paralegal	GS-12/5	\$41.66	\$66.66	3%	\$2.00
Attorney	GS-14/5	\$58.54	\$93.66	97%	\$90.85
Weighted Average (\$/hour)					\$92.85

* A multiplier of 1.6 (as implied by BLS news release USDL-20-0451, March 19, 2020, (see <http://www.bls.gov/news.release/ecec.nr0.htm>)) was added for benefits.

To analyze and review the information required by 30 CFR Part 291, we estimate the government will spend an average of approximately 144 hours per complaint. Additional indirect costs and overhead amount to \$2,478 per complaint (18.5% cost rate (72 FR 17047, April 6, 2007)). Based on a cost factor of \$93 per hour (see below) plus indirect costs, we estimate the total annualized cost to the Government is \$15,870.

144 (hrs) x \$93..... = \$13,392
 18.5% x \$13,392..... = \$ 2,478
 Total..... = \$15,870

15. Explain the reasons for any program changes or adjustments in hour or cost burden.

The current OMB inventory for 1014-0012 includes 51 burden hours and \$7,500 non-hour costs. In this submission, we are not requesting any changes in hour burden or non-hour costs.

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.

BSEE will not tabulate or 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.

There are no forms in this information collection request; however, BSEE displays the OMB control number at § 291.1.

18. Explain each exception to the topics of the certification statement identified in "Certification for Paperwork Reduction Act Submissions."

We are not making any exceptions to the “Certification for Paperwork Reduction Act Submissions.”