



Independent Statistics & Analysis

U.S. Energy Information
Administration

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

Part A: Justification

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

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Introduction

The U.S. Energy Information Administration and the U.S. Department of Energy request 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, which includes reporting imports and exports of natural gas on Form FE-746R, and the submission of additional information for certain types of authorization holders, including long-term contracts associated with the supply and sales of natural gas, compressed natural gas, liquefied natural gas, and associated products; changes in control of authorization holders registrations of agents who import and export natural gas; and for long-term LNG export authorization holders, semi-annual reports detailing information on the status of the proposed or operating LNG export facilities, the date the proposed LNG facilities are expected to commence first exports of LNG, and the status of any related long-term supply and sale/purchase agreements. In addition, 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 as well as the supplemental information required for some types of authorization holders 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 United States Mexico Canada Free Trade Agreement (USMCA), as well as other trade falling outside the parameters of USMCA. Additionally, the trade data collected on Form FE-746R serves as the official source of statistics used in natural gas supply and demand data EIA publishes. For long-term authorization holders, FE requires, as a condition to granting an authorization, long-term contracts associated with the supply and sales of natural gas, compressed natural gas, liquefied natural gas, and associated products; changes in control of authorization holders registrations of agents who import and export natural gas; and for long-term LNG export authorization holders, semi-annual reports detailing information on the status of the proposed or operating LNG export facilities, the date the proposed LNG facilities are expected to commence first exports of LNG, and the status of any related long-term supply and sale/purchase agreements. 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.

Changes to Form FE-746R. FE will collect information on long-term contracts associated with:

- the supply and sales of natural gas, compressed natural gas, liquefied natural gas, and associated products;

- the changes in control of authorization holders' registrations of agents who import and export natural gas; and
- for long-term LNG export authorization holders, semi-annual reports detailing information on the status of the proposed or operating LNG export facilities, the date the proposed LNG facilities are expected to commence first exports of LNG, and the status of any related long-term supply and sale/purchase agreements.

A.1. Legal Justification

The authority to regulate imports and exports of natural gas is derived from 15 U.S.C. § 717. 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.

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.

10 CFR, Part 590 provides the procedure to implement FE's administrative rules for filing applications for natural gas import and export authorizations. . 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 U.S.C. § 717b(a), the importation of the natural gas referred to in 15 U.S.C. § 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. § 717(o) “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. For long-term authorizations, FE requires, as a condition to granting an authorization, long-term contracts associated with the supply and sales of natural gas, compressed natural gas, liquefied natural gas, and associated products; changes in control of authorization holders registrations of agents who import and export natural gas; and for long-term LNG export authorization holders, semi-annual reports detailing information on the status of the proposed or operating LNG export facilities, the date the proposed LNG facilities are expected to commence first exports of LNG, and the status of any related long-term supply and sale/purchase agreements. 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 their information 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

FE determined that most businesses that engage in the import and export of natural gas products are not small businesses. To date, DOE has received—and granted—eight applications to export liquefied natural gas in volumes below 51.75 billion cubic feet per year of natural gas to non-FTA countries. Of these eight applicants, three qualify as small businesses under the Small Business Administration's size standards of 1000 employees or less under both NAICS 221210, Natural Gas Distribution, and NAICS 325120, Industrial Gas Manufacturing.

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.

Without information on the changes in control of authorizations, DOE/FE would be unable to determine who controlled authorizations to import and export natural gas, and such lack of knowledge could present a public interest or national security concern. Without the semi-annual reports, DOE/FE would not know whether or not authorization holders were progressing in completing their facilities. Without information on registrations, DOE/FE would not be clear on which entities were actually importing or exporting gas pursuant to DOE/FE authorizations. Finally, without information on supply and delivery contracts, DOE/FE would be unable to understand natural gas demand by exporters and liquefied natural gas demand by foreign entities.

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

The 60-day Federal Register Notice was published on March 6, 2020 at 85 FR 13,153 soliciting comments on the proposed changes to Form FE-746R. The changes described on the FRN are as follows:

FE seeks to include supplementary data reporting items under OMB Control Number 1901-0294. FE proposes to collect this additional information from long-term import and export authorization holders and short-term authorization holders that have authority to export natural gas to countries that the United States does not have a free trade agreement. The additional information FE seeks to collect from this subset of natural gas import and export authorization holders includes: long-term contracts associated with the supply and sales of natural gas, compressed natural gas, liquefied natural gas, and associated products; changes in control of authorization holders registrations of agents who import and export natural gas; and for long-term LNG export authorization holders, semi-annual reports detailing information on the status of the proposed or operating LNG export facilities, the date the proposed LNG facilities are expected to commence first exports of LNG, and the status of any related long-term supply and sale/purchase agreements.

No comments were received in response to the 60-day Federal Register Notice.

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.
- The un-redacted long-term contracts for the supply and sales of natural gas required

Data protection methods are not be applied to the aggregate statistical data published from submissions on Form FE-746R.

FE includes the following text in their orders approving a permit application:

“DOE/FE recognizes that some information in CMI’s or a Registrant’s long-term commercial agreements associated with the export of LNG, and/or long-term contracts associated with the long-term supply of natural gas to the Liquefaction Project, may be commercially sensitive. DOE/FE therefore will provide CMI the option to file or cause to be filed either unredacted contracts, or in the alternative: (A) CMI may file, or cause to be filed, long-term contracts under seal, but it also will file either: (i) a copy of each long-term contract with commercially sensitive information redacted, or (ii) a summary of all major provisions of the contract(s) including, but not limited to, the parties to each contract, contract term, quantity, any take or pay or equivalent provisions/conditions, destination, re-sale provisions, and other relevant provisions; and (B) the filing must demonstrate why the redacted or non-disclosed information should be exempted from public disclosure.”

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 2019 data, DOE expects to receive a total of 4,752 monthly reports each year (396 currently active authorizations times 12 months per year). DOE expects the annual total burden for this information collection to be 14,256 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 \$1,142,476 (14,256 hours times \$80.14/hour, rounded to the nearest dollar).

An average cost of \$80.14 per hour is the average loaded (salary plus benefits) cost for an EIA employee as of January 1, 2020. 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	396	4,752	3.00	14,256
TOTAL		396	4,752		14,256

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 \$1,142,476 (14,256 burden hours times \$80.14 per hour).

A.14. Changes in Burden

Table A2. Changes in Burden

EIA Form Number/Title	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
FE-746R	12	371	396	4,452	4,752	3.0	3.0	13,356	14,256	0	300	300	0	900	900
TOTAL		371	396	4,452	4,752					0	300	300	0	900	900

A.15. Reasons for Changes in Burden

There is an increase of 25 new respondents from 2019 to 2020 and this resulted in an increase of 900 burden hours shown under Changes Due to Agency Estimate in Table A.2.

FE will collect the additional information from long-term import and export authorization holders and short-term authorization holders that have authority to export natural gas to countries that the United States does not have a free trade agreement. The additional information FE seeks to collect from this subset of natural gas import and export authorization holders is information that authorization holders currently maintain in their ordinary course of business. Therefore, there is no change in the burden per response to submit this information along with their monthly report. .

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