

From: [Agen, Matthew](#)
To: [Tran, Tu](#)
Cc: [Herrera, Katherine](#); [Holgate, Chandler](#)
Subject: [EXTERNAL] AGA's Comments on Form FE-746R, Agency Information Collection Extension, 88 Fed. Reg. 2350
Date: Tuesday, March 14, 2023 4:20:19 PM
Attachments: [230314 AGA Comment Letter FE 746R Final.pdf](#)

Tu Tran,

Attached are the comments of the American Gas Association in response to *Agency Information Collection Extension*, 88 Fed. Reg. 2350 (January 13, 2023) related to Form FE-746R, Natural Gas Imports and Exports. Please let me know if you have any questions.

Thank you,
Matt

Matthew Agen | Chief Regulatory Counsel, Energy

[American Gas Association](#)

400 N. Capitol St., NW | Washington, DC | 20001

P: 202-824-7090 | magen@aga.org

The American Gas Association represents more than 200 local energy companies committed to the safe and reliable delivery of clean natural gas to more than 74 million customers throughout the nation.

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Submitted via e-mail (tu.tran@hq.doe.gov)

March 14, 2023

Tu Tran
U.S. Department of Energy
Office of Fossil Energy and Carbon Management
1000 Independence Ave., SW
Washington, DC 20585

RE: AGA's Comments on *Agency Information Collection Proposed Extension*, 88 Fed. Reg. 2350 (January 13, 2023)

Mr. Tran:

The American Gas Association ("AGA") appreciates the opportunity to comment on the Department of Energy's ("DOE") notice and request for comment regarding Form FE-746R "Natural Gas Imports and Exports." *Agency Information Collection Extension*, 88 Fed. Reg. 2350 (January 13, 2023) ("Notice").

I. Introduction

AGA, founded in 1918, represents more than 200 local energy companies that deliver clean natural gas throughout the United States. There are more than 77 million residential, commercial, and industrial natural gas customers in the U.S., of which 95 percent — more than 73 million customers — receive their gas from AGA members. AGA is an advocate for natural gas utility companies and their customers and provides a broad range of programs and services for member natural gas pipelines, marketers, gatherers, international natural gas companies, and industry associates. Today, natural gas meets more than one-third of the United States' energy needs.¹ AGA members routinely submit information to DOE and the U.S. Energy Information Administration on various topics.

II. Comments

AGA requests that DOE reconsider the removal of certain data protection measures in the proposed instructions for Form FE-746R and retain the protections in the current form. Form FE-746R is designed to collect data on natural gas and liquefied natural gas ("LNG") that is imported and exported to and from the U.S. on a monthly basis. In the Notice, DOE proposes to update and revise the instructions for Form FE-746R. Pertinent to these comments, in the Notice DOE states that the Office of Fossil Energy and Carbon Management ("FECM") will use the exemptions under the Freedom of Information Act ("FOIA") to protect prices of LNG exports but not other

¹ For more information, visit www.aga.org.

natural gas price data.² Additionally, “[i]mport and export prices for all forms of natural gas at the transaction level will be considered public information and may be publicly released in company identifiable form, excluding prices for domestically produced LNG exports.”³

The current instructions for Form FE-746R provide that while certain information may be publicly released, “Price at Import or Export Point for all forms of natural gas imported and exported, including LNG,” provided it satisfies FOIA, would be protected.⁴ In the proposed revised form instructions, DOE proposes to remove the above quoted protection statement and have the applicable protection apply only to “LNG export prices.”⁵

AGA requests that the protections afforded to “Price at Import or Export Point for all forms of natural gas imported and exported, including LNG” in the current instructions for Form FE-746R remain in place and that DOE not remove the protections for import information. Natural gas and LNG import and export price information should remain protected and any relevant FOIA exemptions should continue to be applied to import and export data. The currently effective instructions for Form FE-746R recognize that company-specific import/export information satisfies the criteria for exemption specified in FOIA.⁶ DOE has provided no explanation or justification in the Notice for amending the protections for import information.

Moreover, the proposal is not consistent with FOIA or DOE’s regulations. Notably, FOIA provides for an exemption from public release for trade secrets and commercial or financial information obtained from a person that is privileged or confidential.⁷ DOE’s regulations implementing FOIA provide that the agency must consider certain criteria before the public disclosure of information, such as: “Whether the information has been held in confidence by the person to whom it pertains;” “Whether the information is of a type customarily held in confidence by the person to whom it pertains and whether there is a reasonable basis therefore;” and “Whether disclosure of the information is likely to cause substantial harm to the competitive position of the person from whom the information was obtained.”⁸ LNG import pricing information meets the exemption criteria in FOIA and DOE’s regulations as it is commercially sensitive information that is either contractually and/or customarily held in confidence, and its release on a company specific basis may cause harm. Therefore, such information should not be released as proposed by DOE in the Notice.

² Notice at 2351.

³ *Id.*

⁴ See https://www.energy.gov/sites/prod/files/2019/07/f64/FE-746R%20Instructions_0.pdf.

⁵ See https://www.energy.gov/sites/default/files/2023-01/FE-746R%20Instructions%202023%20-%20v1_01132023.pdf.

⁶ 5 USC § 552.

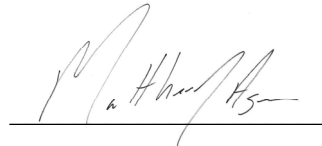
⁷ 5 USC § 552(b)(4).

⁸ 10 CFR 1004.11.

III. Conclusion

The American Gas Association respectfully requests that DOE consider these comments in its proceeding and incorporate the above recommendations in its information collection procedures.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "M. J. Agen", is written over a horizontal line.

Matthew J. Agen
Chief Regulatory Counsel, Energy
American Gas Association
400 N. Capitol Street, NW
Washington, DC 20001
202-824-7090
magen@aga.org

From: [Tran, Tu](#)
To: ["Agen, Matthew"](#)
Cc: ["Herrera, Katherine"](#); ["Holgate, Chandler"](#)
Subject: DOE Response to AGA's Comments on Form FE-746R, Agency Information Collection Extension, 88 Fed. Reg. 2350
Date: Tuesday, May 2, 2023 4:38:00 PM

Dear Matthew J. Agen,

Thank you for submitting comments on behalf of the American Gas Association (AGA) in response to the January 13, 2023 notice issued by the U.S. Department of Energy (DOE), Office of Fossil Energy and Carbon Management. The notice announced changes to Form FE-746R, OMB Control Number 1901-0294. DOE published this notice in the Federal Register on January 13, 2023 at 88 Fed. Reg. 2350 and received the AGA's comments by email on March 14, 2023.

DOE uses Form FE-746R to collect critical information on U.S. natural gas trade from authorized importers and exporters of natural gas, including importers and exporters of liquefied natural gas (LNG). The notice proposes to change the confidentiality policy for select information reported on Form FE-746R using the exemption under the Freedom of Information Act (FOIA) to protect certain price information reported on Form FE-746R, LNG export prices, and for all other price information reported on Form FE-746R to be considered public information.

The AGA requests that the protections afforded to prices at import or export point for all forms of natural gas imported and exported, including LNG, in the current instructions for Form FE-746R remain in place and that DOE not remove the protections for import information. AGA also states that LNG import pricing information meets the exemption criteria in FOIA and DOE's regulations as it is commercially sensitive information and its release on a company specific basis may cause harm.

DOE appreciates AGA comments. Based on comments filed in support of the protection of individual submissions of price data submitted on Form FE-746R, DOE's final proposal does not make changes to the existing data collection. DOE will use the exemptions under the FOIA to maintain the protection of transaction-level price data for all forms of natural gas imported and exported, including LNG, 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 data will not be published at a transaction level for all forms of natural gas imported and exported, including LNG. The final proposal balances the public interest to be served by publishing significant amounts of aggregate price data but retaining protection for transaction-level data that would cause competitive harm to natural gas importers and exporters.

A Federal Register Notice will be published in the near future when Form FE-746R is submitted to the Office of Management and Budget for their review.

If you have further questions or concern regarding Form FE-746R, please feel free to contact me.

Sincerely,

Tu Tran
Economist
U.S. Department of Energy
202-235-5873