

Supporting Statement
U.S. Department of Commerce Bureau of Industry and Security
for Procedures for Submitting Requests for Exclusions
from the Section 232 National Security Adjustments
of Imports of Steel and Aluminum

OMB Control No. 0694-139

A. Justification

This is a request to update and finalize the emergency collection on *Procedures for Submitting Requests for Exclusions from the Section 232 National Security Adjustments of Imports of Steel and Aluminum* which was originally approved on March 18, 2018.

1. Explain the circumstances that make the collection of information necessary.

Background on Section 232

Section 232 of the Trade Expansion Act of 1962 (19 U.S.C. §1862) authorizes the Secretary of Commerce (Secretary) to conduct comprehensive investigations to determine the effects of imports of any article on the national security of the United States. Section 232 investigations include consideration of:

- Domestic production needed for projected national defense requirements;
- Domestic industry's capacity to meet those requirements;
- Related human and material resources;
- The importation of goods in terms of their quantities and use;
- The close relation of national economics welfare to U.S. national security;
- Loss of skills or investment, substantial unemployment and decrease in government revenue; and
- The impact of foreign competition on specific domestic industries and the impact of displacement of any domestic products by excessive imports.

Section 232 requires that the Secretary notify the Secretary of Defense that an investigation has been initiated. The Secretary also consults with the Secretary of Defense regarding methodological and policy questions raised in the investigation and can seek information and advice from other government agencies.

The Secretary's report to the President, prepared within 270 days of initiation, focuses on whether the importation of the article in question is in such quantities or under such circumstances as to threaten to impair the national security. The President can concur or not with the Secretary's recommendations, and, if necessary, take action to "adjust the imports of an article and its derivatives." In addition, pursuant to other sources of authority, the Secretary can

recommend, and the President can take, other lawful non-trade related actions necessary to address the threat.

Background on exclusion request and objection process

On March 8, 2018, President Trump issued Proclamations 9704 and 9705, imposing duties on imports of aluminum and steel. The Proclamations also authorized the Secretary of Commerce to grant exclusions from the duties “if the Secretary determines the steel or aluminum article for which the exclusion is requested is not produced in the United States in a sufficient and reasonably available amount or of a satisfactory quality or should be excluded based upon specific national security considerations.”

On March 19, 2018, the Secretary of Commerce issued an interim final rule, setting forth the requirements U.S. businesses must satisfy when submitting exclusion requests. On behalf of the Secretary, the U.S. Department of Commerce, Bureau of Industry and Security (DOC/BIS) published the March 19 rule, *Requirements for Submissions Requesting Exclusions from the Remedies Instituted in Presidential Proclamations Adjusting Imports of Steel into the United States and Adjusting Imports of Aluminum into the United States; and the filing of Objections to Submitted Exclusion Requests for Steel and Aluminum* (83 FR 12106). The March 19 rule also set forth the requirements that U.S. parties must meet when submitting objections to exclusion requests. The March 19 rule amended the National Security Industrial Base Regulations to add two new supplements, Supplements No. 1 (for steel exclusion requests) and No. 2 (for aluminum exclusion requests) to part 705. The Secretary started this process with the publication of the March 19 rule and is continuing that process to make various improvements with the publication of a second interim final rule described below.

On August 29, 2018, the President issued Proclamations 9776 and 9777. Proclamations 9776 and 9777 authorized the Secretary of Commerce, in consultation with the Secretary of State, the Secretary of the Treasury, the Secretary of Defense, the United States Trade Representative (USTR), the Assistant to the President for National Security Affairs, the Assistant to the President for Economic Policy, and such other senior Executive Branch officials as the Secretary deems appropriate, to provide relief from the applicable quantitative limitations set forth in Proclamation 9740 and Proclamation 9759 and their accompanying annexes, as amended, for any steel article determined not to be produced in the United States in a sufficient and reasonably available amount or of a satisfactory quality, and is also authorized to provide such relief based upon specific national security considerations.

In addition, Proclamation 9777 under clause 2 directed that the Secretary of Commerce, shall, on an expedited basis, grant relief from the applicable quantitative limitations set forth in Proclamation 9740 and Proclamation 9759 and their accompanying annexes, as amended, for any steel article when the requirements set forth in this clause are met. A steel article may only be imported under this clause 2 if such steel article is described in a written contract entered into before March 8, 2018; such contract specifies the quantity of such steel article that is to be produced and shipped to the United States consistent with a schedule contained in such contract; such steel article is to be used to construct a facility in the United States and such steel article cannot be procured from a supplier in the United States to meet the delivery schedule and

specifications contained in such contract; and lack of relief would significantly impede completion of the facility being constructed in the United States with the steel article specified in such contract.]

In Proclamations 9776 and 9777, President Trump directed that as soon as practicable, the Secretary of Commerce shall issue procedures for requests for exclusions described in clause 1 (for steel and aluminum) and clause 2 (for steel). The second interim final rule described below that BIS will soon publish on behalf of the Secretary of Commerce will fulfill the Presidential directives included in the two most recent Proclamations, as well as the earlier Proclamations that directed the Secretary of Commerce to create an exclusion process to ensure users of steel and aluminum in the United States would continue to have access to the steel and aluminum that they may need.

Updates & Improvements to Section 232 Steel and Aluminum Exclusion Request and Objection Processes

BIS will publish a second interim final rule, *Revisions to the Requirements for Submissions Requesting Exclusions from the Remedies Instituted in Presidential Proclamations Adjusting Imports of Steel into the United States and Adjusting Imports of Aluminum into the United States; and the filing of Objections to Submitted Exclusion Requests for Steel and Aluminum*. The second interim final rule that will be published by BIS, on behalf of the Secretary, will make changes to the two supplements added in the March 19 rule: Supplement No. 1 to Part 705 - Requirements for Submissions Requesting Exclusions from the Remedies Instituted in Presidential Proclamation 9705 of March 8, 2018 Adjusting Imports of Steel Articles into the United States; and to Supplement No. 2 to Part 705 - Requirements for Submissions Requesting Exclusions from the Remedies Instituted in Presidential Proclamation 9704 of March 8, 2018 to Adjusting Imports of Aluminum into the United States.

The rule will also make needed changes to the two supplements to address the directives included in the Presidential Proclamations 9776 and 9777 of August 29, 2018, whereby President Trump directed that as soon as practicable, the Secretary of Commerce shall issue procedures for requests for exclusions described in clause 1 and clause 2 of these two proclamations to allow for exclusion requests for countries subject to quantitative limitations. The rule will fulfill the Presidential directives included in the two most recent Proclamations, as well as the earlier Proclamations that directed the Secretary to create an exclusion process to ensure users of steel and aluminum in the United States would continue to have access to the needed steel and aluminum that they may need.

The changes to the exclusion processes in this rule are informed by both the comments received in response to the March 19 rule and the Department's experience with managing the exclusion process. The comments identified a number of areas where transparency, effectiveness and fairness of the exclusion and objection process could be improved, including adding a rebuttal and surrebuttal process. The Department has incorporated changes based on many of those comments and has also included other process improvements. The publication of today's rule should make significant improvements in all three respects, but because of the scope of this new process, BIS is publishing today's rule as a second interim final rule with request for comments.

As of August 20, 2018, the Department of Commerce had received more than 37,398 exclusion requests and 15,222 objections. To streamline the exclusion review process, the Department has already taken steps to expedite the granting of properly filed exclusion requests which receive no objections and present no national security concerns. The Department has also worked to increase and organize its staff to efficiently process exclusion requests. The publication of the second interim final rule is an important step in improving the exclusion and objection process.

The Information Collection number, 0694-0139, described in this support statement covers the paper work needed to be submitted to DOC to submit these exclusion requests.

2. Explain how, by whom, how frequently, and for what purpose the information will be used. If the information collected will be disseminated to the public or used to support information that will be disseminated to the public, then explain how the collection complies with all applicable Information Quality Guidelines.

The exclusion requests and rebuttals will be submitted in electronic form using regulations.gov for exclusion requests described in paragraph (c) in Supplements No. 1 and No.2 to Part 705. Exclusion requests described in paragraph (j) in Supplements No. 1 to Part 705 will be submitted to the U.S. Department of Commerce by email. All exclusion requests and rebuttals must be in electronic form, but may be submitted at any time. Exclusions requests under paragraph (j) if granted will only be valid till March 31, 2019. All submissions for exclusion requests are entirely voluntary.

The information submitted will be evaluated and used by BIS's Office of Technology Evaluation (OTE) to make recommendations to the Secretary regarding which exclusion requests, taking into account any objections to submitted exclusion requests received, should receive favorable consideration. The Secretary of Commerce, in consultation with the Secretary of Defense, the Secretary of the Treasury, the Secretary of State, the United States Trade Representative, the Assistant to the President for Economic Policy, the Assistant to the President for National Security Affairs, and other senior executive branch officials as appropriate, will use the information included in these exclusion requests, objections to submitted exclusion requests, and OTE's recommendations to determine which exclusion requests to approve. In order to approve an exclusion request under paragraph (j), a sworn affidavit must be made by the chief executive officer (CEO) and the chief legal officer (CLO) of the entity that owns the facility under construction that attests under penalty of perjury the criteria specified in paragraphs (j)(1)(i)(A) to (D) and (j)(1)(ii) are met.

The responses to the exclusion requests and objections to submitted exclusion requests will also be posted in regulations.gov and will be a matter of public record. Pursuant to Presidential Proclamation 9777 on August 29, 2018, exclusions granted under this separate grandfathering process under paragraph (j) will not be posted on regulations.gov for a public review period prior to approval, but the U.S. Department of Commerce will post granted exclusions, as described in paragraph (j)(2).

The Section 515 Information Quality Guidelines apply to this information collection and comply with all applicable information quality guidelines, *i.e.*, OMB, Department of Commerce, and specific operating unit guidelines.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological techniques or other forms of information technology.

The Federal rulemaking portal (an electronic submission portal) regulations.gov will be used for parties in the United States submitting exclusion requests and objections to submitted exclusion requests, rebuttals, and surrebuttals. Regulations.gov will also be used for managing and posting DOC's responses to each of the exclusion requests. Exclusion requests under paragraph (j) will be submitted by email. Confidential business information submitted as part of a rebuttal or surrebuttal will also be submitted by email.

4. Describe efforts to identify duplication.

The information voluntarily submitted by U.S. parties is not duplicated anywhere else in the Federal Government for purposes of considering exclusions authorized by the President from his efforts to adjust imports in response to the determinations made by the Secretary based on the finding to the Section 232 National Security Investigation of Imports of Steel and Aluminum. Similar information is not available from any other source. The requested information is unique to BIS.

5. If the collection of information involves small businesses or other small entities, describe the methods used to minimize burden.

The information voluntarily submitted must be provided by U.S. parties, regardless of size, if they wish to request an exclusion from the remedies instituted by the President for a steel or aluminum product. These requirements cannot be minimized to lessen the paperwork burden on small businesses.

6. Describe the consequences to the Federal program or policy activities if the collection is not conducted or is conducted less frequently.

This is a voluntary collection. If the collection is not conducted, U.S. companies would not have the opportunity to request exclusions from the remedies instituted by the President, with the possible result of economic hardship for U.S. companies, that in certain cases may not be needed in order for the larger national security objectives of the adjustment of imports instituted by the President to be achieved. These voluntary exclusion requests will allow the U.S. Government to evaluate whether an exclusion request should be granted based on the information provided in an exclusion request and taking into account any objections to a submitted exclusion request, rebuttals, and surrebuttals.

7. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with OMB guidelines.

There are no special circumstances that require the collection to be conducted in a manner inconsistent with the guidelines in 5 CFR 1320.6.

8. Provide a copy of the PRA Federal Register notice that solicited public comments on the information collection prior to this submission. Summarize the public comments received in response to that notice and describe the actions taken by the agency in response to those comments. Describe the 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.

The notice requesting public comment was published in the Federal Register on 5/1/2018 (Vol. 83, page 19045). No comments were received.

9. Explain any decisions to provide payments or gifts to respondents, other than remuneration of contractors or grantees.

Not applicable.

10. Describe any assurance of confidentiality provided to respondents and the basis for assurance in statute, regulation, or agency policy.

All exclusion requests, objections to submitted exclusion requests, rebuttals, surrebuttals, and comments on the interim final rule and second interim final rule will be made available for public inspection and copying. Information that is subject to government-imposed access and dissemination or other specific national security controls, e.g., classified information or information that has U.S. Government restrictions on dissemination to non-U.S. citizens or other categories of persons that would prohibit public disclosure of the information, may not be included in exclusion requests or objections to submitted exclusion requests. Additionally, personally identifiable information, including social security numbers and employer identification numbers, should not be provided. Individuals and organizations submitting exclusion requests, an objection to submitted exclusion requests, rebuttals, or surrebuttals are responsible for ensuring such information is not included. Individuals and organizations that have confidential business information should so indicate in the appropriate field of the relevant form. Paragraph (b)(6) in Supplements No. 1 and No. 2 describe how to submit confidential business information for rebuttals and surrebuttals. Individuals and organization must otherwise fully complete the relevant forms.

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.

There are no questions of a sensitive nature.

12. Provide an estimate in hours of the burden of the collection of information.

The total annual burden related to the exclusion request information collection activities described in Part 705 of Subchapter A, National Security Industrial Base Regulations is expected to be approximately 387,816 burden hours for all respondents. It is estimated that BIS will receive 96,954 exclusion request annually. For each exclusion submission, the claimant is expected to file a report that would take approximately 4 hours to prepare. This estimate is based on the number of different steel products and aluminum products in the U.S. market and an estimate of the amount of time it would take a claimant to acquire, assemble and submit in regulations.gov the approximately twenty-four data elements required to be included in an exclusion request.

A detailed breakdown of the burden hour and cost estimates are listed in the chart below.

Type of Submission	Submissions	Burden hours to the public	Costs to the public (at \$37 per hour)	Burden hours to the USG	Costs to the USG (at \$39 per hour)
Exclusion requests	96,954	387,816 (4 hours per submission)	\$14,349,192	581,724 (at 6 hours per submission)	\$22,687,236

13. Provide an estimate of the total annual cost burden to the respondents or record-keepers resulting from the collection (excluding the value of the burden hours in Question 12 above).

Since no special equipment is required for this activity, there are no capitalized costs associated with this collection of information. Submitting exclusion requests and rebuttals in regulations.gov is free. It does require access to the Internet but, if needed, free Internet access and computers to access regulations.gov are available at public libraries. Submitting confidential business information as part of a rebuttal by email is also free.

14. Provide estimates of annualized cost to the Federal government.

It is estimated that the total annual cost to the Federal Government will be approximately \$22,687,236. A detailed estimate is given in the burden hour chart in question 12 above.

15. Explain the reasons for any program changes or adjustments.

This is a new collection.

16. For collections whose results will be published, outline the plans for tabulation and publication.

There are no plans to publish this information for statistical purposes, except to the extent needed for importers, the United States Government, and other parties to identify approved exclusion requests. The Federal rulemaking portal (an electronic submission portal) regulations.gov will be used for parties in the United States submitting exclusion requests, objections to submitted exclusion requests, rebuttals, and surrebuttals. Regulations.gov will also be used for managing and posting DOC's responses to each of the exclusion requests.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons why display would be inappropriate.

Not applicable.

18. Explain each exception to the certification statement.

Not applicable.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

Not applicable.