

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

OMB Control No. 0694-[]

A. Justification

This is a request for creation of a new collection for Office of Management and Budget approval to allow for the submittal of rebuttals to objections received on posted exclusion requests and to allow for surrebuttals for objections that receive rebuttals under the Section 232 exclusion process.

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, including adding a rebuttal and surrebuttal process.

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 changes to the exclusion processes in the second interim 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 the second interim rule should make significant improvements in all three

respects, but because of the scope of this new process, BIS is publishing the rule as a second interim final rule with request for comments.

The Information Collection number, 0694-[], described in this support statement covers the paper work needed to be submitted to DOC to submit these rebuttals to objections received on posted exclusion requests and to allow for surrebuttals for objections that receive rebuttals under the Section 232 exclusion process.

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 second interim final rule will add a new Paragraph (f)(*Rebuttal process*) to Supplements No. 1 and No. 2. Paragraph (f) will create a rebuttal process to allow only individuals or organizations that have submitted an exclusion request pursuant to one of the two supplements to submit a rebuttal to any objection(s) posted to their exclusion request in regulations.gov. Many commenters on the March 19 rule, referenced above, requested the Department make this type of a change to ensure that the process was fair and the Department had all of the relevant information when an objector made an objection to an exclusion request.

The second interim final rule will also add a new paragraph (g)(*Surrebuttal process*) to Supplements No. 1 and No. 2. Paragraph (g) will create a surrebuttal process to allow only individuals or organizations that have a posted objection and had a rebuttal filed on their objection, to a submitted exclusion request to be able to submit a surrebuttal to a rebuttal posted to their objection in regulations.gov. The paragraph structure of the rebuttal process and surrebuttal process are the same, and the provisions of the two paragraphs will have most elements in common. The differences between paragraphs (f) and (g) are primarily what party in the process is responding (party that submitted exclusion request for rebuttals, or the party that submitted the objection for surrebuttals) and the timing of the rebuttal and surrebuttal that occurs in a sequential order to allow each party sufficient review time before submitting a rebuttal or surrebuttal.

Once the second interim final rule is published, the public may submit rebuttals and surrebuttals in electronic form through regulations.gov as described in paragraphs (f)(for rebuttals) and paragraph (g)(for surrebuttals) in Supplements No. 1 and No.2 to Part 705, as amended by the second interim final rule.

All rebuttals must be in electronic form and may only be submitted during the 7 day rebuttal comment period. All surrebuttals must be in electronic form and may only be submitted during the 7 day surrebuttal comment period. All submissions for rebuttals and surrebuttals are entirely voluntary. The U.S. Department of Commerce has posted eight separate fillable forms on the BIS website at <https://www.bis.doc.gov/index.php/232-steel> (for the four forms used for the steel exclusion request process) and at <https://www.bis.doc.gov/index.php/232-aluminum> (for the four forms used for the aluminum exclusion request process) and on the Federal rulemaking portal (<http://www.regulations.gov>) that are to be used for submitting exclusion requests, objections to

exclusion requests, rebuttals, and surrebuttals described in this supplement. On regulations.gov, you can find these eight forms for exclusion requests, objections to exclusion requests, rebuttals to objections, and surrebuttals by searching for its regulations.gov docket number, which is BIS-2018-0006 (for the four forms used for the steel exclusion request process) and BIS-2018-0002 (for the four forms used for the aluminum exclusion request process).

The U.S. Department of Commerce requires the forms specified under paragraphs (b)(3) (*Rebuttal to Objection Received for Section 232 Exclusion Request: Steel (in Supplement No. 1)*, and *Rebuttal to Objection Received for Section 232 Exclusion Request: Aluminum (in Supplement No. 2)*), and (b)(4) (*Surrebuttal to Rebuttal Received on Section 232 Objection: Steel (in Supplement No. 1)*, and *Surrebuttal to Rebuttal Received on Section 232 Objection: Aluminum (in Supplement No. 1)*), for submitting rebuttals and surrebuttals.

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, and any rebuttals and surrebuttal. 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, rebuttals and surrebuttals, and OTE's recommendations to determine which exclusion requests to approve.

The responses to the exclusion requests, objections to submitted exclusion requests, rebuttals, and surrebuttals will also be posted in regulations.gov and will be a matter of public record.

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. Confidential business information submitted as part of a rebuttal or surrebuttal will be submitted by email as described in the new procedures the second interim final rule will add to a new paragraph (b)(5) in Supplements No. 1 and No. 2 to Part 705.

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. As described above, allowing for rebuttals and surrebuttals will improve the exclusion review process. 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 submit rebuttals to objections received on posted exclusion requests. In addition, if the collection is not conducted, U.S. companies would not have the opportunity to submit surrebuttals for objections they submitted that receive rebuttals under the Section 232 exclusion process.

As described above and in the second interim final rule that will soon be published, adding a rebuttal and surrebuttal process is an important step in further improving the exclusion request and objection process for requesting exclusions from the remedies instituted by the President. These voluntary rebuttals and surrebuttals will allow the U.S. Government to better 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. Many commenters on the March 19 rule, referenced above, requested the Department make this type of a change to ensure that the process was fair and the Department had all of the relevant information when an objection to an exclusion request received a rebuttal or a surrebuttal was received.

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.

These information collections have been approved on an emergency basis for 180 days because the Department has determined the following conditions have been met;

- a. The collection of information is needed prior to the expiration of time period normally associated with a routine submission for review under the provisions of the Paperwork Reduction Act in view of the President's proclamations issued on March 8, 2018, for the *Presidential Proclamation on Adjusting Imports of Steel into the United States*, <https://www.whitehouse.gov/presidential-actions/presidential-proclamation-adjusting-imports-steel-united-states/>, and for the *Presidential Proclamation on Adjusting Imports of Aluminum into the United States*, <https://www.whitehouse.gov/presidential-actions/presidential-proclamation-adjusting-imports-aluminum-united-states/>.
- b. The collection of information is essential to the mission of the Department, in particular to the adjudication exclusion requests, objections to exclusions requests, rebuttals and surrebuttals.
- c. The use of normal clearance procedures would prevent the collection of information for rebuttals and surrebuttals and would make the review of exclusion requests and objections to exclusion requests less effective. Exclusion requests and objections to exclusions requests are important for national security purposes, as discussed under section 232 of the Trade Expansion Act of 1962 as amended and the Presidential Proclamations issued on March 8, 2018.

As was noted in the report submitted by the Secretary to the President, steel and aluminum are being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security of the United States and therefore any delay in implementing these remedial actions (as described Proclamations 9704 and 9705 of March 8, 2018) would further undermine U.S. national security interests. In order to ensure that the remedial actions from the Presidential Proclamations do not undermine users of these articles in the United States that may need the foreign supply of these articles for manufacturing other articles in the United States that are critical to protecting the national security of the United States, or are otherwise important to protecting the U.S. economy because there is not currently a sufficient and reasonably available amount or of a satisfactory quality of these articles in the United States, the Presidential Proclamations authorized the Secretary of Commerce, in consultation with the Secretary of Defense, the Secretary of State, the United States Trade Representative, and other agency heads as appropriate to grant exclusions. This emergency collection is needed in order for the related for the second interim final rule to establish the process for submitting rebuttals and surrebuttals to help better inform the process of granting these requests for exclusions. These actions are immediately needed in order to protect national security interests of the United States.

If the related second interim final rule and this emergency collection were delayed to allow for public comment before becoming effective, individuals and organizations in the United States would not have the opportunity to submit rebuttals and surrebuttals during the comment period and while the emergency collection is being finalized, from the remedies instituted by the President, with the possible result of economic hardship for the U.S. companies and an overall less effective exclusion process. BIS intends to publish a notice in the *Federal Register* informing the public that DOC submitted a request for an emergency collection and the request was approved by OMB.

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)(5) in Supplements No. 1 and No. 2 will describe how to submit confidential business information for rebuttals and surrebuttals by email. 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 rebuttal and surrebuttal information collection activities described in Part 705 of Subchapter A, National Security Industrial Base Regulations is expected to be approximately 62,823 burden hours for all respondents. It is estimated that BIS will receive 34,902 rebuttal, and 27,921 surrebuttal submissions annually. Each exclusion rebuttal is estimated to take 1 hour to prepare. Each surrebuttal is estimated to take 1 hour to

prepare. These estimates are 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-nine data elements for the form required to be included in a rebuttal or surrebuttal.

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)
Rebuttals	34,902	34,902 (1 hour per submission)	\$1,291,374	69,804 (at 2 hours per submission)	\$2,722,356
Surrebuttal	27,921	27,921 (1 hour per submission)	\$1,033,077	55,842 (at 2 hours per submission)	\$2,177,838
TOTAL	62,823	62,823 (1 hour per submission)	\$2,324,451	125,646 (at 2 hours per submission)	\$4,900,194

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 rebuttals and surrebuttals 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 and surrebuttal 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 \$4,900,194. 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.