DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 705

[Docket No.: 180227217–8217–02]

RIN 0694–AH55

Submissions of Exclusion Requests and Objections to Submitted Requests for Steel and Aluminum

AGENCY: Office of Technology Evaluation, Bureau of Industry and Security, U.S. Department of Commerce.

ACTION: Interim final rule.

SUMMARY: On March 8, 2018, President Trump issued Proclamations 9704 and 9705 (referred to henceforth as the ''Proclamations''), imposing duties on imports of aluminum and steel. The Proclamations also authorized the Secretary of Commerce (referred to henceforth as the ''Secretary'') 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 Department issued an interim final rule (referred to henceforth as the ''March 19 rule''), setting forth the requirements a directly affected party located in the United States must satisfy when submitting exclusion requests. 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.

The rule published today by BIS, on behalf of the Secretary, revises the two supplements added by the March 19 rule. The revisions are informed by the comments received in response to the March 19 rule and the U.S. Department of Commerce's (referred to henceforth as ''the Department'') experience with managing the exclusion and objection process. The Department understands the importance of having a transparent, fair and efficient exclusion and objection process. The publication of today's rule should make significant improvements in all three respects, but due to the scope of this new process, BIS is publishing today's rule as an interim final rule with request for comments.

DATES:

Effective date: This interim final rule is effective September 11, 2018.

Comments: Comments on this interim final rule must be received by BIS no later than November 13, 2018.

See **SUPPLEMENTARY INFORMATION** section for information on submitting exclusion requests, objections thereto, rebuttals, and surrebuttals.

ADDRESSES: All comments on this interim final rule must be submitted by one of the following methods:

- By the Federal eRulemaking Portal: *http://www.regulations.gov.* Comments on this interim final rule may be submitted to *regulations.gov* docket number BIS–2018–0016.
- By email directly to *publiccomments@bis.doc.gov.* Include RIN 0694–AH55 in the subject line.
- By mail or delivery to Regulatory Policy Division, Bureau of Industry and Security, U.S. Department of Commerce, Room 2099B, 14th Street and Pennsylvania Avenue NW, Washington, DC 20230. Refer to RIN 0694–AH55.

FOR FURTHER INFORMATION CONTACT: Brad Botwin, Director, Industrial Studies, Office of Technology Evaluation, Bureau of Industry and Security, U.S. Department of Commerce (202) 482–5642, *Steel232@bis.doc.gov* regarding provisions in this rule specific to steel exclusion requests and (202) 482–4757, *Aluminum232@bis.doc.gov* regarding provisions in this rule specific to aluminum exclusion requests.

SUPPLEMENTARY INFORMATION:

Background

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 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 Department issued an interim final rule, setting forth the requirements U.S. businesses must satisfy when submitting exclusion requests. On behalf of the Secretary, 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 Department started this process with the publication of the March 19 rule and is continuing that process to make various improvements with the publication of today's rule.

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

The rule published today by BIS, on behalf of the Secretary, makes 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 published today also makes needed changes to the two supplements to address the directives included in the Presidential Proclamations 9777 and 9776 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. Today's rule makes changes to add clause 1. The Department has already created a separate exclusion process for clause 2 on the Commerce website at *www.bis.doc.gov/index.php/232-steel,* so no changes are made in today's rule to address the directive included in clause 2 of Proclamation 9777. The rule published today 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 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.

Since March 19, the Department has worked to develop its exclusion process to ensure that the duties and quantitative limitations protect our national security while also minimizing undue impacts on downstream U.S. industries. Two specific Commerce components have worked closely in this effort: BIS and the International Trade Administration (ITA). BIS is the lead agency deciding whether to grant steel and aluminum tariff exclusion requests, and ITA is analyzing requests and objections to evaluate whether there is domestic production available to meet the requestor's product needs, as provided in the exclusion requests.

Since March 19, the Department has diligently worked to develop its exclusion process to ensure that the duties and quantitative limitations protect critical U.S. national security while minimizing undue impacts on downstream U.S. industries. The Department has already taken several steps to improve the exclusion process, including expediting the grant of properly filed exclusion requests that receive no objections and present no national security concerns, as well as increasing and organizing the Department's staff to efficiently process exclusion requests. The publication of today's rule provides an exclusion process for steel and aluminum articles subject to quantitative limitations and is an important step in further improving the exclusion request and objection process, including through the addition of a rebuttal and surrebuttal process.

As of August 20, the Department had received more than 38,000 exclusion requests and more than 17,000 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 today's rule is an important step in improving the exclusion and objection process.

Types of Comments the Department is Requesting on Today's Rule

The Department is not seeking comments on the duties and quantitative limitations or the exclusion and objection process overall, but rather on whether the specific changes included in this second interim final rule have addressed earlier concerns with the exclusion and objection process. Comments specific to the changes included in today's rule will be the most helpful for the Department to receive, including comments on how the changes (*e.g.,* the adding of a rebuttal and surrebuttal to the process) interact with the established exclusion and objection process and whether the commenters believe these changes improve the exclusion and objection process by making it more transparent, fair and efficient, as well as highlighting any unintended consequences of the changes made in today's rule.

Public Comments and BIS Responses

The public comment period on the March 19 rule closed on May 18, 2018. BIS received 67 public comments on the interim final rule. Most of the comments were well thought out and supported their positions with a great deal of specificity. Many commenters made comments on the imposition of duties and quantitative limitations and whether or not that was a good idea. Those comments are outside the scope of the March 19 rule that was focused on creating an exclusion and objection process, thus the Department is not summarizing or providing responses to those general comments on the duties and quantitative limitations. The Department is responding to comments regarding concerns on the downstream impacts of U.S. manufacturers that use steel and aluminum, which is directly relevant to whether the exclusion process created in the March 19 rule is efficient enough to mitigate those downstream end users' concerns.

Commenters were generally supportive and welcomed the idea of creating an exclusion process, but most of the commenters believed the exclusion process was not working well and needed to be significantly improved in order for it to achieve the intended purpose. The commenters covered a broad range of industries and included some of the largest companies in the world, along with small to mid-size (SME) enterprises expressing significant concern over the duties and quantitative limitations and the difficulties in managing the exclusion process. Several of the SMEs indicated that without an efficient exclusion process, it is likely they may not survive or will face significant cut backs in employment and business activities. Larger companies indicated that without an efficient exclusion process, it is likely that major projects that they may have otherwise undertaken will likely not be undertaken. Commenters from the oil and gas industries and petrochemical industries hit on these points.

Many downstream manufacturers that use steel and aluminum were particularly concerned with suffering from higher input costs, while at the same time having to compete directly with foreign competitors in other countries; *e.g.,* China, but also countries such as Canada and Mexico. Many commenters argued that the exclusion process was overly and unnecessarily restrictive and did not take into account how steel and aluminum are procured and used in the United States.

Commenters supporting and opposing the duties and quantitative limitations submitted comments on what they thought needed to be changed in the exclusion and the objection process to make it more fair, efficient and effective. Commenters included references to arbitrary and capricious government action and laid out from their perspective how the exclusion and objection process could be legally challenged if not improved.

Concerns With Unintended Downstream Impacts That Steel and Aluminum Duties and Quantitative Limitations Will Have on U.S. Manufacturers and Consumers

The Department received a significant number of detailed comments that raised concerns in this area. The comments came from a broad spectrum of U.S. industries, including many major sectoral employers. The creation of an effective product based exclusion/objection process (and with the publication of today's rule, a rebuttal/surrebuttal process) is intended to address as many of these types of concerns as possible. As detailed below, many commenters do not believe that the exclusion/objection process is effective and that because of how products are sourced and used in the manufacturing process, it is unlikely to succeed.

Comment (a)(1): Concerns for unintended downstream impacts for U.S. manufacturers. A small manufacturer noted that a 25 percent ad valorem duty increases their Cost of Goods Sold (COGS) by 7 percent, which can be the difference between

profitability and loss for their employee-owned company. This commenter noted that it has been portrayed in the media that this duty will have an impact of one half of one percent on the total cost of U.S. produced product. This commenter noted that its potential impact is fourteen times that. Many additional commenters provided additional examples from their experience. One manufacturer of dump bodies for dump trucks asserted that a 25 percent increase in steel prices would result in an ''11 percent increase in wholesale product price'' for the company. A commercial construction company asserted that ''steel building suppliers increased [their prices by] 25–29 percent overnight and will only hold pricing for 15 days.'' The company anticipates price increases ''across the board on more subcontractors and suppliers'' as they anticipate a shortage. Another downstream manufacturer asked ''how the Department will monitor and report on the effect of this tariff on the primary manufacturers of aluminum in the U.S., let alone downstream industries, which were ignored in the 232 report?'' Other commenters noted that it is not only the 232 duties and quantitative limitations that are putting pressure on these U.S. manufacturers, but also the other various trade remedies that the U.S. has implemented.

BIS response: The Department understands that the consistent message from these commenters is that they are feeling pressure from the duties and quantitative limitations, and in many cases the commenters believe the costs may not be absorbable by these companies and the market. This puts pressure on the U.S. steel and aluminum industries to ramp up production and in the interim for an effective exclusion process to fill the void. The Department understands that and is taking steps to ensure the exclusion process is efficient enough to fill the void to avoid any unintended economic impact to downstream U.S. industries. The changes made in today's rule will improve the efficiency of the process and address these comments. The Department will be monitoring the domestic aluminum and steel industries, as well as industries consuming steel and aluminum, to regularly evaluate the competitiveness of U.S. industry. The exclusion process is available to individuals and companies to ensure that they can obtain adequate supply of steel and aluminum products of size, shape, and function that are not available in the United States in adequate quantity or quality.

Comment (a)(1)(ii): Recommends additional analysis is done of the downstream impact of duties and quantitative limitations. Some commenters recommended the Department review, on a regular basis, the impact of duties and quantitative limitations on the economy and downstream users and develop and implement a plan to sunset them if they prove to have a significant unintended impact. These commenters urged the Department to consider the unintended consequences of these duties and quantitative limitations in any review. One such consequence would be companies further down the supply chain importing finished goods at lower prices instead of purchasing higher-priced U.S. manufactured goods from companies that imported raw and semi-finished materials subject to duties and quantitative limitations.

BIS response: The Secretary has directed the Department economists to regularly review the impacts of the steel and aluminum duties and quantitative limitations, including on downstream sectors. The Secretary will present this information to the President for his consideration as appropriate.

Comment (a)(1)(iii): Higher input costs for steel and aluminum will have a chilling effect on capital intensive investments that require a large amount of steel and aluminum, e.g., for energy exploration and production or petrochemical production. Commenters from major trade associations for oil and gas exploration noted that a process that generally involves granting only one-year product exclusions would impede the ability to plan for the long term by introducing significant uncertainties as to when, whether, where, and at what price the member companies can purchase the steel inputs needed to bring U.S. oil and natural gas projects to fruition. Planning and locking in cost projections for equipment and materials is often key to determining whether a project's economics merit approval. Other major industry associations, such as a trade association for the auto industry, identified an impact on investments in the U.S. that they attribute to the duties and quantitative limitations. These commenters believe the duties and quantitative limitations will have an impact on these manufacturers, the jobs they create, and ultimately the American consumer.

BIS response: The Department believes an effectively managed and configured exclusion/objection process, with a rebuttal/surrebuttal process being added with today's rule, will significantly mitigate these concerns. U.S. steel and aluminum manufacturers are already starting to increase production, and the exclusion process will be there to fill any temporary gaps in the U.S. supply to ensure that companies, such as those involved in oil and gas exploration and production and the automotive industry, will have the steel and aluminum they need to continue to invest in the United States.

Comment (a)(1)(iv): Consumers will face increased prices. Commenters noted that the cost of their finished goods will increase because of the duties and quantitative limitations and those increases will be passed to consumers. A commenter noted that in order to compensate for their increased steel cost they will be forced to raise their finished product cost by at least 8 percent. ''That may seem like a small margin, but in today's global market that is enough to cause a company to be forced to relocate manufacturing outside of the U.S., import finished foreign product, or ultimately to close their doors completely.'' Another commenter noted that for 84 years in Harlan, Iowa this company has been a manufacturer of spare parts for mills used to make animal feed in the agriculture industry. The duties and quantitative limitations will drastically increase their costs and U.S. feed suppliers will see an increase in production costs to produce feed, leading to an increase in the cost of our food.

BIS response: The Department agrees there may be some short term price adjustments that may reach consumers, but we believe that the price increases at the consumer level will be minimal. The Secretary has, as noted above, also directed the Department economists to regularly review the impacts of the steel and aluminum duties and quantitative limitations, including on downstream sectors.

Concerns Over the U.S. Supply Chain and Comments Asserting That the Exclusion Objection Process Are Inefficient and Not Consistent With Business Practices, Regulatory Requirements, and Contractual Agreements for Sourcing Materials

Comment (b)(1): Concern that exclusion process is not consistent with business procurement practices. Commenters asserted that the exclusion process does not take into account several key aspects of how the U.S. supply chain functions. A commenter asserted that companies generally classify their suppliers into a multi-tiered list, such as acceptable, approved, and preferred. Each of these tiers indicates the compliance with quality

standards based on years of experience with a supplier's product. Even after a supplier adds new capacity, additional time is needed for purchasers of steel to technically qualify these new mills/lines. Adding a new supplier to an approved manufacturers list is a lengthy process, taking as long as three years as a company wants to be assured of a supplier's ability to manufacture a product to a given standard consistently.

BIS response: The exclusion process created in the supplements added in the March 19 rule and the Proclamations include criteria requiring suitable quality of U.S. steel and aluminum to deny an exclusion request. The detailed form for requesting exclusions and the form for submitting objections are intended to provide enough information for individuals and companies to determine whether in fact a U.S. supplier can supply the steel or aluminum in the quantities and quality needed. If a U.S. supplier objects to an exclusion request, the burden is on that supplier to demonstrate that the exclusion should be denied because of failure to meet the specified criteria. As described below in the regulatory changes, today's rule is adding additional text to paragraph (d)(4) in the two supplements to provide greater specificity for objections, which will be responsive to these types of comments. Today's rule adding a rebuttal process to paragraph (f) to allow requesters of exclusions to rebut information included in an objection to their exclusion request will also improve the process and address these types of concerns raised by these commenters.

Comment (b)(2): Factors beyond an importer's control may limit their ability to change suppliers. Commenters asserted that regulatory requirements often limit the ability for U.S. manufacturers to make changes in the inputs, *e.g.,* in the medical area or food products area. Offshore drilling and aircraft are other examples. Therefore, making changes in suppliers may not be permissible, or if it is, it may be expensive and/or time consuming. One commenter asserted that under Federal Food and Drug Administration regulations, substitution of the foil substrate could take two to ten years for approval, depending on use in packaging for food or medical devices. Another commenter asserted that given the low volume and high investment necessary to manufacture and smelt some specialty products for vehicles, many U.S. steel producers simply have decided not to enter into these markets. It can take many years for a company to test and validate that a material producer's product will meet the specifications necessary to perform as required for many of these safety-critical parts.

BIS response: The Department, when evaluating whether suitable quality of steel or aluminum supply exists in the United States, can take into account the types of factors asserted here by the commenters in two respects. First, these considerations may be taken into account when deciding whether to grant an exclusion request and second, these considerations may be taken into account when determining the appropriate validity period for an exclusion request. As described below, regulatory changes that add paragraphs (c)(6)(i) and (ii) to better define the exclusion review criteria and paragraph (h)(2)(iv) to provide additional context for how the Department determines the appropriate validity for exclusions will be responsive to these comments.

Comment (b)(3): A one year window is not consistent with the way many raw materials are sourced. One commenter asserted that the restriction of exclusions to specific supplier and country of origin combinations may make it difficult for the commenter to actually use an exclusion if one were granted because the company does not have visibility as to the country of origin or producer when sourcing aluminum through traders. At the time the commenter makes minimum purchase commitments, it does not know which traders will have inventory from which specific countries or which markets will have the most favorable pricing. In order to obtain an exclusion for its purchases from traders, the commenter would have to apply for an exclusion for each product from every market from which the commenter's traders could reasonably be expected to source product. Another commenter asserted that a problem could arise when the product delivered is not identical to what is ordered. In some instances, even though this commenter may place an order for one grade of aluminum, it might receive a better grade when there is a larger inventory of the higher graded product and the price differential is small. If an exclusion is limited to a specific grade and chemical composition of aluminum, the commenter would be forced to pay the tariff to use the product that was delivered. If the aluminum user must reject a shipment and wait for the specific grade covered by an exclusion, that could cause delays in its production process which could result in damages being assessed by its customers.

BIS response: The Department understands that in the types of scenarios described by these commenters the usefulness of an exclusion may be limited or obtaining additional exclusions to cover additional sourcing activity may be needed. The Department believes that some of the concerns may be overstated and that, based on past procurement activities, patterns of steel and aluminum procurement can be identified to significantly limit the total number of exclusions that may need to be requested. These organizations may also attempt to begin sourcing more of their steel and aluminum procurement needs from U.S. manufacturers. Today's rule nevertheless clarifies in (c)(2) in both supplements that the exclusion request forms do allow for minimum and maximum dimensions, as well as clarifying that ranges are acceptable when the manufacturing process permits small tolerances. A permissible range must be within the minimum and maximum range that is specified in the tariff provision and applicable legal notes for the provision. These changes to paragraph (c)(2) will also help address some of the concerns raised by these commenters.

Comment (b)(3)(i): Exclusion process and timeline are difficult to align with real-world purchasing and contract decisions. One commenter asserted that like many companies, it makes purchase decisions on a calendar year basis. For calendar year 2018, this company has already obligated itself to purchase guaranteed minimum amounts from certain suppliers. The company has already obligated itself to purchase certain volumes for 2019 and expects to sign purchase contracts for the remaining volume for 2019 in mid to late 2018. Even if the exclusion requests are renewable at the end of their one-year term, this company is concerned it will be forced to make 2020 purchasing commitments without knowing whether the full year's purchases will be subject to duties or not.

BIS response: The Department understands the concerns being raised. Organizations, such as those that need to make purchasing decisions multiple years out in the future, should include in the exclusion request information to that effect. This type of information may be used to support a validity period for longer than one year. As noted above, this rule adds paragraph (h)(2)(iv) to provide greater transparency in how the Department determines the appropriate validity date for exclusions and this will be responsive to these types of comments. The March 19 rule did not include any type of grandfathering

provisions for existing purchase contracts, and today's rule does not add any grandfathering provisions. However, there is nothing that would preclude an individual or organization in the U.S. that has an existing purchase contract from applying for an exclusion request to cover the scope of that purchase agreement. To the extent that such exclusion request can meet the existing criteria in the supplements and Proclamations, the Department could approve that request and take into account the existence of a purchase contract in determining the appropriate validity period. The existence of a purchase contract would not be determinative, however, as the Department must also take into account any objections that are filed and the timeframe in which U.S. supply may be available.

Comment (b)(4): Other concerns with quality or domestic supply. Some commenters asserted that lead times are long to make changes to the supply chain, including sometimes requiring OEM approvals before changing. Because one trade association's members supply to the automotive and aerospace industry, the process to change raw material suppliers is closely followed by and often approved by their OEM customers. The association's members have long-term customer contracts based on these approvals, and changes to the terms of those contracts are lengthy and time consuming. Other commenters raised concern about obtaining products where there is not sufficient U.S. supply. For example, some commenters asserted that many specialty steel and aluminum materials used in vehicle components are not available domestically. There may be only a few producers in the world—in some cases only one or two—that can source the grade of specialty materials needed to meet component specifications. Examples cited include wire used in steel-belted radial tires and specialty metals used in fuel injectors. For domestic manufacturers, it is not a question of whether they can produce these materials, but instead whether production of these niche materials will be cost-effective and provide a return on investment.

BIS response: The Department is reviewing exclusion applications from domestic industry, and related objections (and will do the same for rebuttals/surrebuttals), on a case-by-case basis in a fair and transparent process. The Department will assess whether manufacturing capability can meet the technical parameters for the specific article in question, including if idle capacity is being brought back online as well as new capacity. Today's rule adds greater specificity on the review criteria for exclusions under new paragraph (c)(6) and objections under revised paragraph (d)(4). These changes will be responsive to these types of comments.

Increases in Costs for Steel and Aluminum in the U.S. That Exceed the Duties

Some commenters provided detailed comments on what they perceived to be profiteering that may be occurring in the U.S. As described above, some of this may be short term adjustments that are not warranted by market fundamentals that should level out.

Comment (c)(1): Concerns over profiteering by certain U.S. manufacturers of steel and aluminum or other parties that supply downstream manufacturers with steel and aluminum. One commenter asserted that it is not just importers being impacted by the duties and quantitative limitations. This commenter currently purchases all of its steel and aluminum from domestic sources, but is concerned that duties and quantitative limitations will allow the steel companies to raise their material prices significantly, even beyond the 25 percent competitive advantage provided by the tariff. Another commenter, a manufacturer of garage doors that buys 90 percent of its raw materials in the U.S., commented that ''the tariffs have given the domestic manufacturers the ability to raise prices in excess of 28% this quarter.'' The company fears that this increase will be impossible to pass on to its customers (national home builders). A trade association commenter expressed concern that market manipulation would cause the Midwest Premium to spike and the U.S. market to become more attractive to global aluminum suppliers, thereby drawing additional supply into the market and undermining the Department's Section 232 remedy. The commenter recommended that the Department follow the suggestion of Chairman Hatch and Ranking Member Wyden to ''[c]oordinate with the Department of Justice and Federal Trade Commission to ensure that effective mechanisms are in place to deter and to redress any anticompetitive conduct in the market for products that are subject to the Section 232 tariffs [duties and quantitative limitations] and product exclusion process,'' including ''[m]echanisms . . . for the public to report perceived anticompetitive behavior in respect of such products and prompt review of those reports by the appropriate authorities.''

BIS response: The Department and other parts of the U.S. Government as appropriate will review this issue and address as needed.

Comment (c)(2): Concern that openness of exclusion process will allow for foreign profiteering because importers granted exclusions will be locked in to specific foreign suppliers. Because of the amount of confidential business information required on the exclusion forms, it will allow for foreign suppliers and competitors to increase their prices. A commenter asserted that they are concerned that limiting exclusions only to the suppliers, countries of origin, and quantities indicated in the exclusion request, while at the same time making all of this information public will create pricing, anti-trust, or customer-relation concerns. For example, once suppliers know that their company is limited only to sourcing through them if their company wants the product to be covered by an exclusion, they will have pricing power over the commenter and may raise prices because they know the commenter has no other choice but to buy from them. Another possible unintended consequence was highlighted by one commenter that asserted their competitors will know which suppliers and countries of origin they will need to purchase from and could attempt to fully book the supply so as to force the commenter to use more expensive materials that make the commenter's finished products uncompetitive.

BIS response: The Department does not agree that importers granted exclusions will be locked in to specific foreign suppliers. The approved exclusions will be specific to specified countries and suppliers, but domestic users are not precluded from submitting a new exclusion request if that type of profiteering or anticompetitive activity occurred by a foreign party.

Is the exclusion objection process making supply issues worse for downstream manufacturers in U.S.?

Comment (d)(1): Commenters arguing that the inefficient exclusion process is part of the problem and making issues worse. Many commenters expressed concern that the product exclusion process, as set forth in the March 19 rule, is not working well. One commenter asserted that the mechanism set up to assess these requests fails to address the economic impact done to domestic manufacturing and opens up the U.S. to additional national security risks. Other commenters asserted that the volume of requests slows the entire process and that unnecessary

limitations on the scope of the exclusion requests create an untenable burden on the parties as well as the Department. Commenters asserted that the current exclusion process prevents requesters from being able to receive an exclusion quickly enough in the short-term to avoid disruption to their supply chain, and prevents them from being able to prepare in the long-term due to the short scope of any approved exclusion request. Requiring a business to accurately predict its usage for the year, they contend, prevents the business from being able to adjust or adapt to any changes in the market. And they assert that the lack of clarity around the process means that no company submitting a request has any idea if it will receive an exclusion, despite having disclosed some of its most sensitive proprietary information. They worry that requesters in similar situations will find themselves treated in a disparate manner as the Department determines how it will approach the relevant criteria. Finally, they assert that the complexity of the process, in particular the amount of information required, discourages participation in the exclusion process.

BIS response: The Department understands the importance of a transparent, effective, and fair exclusion/objection process, as well as having the rebuttal/surrebuttal process added in today's rule. The publication of today's rule makes improvements that will be responsive to these concerns and that will make the process work better for the Department. The process is designed to help U.S. downstream manufacturers obtain steel and aluminum without the additional duties when U.S. supply is not available in the quantity and quality that they need.

Comment (d)(1)(i): The Department misjudged the number of exclusions that would be submitted, as well as the anticipated burden. One commenter questioned the burden estimates included for complying with the rule and filing exclusion requests. This commenter asserted that each exclusion request requires the compilation of extensive supporting information that manufacturers must submit in addition to the lengthy exclusion request form. The Department estimated an average reporting burden for the collection of information in the exclusion request of four hours per request. This commenter thought four hours is a misleading estimate and does not account for the time taken to identify in a company's business records the pertinent data needing to be entered or attached. This same commenter asserted that the Department was not even close on its estimate for how many exclusion requests would be received.

BIS response: The commenter is the only commenter that mentioned a concern about four hours not being a sufficient amount of time to gather the information. Therefore, the Department believes the original estimate of four hours to gather the information and fill out the exclusion and objection forms is still an accurate estimate and makes no adjustments in that estimate. It is now clear, however, that the Department underestimated the number of exclusion requests and objections that would be filed. Although the estimates included in the March 19 rule were based on the Department's good faith estimate at the time, the Department now has more information and experience that it can rely upon to project an annual number of exclusion requests. As described later in the Rulemaking Section, the Department revises the exclusion form paperwork collection, as well as the objection form paperwork collection to reflect the new estimates of the burden, as well as expanding both collections to account for the rebuttal/surrebuttal process today's rule is adding. The Department believes the new numbers should be much more accurate. The Department took the changes being made in today's rule into account when developing the updated estimates for the number of exclusions and objections that are anticipated to be received, as well as the anticipated numbers of rebuttals/surrebuttals that will be received. Because the rebuttals/surrebuttals will not require filling out as extensive of a form as an exclusion request or objection, and in most respects will be responding to an objection or a rebuttal of an objection, the amount of time estimated to submit a rebuttal/surrebuttal is estimated to be much less, at one hour per rebuttal/surrebuttal. The Department will reevaluate the estimates provided in today's rule and the two related paperwork collection notices published in support of this rule and make any needed adjustments.

Comment (d)(2): Supportive of having exclusion process. Commenters were supportive and appreciative of having an exclusion process. Commenters did not want to eliminate the exclusion/objection process, but almost all had suggestions for changes to the process. Many commenters asserted that while they think the duties and quantitative limitations should be lifted as soon as possible because of unintended effects on downstream users, they also recognize that there must be a workable product exclusion process. Several commenters asserted that they appreciated the opportunity to comment on the Department's March 19 rule and look forward to working with the Department to ensure that the exclusion request process is fair, inclusive, and effective. Commenters asserted that they understand the need for BIS to manage the product exclusion request process in a fair and transparent manner while taking appropriate account of the Proclamations' goals of ensuring sufficient U.S. production of steel and aluminum to meet fundamental national security requirements. These commenters believe several aspects of the supplements and forms added in the March 19 rule should be modified or clarified consistent with those goals.

BIS response: The Department appreciates the support for the exclusion/objection process, as well as the comments provided to improve the process. The Department believes with the publication of today's rule, the exclusion/objection process (along with the rebuttal/surrebuttal process being added) will be significantly improved.

Arbitrary and Capricious, Lacks Basic Due Process, Not Transparent, and Not Fair

The comments described here are also referenced and addressed in other parts of this preamble and the regulatory changes made below. The intent of the discussion here is to highlight the general concerns raised in this area, along with the general BIS response. The specific types of issues, *e.g.,* the need to add a rebuttal process, are addressed in other parts of the preamble and the regulatory text of this rule, and the Department believes the process will resolve these types of fairness and consistency concerns that were the focus of these commenters' concerns.

Comment (e)(1): Commenters raised concerns over lack of due process, fairness, or transparency. One commenter asserted that tying refunds to the date when the Department finally posts the petitions on its website is arbitrary. The commenter asked if an exclusion is granted, why that exclusion would not be granted retroactively to the date the tariff was imposed. Another commenter asserted that granting the exclusion for one year is arbitrary and that the decision process for whether to approve or deny exclusion requests is not specified and appears arbitrary. Other commenters asserted that it was critical for due process to include a formal rebuttal process in the exclusion and objection process. These commenters believe that without a rebuttal process, the Department risks finalizing actions without a complete record and taking action that is unfairly

biased against U.S. businesses that rely on imported articles or that may exacerbate risks to national security. Other commenters asserted that the current process increases the possibility of inconsistent treatment for individual requests that are only different based on an insignificant dimension. For example, one comment opined, ''One can easily imagine a situation where a company ends up only able to import certain dimensions without payments of tariffs, and being barred from similarly being able to import others, despite their otherwise identical nature.'' The comment continued, ''This would be the definition of an arbitrary act on the part of the agency, when it ''treats similar situations in dissimilar ways.'' Along similar lines, another commenter asserted that the Department may grant an exclusion for a specific product for some companies/end-users but unreasonably deny it for others for the identical product, a result that it contended would be arbitrary, particularly if the exemption was based upon ''short supply'' considerations or a general lack of U.S. availability.

BIS response: The review of all product exclusion applications from U.S. industry is being conducted on a case-by-case basis in a fair and transparent process. As described above, two specific Commerce components have worked closely in this effort—BIS and ITA. BIS is the lead agency deciding whether to grant steel and aluminum tariff exclusion requests, and ITA is analyzing requests and objections to evaluate whether there is domestic production available to meet the requestor's product needs, as provided in the exclusion requests. The Department appreciates all of the commenters' suggestions to improve the exclusion request process. Several of the commenters argued that they believe the March 19 rule and the exclusion process it established could be legally challenged because it appears arbitrary and capricious to them in certain respects. The Department does not agree with that assessment. However, the Department does believe the changes being made in today's rule should significantly address these concerns. For example, today's rule is adding a rebuttal/surrebuttal process under paragraphs (f) and (g) of the two supplements and making a number of other changes to make the criteria more well defined and their application more transparent for the public. The Department has been treating each exclusion request and objection received in a fair and equitable way based on the stated criteria included in the March 19 rule and standard operating procedures that have been developed for the exclusion and objection review process.

Comments for How the Exclusion and Objection Process Can Be Improved

Commenters in almost all cases noted that their comments applied equally to the steel and aluminum supplements. The rule published today makes the same improvements to each supplement to continue with parallel supplements (same parallel structure included in the March 19 rule), with only slight differences for information that is specific to steel or aluminum, *e.g.,* in some of the examples being added to the supplements to make the application of the criteria more transparent. These changes are described below under Changes made in this interim final rule to the exclusion/objection process.

Several commenters asked for clarification and guidance on how to apply for broader product exclusions that would apply to all importers in the United States. As described below in more detail, the Department has the discretion to make exclusions available to all importers if we find the circumstances so warrant, and we will exercise this discretion as appropriate. Individuals and organizations do not apply for such broad product exclusions, but rather the Department as it gains experience with the types of exclusion requests that are being repeatedly approved because the criteria are being met on a consistent basis over time, can exercise this type of discretion that will likely result in making the process more efficient. Several commenters wanted to quickly move toward these types of broad product exclusions, but the Department believes it better to begin with a deliberative assessment of individual requests in order to not undermine the purpose of the duties and quantitative limitations in place for steel and aluminum.

Comment (f)(1): Date of submission, not the date of posting on regulations.gov, should be the relevant date for all decisions. Commenters requested that the date used for all future decisions such as applicability of duties or retroactive relief of duties be the date of submission of a complete request. They asserted that providing such retroactivity is a matter of fairness, as the date that the Department posts the submission on *regulations.gov* is currently an unknown and lengthy amount of time which is costing U.S. manufacturers hundreds of thousands of dollars per week. Another commenter asserted that the Department could have flexibility in this area and still be consistent with the second Presidential Proclamation, which set forth that the exclusion would apply retroactively to the date the request was posted for public comment. The commenter asserted that such language was not language of limitation, and the Department, through its action in response to these comments, might further extend the period of application.

BIS response: The retroactive date for duty relief through the exclusion process is set by the Proclamations, not the Department. Today's rule, as described below in the description of the regulatory changes, in order to improve the transparency of the process is adding a new paragraph (h)(2)(iii) to specify the effective date for approved exclusions.

Improve Transparency, Including Making Information and Forms More Easily Accessible for the Public

Comment (f)(2)(i): Make information and process more transparent. Commenters requested that the Department provide detailed timing and criteria, based on the Proclamations, that set forth how decisions will be made. U.S. manufacturers should be able to quickly determine that an exclusion request or denial is based on a known set of facts and is consistent with other actions on requests received. Several commenters requested that the Department impose stricter and more certain deadlines for its own actions, providing some finite time period between when an exclusion request is filed with the Department and when it is posted for comment. Commenters provided a range of suggested times from immediately (which is not feasible under the current *regulations.gov* system being used for the exclusion/objection process, as well as for the rebuttal/surrebuttal process being added in today's rule) to 5 to 14 days. Commenters were less concerned with the actual number of days than with having a specified number of days, so they better know what to expect. Without some set period for this step in the process, filing companies have no certainty as to when they can likely get a response to their request and this uncertainty is extremely disruptive to U.S. businesses trying to cope with the duties and quantitative limitations. Commenters said that the *regulations.gov* website where documentation is posted is not easy to navigate nor fully transparent. Commenters requested that the Department develop a system to notify applicants of their application status and anticipated wait time to facilitate planning and communications with

customers. Commenters requested that the Department publish official guidance or an ''FAQ'' page to describe the steps of the exclusion/objection process in easy to understand language. Commenters believe that information provided to the public should include a clear description of an entity eligible to file and an inventory or checklist of the information/evidence that should be provided as supplemental materials.

BIS response: The Department published procedures for the product exclusion requests, as well as for objections, in the March 19 rule and subsequently made them available on the Department's website. Today's rule as described below adds Annex 1 to Supplements No. 1 and 2 to Part 705 that will assist the public in using *www.regulations.gov* for application issues that are specific to submitting rebuttals under the exclusion, objection, rebuttal, surrebuttal process. The Department has also posted a step-by-step visual guide to assist industry through the process and tips on how to properly complete the exclusion request forms based on issues identified during BIS's initial review of submissions, as well as based on ITA's experience in reviewing the submissions. The Department will update these guides as appropriate. BIS has established dedicated phone numbers and email addresses for U.S. industry to seek assistance or ask questions about the process. These phone numbers and email addresses were included in the press release announcing the exclusion process and in the supplements added in the March 19 rule. The procedures published in the March 19 rule set forth the requirements for submitting requests for exclusions and for submitting objections to such exclusion requests during a 30-day comment period. Today's rule is making a number of changes to better define the criteria used to review exclusion requests and objections that will be responsive to comments raising concerns about transparency and being able to predict the outcome for a particular exclusion request and any objections thereto.

Today's rule is adding a rebuttal/surrebuttal process that will specify that after the 30-day objection period, an exclusion requester may submit a rebuttal to any objection(s) within 7 days, and an objector(s) may respond to that rebuttal within an additional 7 days after the rebuttal period has ended and the 7-day surrebuttal comment period is opened. The Department will not open the 7-day rebuttal period until the 30-day objection period has concluded, all complete objections have been posted in *regulations.gov*, and the Department indicates on the tracking sheet that will be posted on the Department website that the 7-day rebuttal period has opened. The same type of process will be followed by the Department opening the 7-day surrebuttal comment period. The Department in order to not divert staff resources from reviewing 232 submissions will not be able to contact each submitter to notify that the rebuttal or surrebuttal review period have opened, so submitters will need to check the tracking sheet that will be posted on the Commerce website for updates on their 232 submissions. Only the individual or organization that submitted the exclusion request may submit a rebuttal during the rebuttal comment period. Only the individual or organization that submitted an objection to exclusion request that received a rebuttal may submit a surrebuttal during the rebuttal comment period. The Department is confident that these added procedures will allow it to more efficiently make determinations on exclusion requests. The Department also has the discretion to make exclusions available to all importers if we find the circumstances so warrant, and we will exercise this discretion as appropriate. The Department will expeditiously grant properly filed exclusion requests which receive no objections and present no national security concerns. The Department will work with U.S. Customs and Border Protection to ensure that the requester provided an accurate Harmonized Tariff Schedule of the United States (HTSUS) statistical reporting number. If so, BIS will immediately assess the request for any national security concerns. If BIS identifies no national security concerns, it will expeditiously post a decision on *regulations.gov* granting the exclusion request. The Department has already made these process improvements and in today's rule is adding a new paragraph (h)(2)(ii) in both supplements to specify this streamlined review policy for exclusion requests that receive no objections. These changes taken together should be responsive to the various comments described above on the exclusion/objection process.

Comment (f)(2)(ii): Establish consistent guidelines for filling out the forms. Commenters requested that the Department adopt objective and transparent standards and guidelines for completing and submitting the forms and curing deficiencies when refiling the forms. A commenter asserted that the Department has been inconsistent and non-transparent in processing and posting the forms and in determining which forms ''satisfy'' reporting requirements and which forms do not. The commenter asserts that some forms are accepted and posted even though they are inconsistent with the Department's detailed reporting specifications.

BIS response: The Department has already taken action to improve transparency in this area. The Department has posted guidance with step-by-step visual guides to assist industry through the process and with tips on how to properly complete the exclusion request forms based on issues identified during the Department's initial review of submissions. The most common issues have been incomplete forms or bundling numerous requests in a single submission, but as requesters have become more familiar with the process and *regulations.gov*, these issues have been reduced significantly. Today's rule is also making changes to paragraph (b), including adding text to paragraph (b)(5) to clarify the provisions for public disclosure and information protected from public disclosure, and changes to paragraphs (c) and (d) to better define and include application examples for the criteria used for reviewing exclusions and objections. As described below, today's rule also adds Annex 1 to Supplements No. 1 and 2 to Part 705, which will assist the public in using *www.regulations.gov* for application issues that are specific to submitting rebuttals and surrebuttals under the exclusion, objection, rebuttal, surrebuttal process.

Comment (f)(2)(iii): Backlog of requests and timely release of information. Commenters requested the Department streamline its process, asserting that the Department is simply not equipped to handle the crushing volume of exclusion requests, particularly with the details reported in the forms. They request that forms be simplified and that the information requested be streamlined and grouped. Commenters also identified much of the backlog as attributable to the duplicative filings required by the product specific and customer-specific filing requirements. Commenters believe the Department can alleviate much of this backlog by adopting product exclusions based on broader product groupings, regardless of source and supply chain, as discussed further in the comments below.

BIS response: The Department has worked to increase and organize its staff to efficiently process exclusion requests. Since July 2, the Department has been reviewing and posting about 1,800 requests and 700 objections weekly. As of August 1, the Department has posted more than 2,200 steel and aluminum

decisions and will be posting substantially more in the coming weeks. BIS's dedicated phone lines and email accounts are available to assist industry with any inquiries about their exclusion or objection filing. Due to the rolling nature of the exclusion/objection process, the wait time can vary. The Department has also modified its review procedures to expedite decisions on requests that have no corresponding objections, as described further in other parts of this rule, such as by adding a new paragraph (h)(2)(ii). This will not only speed processing of those requests but also facilitate review of requests with objections, and with the publication of today's rule, requests that have rebuttal/surrebuttal(s). More Departmental staff time will be available for reviews of the more difficult requests that involve an objection(s) and rebuttal/surrebuttals(s).

Confidentiality Issues

Comment (f)(3)(i): Create formal process to allow for and protect submissions of confidential business information (CBI). Most commenters requested the Department revise the supplements added in the March 19 rule to provide for a formal process for the submission of CBI. Commenters asserted that neither the March 19 rule nor the exclusion request and objection forms indicate the procedures for submitting confidential business information. Commenters asserted that the Department has much experience (in trade remedy proceedings) in protecting CBI through the use of ''protective orders.'' Commenters requested the Department establish a similar process where parties may submit a ''confidential'' version of an exclusion request and a separate redacted ''public'' version which is released to the public at large. Commenters asserted that they believe that concerns over CBI may depress the number of companies willing to submit objections to exclusions. Commenters requested that the Department clarify the following issues related to CBI and the exclusion and objection process: Is an application complete if CBI is not provided, such as when a company determines that certain fields on an exclusion or objection form require disclosing proprietary information? If the box for CBI is checked, how long does the submitter have to submit the CBI and how long will it take for the completed application to be posted in *regulations.gov*? Does the 25 page limit of the petition include CBI? If the Department accepts group submissions, how can individual members protect their CBI? Other commenters urged the Department to allow filing of CBI in a way that protects that information from public disclosure but allows the Department to use it in a balanced manner across all requesters.

Commenters raised concerns over fairness for the current process of dealing with CBI. The lack of a process for dealing with proprietary information means that when the Department posts an exclusion request or an objection with CBI in the supplementary material, there is no way for other parties to respond. For example, a commenter notes that objections from U.S. Steel have been posted, but certain information has not been provided, such as capacity and capacity utilization. Although the Department may reach out relating to such information, the requester will never know what the objector said about its capacity to supply the requested demand and, therefore, will never be able to rebut the issue. The commenter argues that the current system penalizes requesters whose requests may not be posted (or at a minimum may be delayed in being posted, thereby forestalling retroactive relief) if the exclusion request form is not fully filled out, yet an objector is able to unilaterally withhold data and delay consideration of the exclusion request. The commenter requests that such an objection be rejected as incomplete.

BIS response: The Department published the regulations establishing the exclusion request/objection process in the March 19 rule. The Department has made clear in the regulations that parties applying for an exclusion and those objecting to the exclusion requests should include only public information in their full submissions. The exclusion and objection forms include an area where parties can indicate if they have additional CBI that they believe is relevant to their submission, although the Department believes that the information requested in the forms, in most cases, should suffice to allow a determination to grant or deny. However, based on the number of comments received on this issue regarding concerns over protecting CBI, the Department understands that additional changes and clarifications need to be made. Today's rule is revising paragraph (b)(5) to clarify the procedures for public disclosure and the information protected from public disclosure, including specifying a process to be followed when making submissions that are not intended for public release.

Comment (f)(3)(ii): Exclusion/objection forms need to be scrubbed to eliminate questions that require disclosing CBI. Commenters asserted that much of the information the Department has requested in conjunction with objections to exclusion requests includes CBI, information that, if shared publicly, could raise intellectual property/trade secret, anti-trust, or customer-relation concerns. For example, a requester must provide chemical composition, dimensions, strength, toughness, ductility, magnetic permeability, surface finish, coatings, along with other technical data and must also provide the names of the suppliers used, as well as the quantity predicted to be needed from each supplier. An objector must provide capacity and capacity utilization data; production information, including production capacity and utilization data; technical specifications, including the detailed chemical composition; production/shipping timelines; and internal technical data to refute assertions made in the request. Commenters believed that this level of detail is unnecessary and burdensome for the purpose of this exercise and may require disclosure of proprietary information belonging not only to a requester or objector, but to a requester's supplier. Commenters were also concerned that the exclusion request form requires companies to provide support regarding their inability to source domestic suppliers which will often involve revealing non-public terms of sale discussions and available sources of supply. One commenter asserted that sharing such extensive information plays into the hands of foreign powers or other competitors, allowing them to easily amass a large amount of industrial information on the U.S.

BIS response: The Department designed both the steel and aluminum exclusion request and objection forms with input from a variety of U.S. Government and industry experts. The goal was to create a balance of information requested from the exclusion requester to allow a U.S. manufacturer of steel or aluminum to file a credible objection to that specific exclusion request. The Department is requesting that parties applying for an exclusion and those objecting to an exclusion request include only public information in their full submissions. The exclusions, objections, rebuttal, and surrebuttal forms include a section where parties can indicate if they have additional CBI that is relevant to their exclusion request or their objection. Metallurgical composition is not proprietary information. The Department does not ask for steel or

aluminum process information, which can be CBI. In almost every case, only public information is needed for a valid exclusion request and a valid objection. In the event that the Department determines that additional information of a proprietary nature is necessary to make a determination on an exclusion request, the Department will provide instructions to the affected parties and will protect this information from public disclosure. However, to address concerns in this area, today's rule is revising paragraph (b)(5) to add more provisions to clarify the procedures for public disclosure and the information protected from public disclosure, including specifying a process to be followed when making submissions not intended for public release as part of a request, objection, rebuttal, or surrebuttal.

Expand and Clarify What Parties Can Apply for Exclusions

Comment (f)(4)(i): Trade associations should be able to petition on behalf of industries. Commenters felt strongly that the exclusion process should be revised to allow for trade associations to file for a broader exclusion on behalf of similarly situated member importers. They asserted that this would cut down on the number of requests that the Department is receiving, making the process more efficient and less costly, and would benefit small business importers in particular. In cases where several companies would like to make the same exclusion request, such as when the imported product at issue is not produced in the U.S. and is used by multiple domestic manufacturers, they argued that it is very inefficient to ask each of the companies to file the same request. Commenters asserted that the supplements contemplate broader exclusions, which they thought would be a natural place for trade associations to play a beneficial role in the exclusion process, but the supplements provide no guidance on how to apply for such broader exclusions.

BIS response: Allowing trade associations to file requests will not make the process more efficient, because the information required for an exclusion request is unique to each individual or company applying for an exclusion. The individuals or organizations applying for an exclusion request must specify the precise steel or aluminum product, including whether a product is customized. Because the primary consideration in whether to grant or deny an exclusion request is evidence that the requested product is or readily can be made in sufficient quantity and quality by domestic manufacturers, it is essential that the precise product being sought be clearly identified, along with the quantity needed and the timeframe for delivery. This will necessarily be different for each individual or organization. A credible objection must state that the objector can produce the product being sought. Absent this specificity, it would be impossible for domestic manufacturers to determine whether or not they can produce the product. The need for specificity is why each individual or company needs to respond, as opposed to trade associations. The Secretary does have the discretion to make broader exclusions available to all importers if the Department finds the circumstances warrant, and the Secretary will exercise this discretion as appropriate.

Comment (f)(4)(ii): Confirm that contractors and distributors that supply others with steel may apply for exclusion requests. A commenter requested the Department confirm that the supplements added with the March 19 rule allow the Department to accept petitions from contractors and distributors that supply others with steel, as eligible individuals or organizations using steel in business activities. The commenter argued that it is important to accept such petitions, as these entities work with numerous clients and customers that need to procure steel needs for various oil and natural gas projects.

BIS response: The Department confirms that contractors and distributors in the U.S. that supply others with steel or aluminum in the U.S. may apply for exclusion requests to supply those U.S. customers.

Comment (f)(4)(iii): The Department should accept petitions from entities that are not the importer of record for products. Commenters requested the Department accept petitions from entities that are not importers of record, so that companies can submit petitions on behalf of their ultimate procurement needs that may be imported by other entities within their supply chains.

BIS response: The Department does not agree. The individual or organization that will be identified as the beneficiary of the exclusion request must also be the importer of record.

Comment (f)(4)(iv): U.S. importers of record—even though they may be foreign entities, should be able to submit exclusion requests. One commenter asserted that all of its European production exported to the United States is sold before that export. In such cases, this commenter believes the importers of record are more likely to have the information that would be useful to fill in the exclusion request forms as they are the ones involved with the actual act of importing and the ones responsible for tariffs. The commenter requests the Department allow such parties to apply for exclusions.

BIS response: The Department confirms that a U.S. importer of record, including foreign entities located in the United States, may submit an exclusion request, provided they meet the other applicable criteria. The Department is aware that in certain cases a U.S. importer of record may be a foreign entity not located in the United States and those U.S. importers of record would not be able to meet the other applicable criteria—meaning an exclusion request would not be granted to such a foreign entity. The supplements added in the March 19 rule already permitted these types of parties to apply for exclusions, so no regulatory changes are needed.

Comment (f)(4)(v): Allow affected foreign producers and exporters of steel and aluminum to apply for exclusions. One commenter asserted that foreign producers and/or exporters of steel and aluminum often have the most detailed information about the merchandise for which an exclusion is requested, including chemistry, standards, dimensions, availability, and quantities. This commenter asserted that foreign producers and exporters of steel and aluminum must often be consulted for this information by U.S. importers and end-users. The commenter requested the Department allow such foreign producers and exporters to submit exclusion requests on their own behalf to streamline the process. They asserted that doing so would be consistent with the Section 201 exclusion process, which allowed foreign producers to seek exclusions.

BIS response: Making this change would not be consistent with the Proclamations or the intent of the two supplements added in the March 19 rule.

Comment (f)(4)(vi): Permit and clarify flexibility in certain situations particular to the motor vehicle industry in the designation of the proper party to make the exclusion request. A major trade association representing the auto industry asserted that there are certain situations that may be unique to the motor vehicle industry. The first example provided by the commenter is a ''resale'' program, in which the purchaser and user of the materials are not the same company. The vehicle manufacturer will purchase steel directly from the foreign steel company but will then resell the steel to a parts supplier. That supplier will then use the

steel in the production of a part to be sold to the vehicle manufacturer who originally purchased the materials. In the second example provided by the commenter, the vehicle manufacturer will instruct the parts supplier to purchase specific materials from a foreign producer. The properties or chemical makeup of the materials being purchased and used may be unknown to the parts supplier. This commenter requested the Department clarify the application process and provide flexibility allowing either the parts supplier or the vehicle manufacturer to make the exclusion request.

BIS response: The Department clarifies that either the parts supplier or the vehicle manufacturer in these scenarios may submit an exclusion request. Individuals or organizations that apply for exclusion requests must use steel or aluminum articles in business activities in the United States, such as construction, manufacturing, or ''supplying these articles to users.'' In this scenario, where the ''vehicle manufacturer will purchase steel directly from the foreign steel company but will then resell the steel to a parts supplier,'' the Department would consider the vehicle manufacturer to be a party supplying these articles to users and therefore could apply for an exclusion request.

Tighten Exclusion Approval Criteria To Ensure That Intent and Scope of Exclusion Process Is Not Circumvented

Comment (f)(5)(i): Clarify approval criteria for exclusions to specify requester must show that neither product nor an equivalent or substitutable product is produced in the U.S. A commenter requested that a product-specific exclusion be granted only upon a showing that neither the product nor an equivalent or substitutable product is produced in the United States.

BIS response: The Department evaluates whether the steel or aluminum is ''produced in the United States in a satisfactory quality'' for consistency with the Proclamations. The exclusion review criteria ''not produced in the United States in a satisfactory quality'' does not mean the aluminum or steel needs to be identical, but it does need to be equivalent as a ''substitutable product.'' Today's rule adds a new paragraph (c)(6)(ii) to further define this criterion, including adding some application examples to assist the public's understanding and make the review process more transparent.

Comment (f)(5)(ii): Clarify approval criteria for exclusions to specify that simply avoiding duties is not sufficient basis for approval. A commenter requested clarification that product-specific exclusions will not be granted simply to allow a submitter to avoid paying the additional duty on a product that is commonly produced in several markets, including markets that are exempt from the duties. This commenter believes allowing exclusions on such grounds would severely undermine the purpose of the duties.

BIS response: The Department confirms that, based on the criteria of the Proclamations and the two supplements added in the March 19 rule, simply wanting to avoid the duties is not sufficient basis for approval.

Comment (f)(5)(iii): Definition of ''immediately'' is too rigid and should be lengthened. Commenters requested lengthening the period for what should constitute ''immediately.'' A commenter asserted that in several instances, the exclusion request form asks whether a product could be produced ''immediately,'' which is defined as ''within eight weeks.'' Unless an article is currently being manufactured, an eight-week window to begin production is unreasonable. Beginning production ''immediately'' should vary based on the level of processing and finishing involved (*i.e.,* semi-finished products should have the shortest time period while downstream finished products should have longer time periods, including some much longer than 8 weeks) as well as the volume requested (with larger volumes requiring more time). The commenter requested that if a specific time period is used in the forms and the Department's analysis for ''immediately,'' then it should be ''within twelve to sixteen weeks.''

BIS response: The Department disagrees. The definition of ''immediately'' is appropriate and requires no lengthening or shortening in order to meet the purposes of the exclusion and objection process and for consistency with the Proclamations. The Department emphasizes that the supplements added in the March 19 rule used the word ''generally'' to qualify the one year validity periods for approved exclusions. Because of the large number of comments received on the issue of the appropriate validity date and the need to improve the transparency of the decision making process and alert submitters of exclusion requests/objections/rebuttals/surrebuttals to the types of information that may warrant a longer or shorter validity period, today's rule is adding a new paragraph (h)(2)(iv) to provide more details on validity periods, including application examples.

Comment (f)(5)(iv): Clarify approval criteria for exclusions to specify that evidence of substitutable products is sufficient to deny. A commenter asserted the final rule should clarify that exclusion requests will be denied where a member of the domestic industry opposes the request and demonstrates that it produces a product with ''similar form, fit, function, and performance'' to the requested product.

BIS response: The Department agrees, provided ''similar form, fit, function, and performance'' being referenced by the commenter meets the definition of ''substitute product'' that is being added to the two supplements in today's rule and can be provided in the requisite quantity and time frame to meet the needs of the requester. Today's rule adds a new paragraph (c)(6)(ii) to provide a definition for the criterion ''not produced in the United States in a satisfactory quality.'' The new paragraph specifies that the exclusion review criterion ''not produced in the United States in a satisfactory quality'' does not mean the steel or aluminum needs to be identical, but it does need to be equivalent as a substitute product. This new paragraph will also include application examples to assist the public's understanding of ''substitute product.''

Comment (f)(5)(v): Specify that approved exclusions cannot be assigned for other companies to use. A commenter requested the Department to clarify that not only is an exclusion limited to the party that requested it, there can be no assignment or transfer of the exclusion once granted. Allowing the assignment of exclusions would allow importers to circumvent the duties by accumulating the ability to import under product-specific exclusions.

BIS response: The Department agrees and clarifies here that the use of an approved exclusion may not be assigned to another entity.

Comment (f)(5)(vi): Specify that all product needs to be imported within one year of the approved exclusion. A commenter requested further narrowing and clarifying the scope of exclusions to specify that goods must be imported into the United States prior to the end of the one-year (or any other period) for which the exclusion is granted.

BIS response: The Department agrees and confirms here that all products in an exclusion approved request must be imported within the validity period. A one-year validity period is standard. The Department communicates with CBP once an exclusion request is to be approved to provide the validity date. The Presidential Proclamations

establish the requirements for obtaining retroactive refunds from duties paid prior to the validity period of a granted exclusion.

Broaden Exclusion Criteria (To Make It Easier To Get Approved) To Better Achieve the Purpose of the Exclusion Process

Commenters that had concerns with the exclusion process made suggestions for broadening the exclusion criteria to make it easier to get approval as discussed in the next series of comments.

Comment (f)(6)(i): Department should not consider the availability of ''substitute steel products'' in assessing requests. In contrast to the comments above that advocated being more permissive to steel and aluminum manufacturers in the U.S., the commenter here requested that the Department not allow supposed product ''substitutes'' to form the basis of rejecting an exclusion request, arguing that doing so would be contrary to the Proclamations. The same commenter asserted that neither the Proclamations nor the text of the March 19 rule mention either ''substitute'' or ''near-equivalent'' products, so inclusion of this as part of the criteria is not appropriate. The same commenter asserted that neither ''substitute steel product'' nor ''near-equivalent steel product'' is defined, creating uncertainty as to what these fields mean and that the Department is in no position to make that determination on a factual or technical basis. The commenter noted that if a customer requires certification of the product, just being similar is not good enough to immediately replace a current supplier. The commenter also noted that manufacturers have production lines and operations created for exact technical properties and cannot just do with any raw material that is ''similar.'' The commenter also argued that if a manufacturer has a preference for products it uses as raw materials, it is wholly inappropriate for the government to force it to use another kind of product. A company's operations and equipment may need to change in order to use a ''substitute steel product'' and its workforce may not have the experience in dealing with a different kind of steel. Finally, the commenter asserted that even if the Department believes that substitute steel products should be considered, it must clarify how it is using that factor in its analysis and specify what factors are being considered as the exclusion request form does not fully address these issues. The commenter asserted that a company should be afforded a full opportunity to explain why it cannot use such ''substitute'' or ''near-equivalent'' products, and any problems that could arise from the use of such products.

BIS response: The Department disagrees with the concerns raised about considering substitute products. The Department understands the points raised about the importance of adding greater specificity for the criterion on what may constitute an equivalent product that is of satisfactory quality and how the criterion is used in the review of exclusion requests and objections. As noted above in response to comment (f)(5)(iv), today's rule is adding a new paragraph (c)(6)(ii) to provide a definition for the criterion ''not produced in the United States in a satisfactory quality,'' defining the term ''substitute product,'' and including application examples. The Department is also adding a rebuttal and surrebuttal process that will allow an exclusion requester to identify reasons why an alleged substitute product is not in fact a substitute. These changes are responsive to these types of comments.

Comment (f)(6)(ii): Definition of ''immediately'' should be kept the same or shortened. One commenter asserted that as the exclusions currently only last one year, the Department should not recognize objections unless they can produce the item at that point. If a domestic steel manufacturer is able to produce the good in the future, it would be then more appropriate to object to the following year's request.

BIS response: The Department agrees that the definition should remain the same, but disagrees that the definition needs to be shortened. The definition of ''immediately'' is appropriate and requires no lengthening or shortening in order to meet the purpose of the exclusion and objection process and for consistency with the Proclamations. As referenced above, today's rule is adding paragraph (h)(2)(iv) to provide more transparency and guidance to submitters on how the Department will determine the appropriate validity date for approved exclusions. Today's rule also is adding a rebuttal and surrebuttal process discussed in regulatory changes below that will be responsive to these types of comments and help to ensure the Department has all the relevant information needed to determine the appropriate validity period on a fair and consistent basis.

Comment (f)(6)(iii): Add metrics for determining U.S. domestic capacity to meet demand. Commenters raised concerns that the March 19 rule does not identify the criteria the Department will apply in determining whether an article is produced in the United States in a sufficient and reasonably available amount, which raises the following questions:

Comment (f)(6)(iii)(A): To what extent will the Department take into account quantities demanded by users of the article other than the applicant itself?

BIS response: The Department, including product experts from ITA, will review requests based on the information provided and representations made by the objector. Today's rule is adding a rebuttal and surrebuttal process where an individual or organization that submitted an exclusion request that received an objection could include in their rebuttal any concerns they had about an objector overcommitting the steel or aluminum manufacturer's current or future capacity. This rebuttal process will be included in a new paragraph (f) in both supplements.

Comment (f)(6)(iii)(B): To what extent will the Department verify the potential for U.S. manufacturers to increase capacity and/or capacity utilization?

BIS response: If the objector is asserting that it is not currently producing the steel identified in an exclusion request but can produce the steel or aluminum within eight weeks, the objector must identify how it will be able to start production within eight weeks. This requirement includes specifying in writing to the Department as part of an objection the timeline the objector anticipates to start or restart production of the steel or aluminum included in the exclusion request to which the manufacturer is objecting. Today's rule revises paragraph (d)(4) to add more specificity on these requirements for the substance of objections to submitted exclusion requests.

Comment (f)(6)(iii)(C): How does the Department intend to deal with multiple exclusion requests where each individual request might be fulfilled from U.S. domestic parties, but the total of such requests exceeds current U.S. capacity?

BIS response: The Department, including product experts from ITA, will be evaluating these factors as part of the review process when objections are received. The new rebuttal process this rule is adding to a new paragraph (f), as well as the surrebuttal process being added to paragraph (g), in each supplement, provides an additional way for the Department to receive input to help identify these types of trends that the Department agrees should be taken into account for an efficient and effective exclusion process.

Comment (f)(6)(iii)(D): What is the timeframe that the Department will use to determine if a U.S. domestic party is capable of producing the specific product? Is it within the period of the particular exclusion request (*i.e.,* one year)?

BIS response: The steel or aluminum product must be available ''immediately.'' ''Immediately'' means whether a product is currently being produced or could be produced and delivered ''within eight weeks'' in the amount needed for the business activities described in the exclusion request. Today's rule is adding a definition of ''immediately'' to paragraph (c)(6)(i) and application examples to assist the public's understanding.

Comment (f)(6)(iii)(E): Will the Department take into account product prices and the conflicting impacts of such prices on U.S. domestic steel producers and users in determining whether there could be sufficient domestic capacity?

BIS response: The Department will not consider this criterion. The Department only considers criteria taken from the Proclamations which are included in the review criteria of the two supplements and on the exclusion request and objection forms.

Comment (f)(6)(iii)(F): One commenter argued that the Department should apply reasonable standards to the review of exclusion requests and objections, which the commenter identified as not allowing unsupported assertions of production capacity and, after a *prima facie* case for an exclusion request is made (accepted as correct until proven otherwise), affording that request a presumption of approval.

BIS response: The Department agrees that it must hold requesters and objectors to a high and consistent review standard and will continue to do so with the rebuttals and surrebuttals being added with today's rule. However, the Department wants to emphasize that BIS and ITA do not prejudge or give greater weight to any particular submission, whether an exclusion request, an objection, a rebuttal, or a surrebuttal. The process is created to allow each party involved in the process to provide relevant information, including that specified on the forms by the Department, and any other information that the party involved in the process believes is relevant, in order to allow the Department to make a fair, impartial and consistent determination whether an exclusion request should be approved or denied.

Comment (f)(6)(iv): Broaden criterion for determining whether a U.S. steel or aluminum user has tried to source from U.S. suppliers to be longer than two years. One commenter requested that the Department broadly take into consideration requesters' attempts to source a product historically beyond the most recent two-year period. The commenter argued that if a requester has tried repeatedly over the years or is familiar enough with the market, it may not have regularly reached out to domestic suppliers in the most recent years. The commenter believed it would be unfair to expect a company to check annually whether or not a supplier has changed its production capabilities.

BIS response: The Department disagrees. The U.S. Government anticipates and is already seeing a resurgence in steel and aluminum production in the United States with new facilities opening and new capacity being actively planned. If an individual or organization has not looked to buy steel or aluminum manufactured in the United States, it would be well worth their effort to do so before applying for an exclusion request. This will also save the requester time, as well that of potential objectors and the Department, because the potential requester may find in conducting a search that steel or aluminum not available in the U.S. market before may now or soon be available in the United States.

Comment (f)(6)(v): Add metrics to determine sufficient quality. Commenters asserted that the Department should define and release metrics that will be used to determine whether U.S. steel manufacturers have the capacity to meet demand in order to provide greater clarity on how the Department will make its determination regarding production in the United States in a satisfactory quality. One commenter requested that objectors be required to show that they have the ability to produce steel goods that can actually be used by the supplier in the same way as the overseas product it had previously sourced. In the commenter's view, that would require a showing that the product is of the same quality and can be certified if necessary for the particular item and that it will be committed to this specific use if requested. Another commenter was concerned that it is easy for manufacturers to assert that they ought to be able to make a certain product but, in reality, it may turn out to be difficult and unfeasible. Still another commenter was concerned that for many steel items there is a certification process which can take years and require demonstrated consistency in the product, thereby pushing off by two to three years actual production by a replacement U.S. steel supplier, assuming the would-be supplier is able to pass the certification. The commenters argued that if the Department does not stringently assess U.S. steel producers' claims and consider extrinsic factors that affect available supply, it could create a situation where domestic steel users will have no usable steel supplies, driving them out of business.

BIS response: The Department agrees with some of the concerns raised and, as noted above, is adding a new paragraph (c)(6)(ii) to clarify issues regarding quality and provide the public with a better understanding of the application of the criterion. In addition, the Department notes that today's rule also is adding a rebuttal and surrebuttal process under paragraphs (f) and (g) that will allow requesters to provide a rebuttal if they believe an objector cannot meet their quality standards or if some other aspect of the objection warrants a response, as well as an opportunity for the objector receiving a rebuttal to submit a surrebuttal if it believes that is warranted.

Comment (f)(6)(vi): Allow companies to seek product exclusions on basis of internal quality standards. A commenter requested the Department specify how it will determine whether, in the case of highly specialized products, a domestic product's quality/standard is equivalent to the quality/standard of the foreign import. The same commenter requested the Department explain the weight that it will give to a user's stated needs regarding product quality in making its determination whether to grant an exclusion request. Commenters requested that the Department define the minimum quality thresholds that U.S. steel manufacturers must meet. In particular, commenters requested that the Department approve exclusions based on comparative performance standards. For products available from both domestic and international sources, commenters asserted that companies should be allowed to submit data identifying the companies' performance needs and comparing the performance of the domestic product vs. the international product; identifying specific products needed to meet a specific performance standard determined by the user, who is in the best position to identify the product quality requirements for any given project; and establishing the existence of a company's corporate approved Quality Assurance standards that exceed regulatory or industry approved standards.

BIS response: The purpose of the exclusion process is to protect

downstream manufacturers that rely on products not produced by U.S. domestic industry at this time. The guiding principle is that, if U.S. domestic industry does not or will not produce a given steel or aluminum product of the quality needed by users in the United States, companies that rely on those products will not pay duties on them. Today's rule adds paragraph (c)(6), including paragraph (c)(6)(ii), to respond to these types of comments concerned with ensuring that the exclusion review process adequately takes into account the quality needs of requesters.

Comment (f)(6)(vii): The Department should only deny an exclusion request if there is a domestic metals producer that can provide the same product to customer specifications in the time line needed by the requester. A commenter asserted that domestic capacity to make a product is not the same thing as the current ability to produce a needed product within a viable lead time to meet customer demands. The commenter was concerned that the Department not reject product exclusion requests based solely on a domestic producer's claim of capacity to make the product, noting that many of the objections posted on *regulations.gov*, have included phrases like ''Although we don't make this product. . .'' and ''We have the capacity to make this product. . .'' The commenter emphasized that a manufacturer that needs steel or aluminum to make its product needs it available in the U.S. marketplace within reasonable lead times and to specific specifications to meet customer demands.

BIS response: The Department agrees on the point generally, but also believes that a reasonable standard needs to be applied to balance the needs of requesters to obtain steel and aluminum in a timely fashion with providing an opportunity for U.S. steel and aluminum manufacturers to expand capacity when that can be done ''immediately''—meaning within eight weeks. This criterion is consistent with the intent of the Proclamations and the criteria of the two supplements added in the March 19 rule. The final rule published today is adding text to paragraph (d)(4), as well as adding new paragraphs (c)(6)(i) and (ii) to the supplements, to provide additional context for what constitutes sufficient quality and application examples for this criterion.

Comment (f)(6)(viii): Establish process to consider existing contracts and supplier agreements when reviewing exclusion requests. A commenter requested that the Department establish a process to evaluate existing contracts and supplier agreements when assessing exclusion requests in order to avoid undue disruption to the operations of U.S. companies that are already relying on qualified suppliers of needed inputs.

BIS response: The Department is not authorized by the Proclamations to grant product exclusions on the basis of existing contracts, except as described in the Presidential Proclamation 9777 of August 29, 2018 under clause 2 that requires the Secretary to grant exclusions from quantitative limitations. The August 29 Proclamation 9777 created the separate exclusion process to address concerns such as these for certain existing contracts that include steel articles. Other than clause 2, exclusions will only be granted if an article is not produced in the United States in a sufficient and reasonably available amount, is not produced in the United States in a satisfactory quality, or for specific national security considerations.

Comment (f)(6)(ix): Add metrics to determine ''national security considerations''—current criterion is too narrow for what should be considered national security. Commenters requested that national security considerations be defined more precisely and more broadly to take into account other economic considerations that are important to U.S. national security. A commenter requested that the Department must make ''national security considerations'' explicitly clear to requesters. It asserted that, if the Department produces exclusion guidance without defining this term or with a vague definition, requesters will have great difficulty in providing the necessary information in their requests and such vagueness could lead the Department to deny exclusion requests in an arbitrary and capricious manner. Smaller companies, the commenter remarked, would be at a severe disadvantage in responding to this criterion. Another commenter was concerned that national security was being defined too narrowly because the exclusion request form identifies U.S. national security requirements as ''critical infrastructure or national defense systems.'' The commenter was concerned that this form implies that these two criteria alone are the only national security justifications that may be made for a product exclusion request. The commenter requested that the Department consider a broader definition of ''national security'' for determining exclusion requests that mirrors the language of 19 U.S.C. Sec. 1862(d), which states that ''. . . [I]n the administration of this section, the Secretary and the President shall further recognize the close relation of the economic welfare of the Nation to our national security . . .'' A trade association commenter for the oil and gas industry asserted that they expect the Department to recognize the importance the oil and natural gas industry and to consider petitions for relief from the U.S. oil and natural gas industry in the spirit of President Trump's March 28, 2017 Executive Order (E.O.) entitled ''Promoting Energy Independence and Economic Growth.'' That E.O. states that ''[I]t is in the national interest to . . . avoid regulatory burdens that unnecessarily encumber energy production, constrain economic growth, and prevent job creation'' and that regulatory actions that ''unduly burden the development of domestic energy resources'' be suspended, revised, or rescinded.

BIS response: Protecting U.S. national security is why the Section 232 process exists. The President has instructed the Department to grant exclusions from the tariff for specific national security considerations, and the Department, as well as the rest of the U.S. Government, must exercise some reasonable discretion in determining whether that standard is met when evaluating exclusion requests, objections, and the rebuttals and surrebuttals being added with the publication of today's rule. However, the Department also understands the importance of transparency in applying the national security review criterion in a fair and consistent way. The Department in today's rule is adding a new paragraph (c)(6)(iii) to each of the supplements to provide additional context for how the Department will apply the criterion ''*for specific national security considerations.*'' Similar to the other new paragraphs today's rule is adding to better define the criteria used to evaluate exclusion requests, objections, and the new rebuttals and surrebuttals process, examples are provided to assist the public in better understanding the application of the national security criterion.

Comment (f)(6)(x): Establish processes that evaluate the risks to approving an exclusion request, but also the risks of not approving. A commenter requested that the Department, in evaluating exclusion requests, consider the risks and potential effects of granting as well as not granting a requested exclusion on U.S. businesses, including downstream users of products with little or no national security applications.

BIS response: The Department considers the criteria of the Proclamations in deciding whether or

not to grant an exclusion request and is committed to applying those criteria in a fair and objective way.

Comment (f)(7): Separate requests for like products should be eliminated. There was overwhelming support by a large number of the commenters for the rule to be revised to allow exclusion requests to cover ranges or dimensions within the same HTSUS code and thereby streamline the process for both importers and the Department. Commenters asserted that not only do current limitations unduly burden the requester by requiring duplicative requests, they also burden objectors who must respond individually to each request and the Department that must consider each request. The commenters believe that substantively the Department could still adequately track what was being approved in exclusions without retaining this unnecessary restriction. Another commenter raised concerns that the current process increases the possibility of inconsistent treatment for individual requests that are only different based on an insignificant dimension. Commenters recommended the Department clarify that a single exclusion form may be submitted for similar products and allow reasonable ranging of chemistry and dimensions (including width, height, length, diameter, and thickness) based upon standard industry practice.

BIS response: BIS designed both the steel and aluminum exclusion and objection forms with input from a variety of U.S. Government and industry experts. The goal was to obtain sufficient information from the exclusion filer to allow a U.S. manufacturer of steel or aluminum to file a credible objection to that specific exclusion. To be credible, the objection must state that the objector can produce the specific product for which the exclusion is requested within the time frame covered by the exclusion request. The forms allow for a product that may be within a narrow range. Today's rule is adding two sentences to paragraph (c)(2) to clarify these types of issues.

Define Process for Obtaining ''Broad Exclusions'' and Use This Process To Make the Exclusion Process More Effective

Comment (f)(8)(i): Provide details on how to apply for broad exclusions. Commenters asserted that the statement ''unless Department approves a broader application of the product-based exclusion request to apply to additional importers'' clearly contemplates that the Department is considering approving broader exclusion requests that can apply to multiple importers and that the Department should provide guidance on a process for such exclusions. Many commenters requested that the Department explain the circumstances under which BIS will approve a broader product exclusion and how U.S. companies may request such an exclusion. Commenters believe these broader exclusions would allow steel products to be reviewed in a broader fashion and provide the Department with an opportunity to more accurately assess domestic availability in relation to all the requests relating to that particular type of steel. Some commenters, to further support their position, asserted that the Department and the USTR relied on such a product-based exclusion process as part of the Section 201 steel safeguard proceedings more than a decade ago.

BIS response: The March 19 rule was not clear enough on this issue. Identifying, evaluating, and approving broad product-based exclusions is done solely by the Department. Individuals and companies do play a role in this process, but that role is limited to submitting exclusion requests, objections, and the rebuttals and surrebuttals being added with the publication of today's rule. The Department is responsible for identifying market trends in specific exclusion requests that may warrant approving broad product-based exclusions. In identifying these market trends, the Department will place particular importance on the objections being provided or lack thereof. The Department understands that this is a more time intensive process for all parties involved, but it ensures that the granting of broad based product exclusions is done in a measured and deliberative way so as not to undermine the Proclamations and their objective of protecting critical U.S. national security interests.

Comment (f)(8)(ii): Product exclusions must not be company-specific and should apply broadly to all products from all sources meeting the exclusion requirements. Some commenters believe product exclusions should be broadly considered and granted on a product-specific basis, regardless of source, manufacturer, country-of-origin, or supply chain. They argued that the Department should use an exclusion process similar to the one used during the Section 201 safeguard measures on imported steel in 2002 in which exclusion requests were not tied to specific supply chains, manufacturers, or countries. The commenters asserted that a company-specific exclusion scheme is unduly restrictive, arbitrary, and ignores commercial realities. They argued that, under the current system, the Department may grant an exclusion for a specific product for some companies/end-users but unreasonably deny it for others for the identical product, a result that they contend is arbitrary, particularly if the exemption is based upon ''short supply'' considerations or a general lack of U.S. availability. Commenters also note that the current system increases the burden on requesters and the Department and creates needless enforcement and compliance issues at the border, as suppliers, importers, and end-users must determine how to monitor, segregate, track, and report all such supply chain details to CBP at the time of entry. Therefore, these commenters believe a ''product'' exclusion should be granted for ''the product'' itself, regardless of supplier or country of origin.

BIS response: The Department does not agree. Parties applying for exclusions are required to identify the source countries for the single product for which the exclusion is requested, the annual quantity to be supplied, and the name of the current manufacturer(s)/supplier(s), and the country of the manufacturer(s)/supplier(s). The exclusion request, if granted, will only pertain to the identified supplier(s) listed in the exclusion request form and the specific country of origin identified by the requester. The Secretary has the discretion to make broader exclusions available to all importers if the Department finds the circumstances warrant it, and the Secretary will exercise this discretion as appropriate, but only after exclusion request in the ordinary course.

Comment (f)(8)(iii): If the Department determines a product is not available in U.S., then broader product (categorical) exclusion available to all should be approved. Commenters requested that if a product is not made in the United States or is not made in sufficient quantity or quality, the Department grant a broader product exclusion (not just on company by company, product by product basis). Commenters requested that any domestic industry objections to such a categorical exclusions be accompanied by specific evidence demonstrating when domestic capacity is projected to come on line. One commenter requested that the Department allocate resources to accelerate the identification of products where there is currently no (or very limited) U.S. production and none is likely to be available before a to-be-determined future date. Such action would ease the burden on users of these types of products. Moreover, once the

review is completed, the commenter argued that the Department would be able to focus its resources on analyzing exclusion requests where there is substantial U.S. production or where there is expected to be substantial U.S. production in the foreseeable future.

BIS response: As asserted above, the individuals or organizations applying for an exclusion must specify the precise steel or aluminum product, including whether a product is customized. Parties applying for exclusions are required to identify the source countries for the single product for which the exclusion is requested, the annual quantity to be supplied, the name of the current manufacturer(s)/supplier(s), and the country of the manufacturer(s)/supplier(s). The exclusion request, if granted, will only pertain to the identified supplier(s) listed in the exclusion request form and the specific country of origin identified by the requester. The Secretary does have the discretion to make broader exclusions available to all importers if the Department finds the circumstances warrant it, and the Secretary will exercise this discretion as appropriate, but only after an exclusion request in the ordinary course.

Comment (f)(9): Provide streamlined process whereby a second company seeking to use an exclusion already granted to another U.S. company can quickly obtain the right to use the same type of product exclusion. Commenters thought requiring that each exclusion granted be available only to the company that requested it is inefficient and time-consuming. Commenters recommended the Department provide a streamlined process whereby a second company seeking to use an exclusion already granted to a U.S. company can quickly obtain the right to use the same product exclusion.

BIS response: The Department will allow exclusion requesters to reference a previously approved exclusion, but the new requester must still fill out the exclusion form and their new exclusion request will be evaluated based on the information included in their exclusion request. New requesters may include a copy of the original approved exclusion request, but simply referencing the approval identifier of the previous approved exclusion is sufficient and is what the Department recommends in such scenarios. The existence of a preexisting approved exclusion request for another individual or company would not be determinative for the review of a new exclusion request. Each request is reviewed on a case-by-case basis, and potential objectors will have an opportunity to review the new exclusion request, to object, and if they submitted an exclusion request or objection, to participate in the rebuttals/surrebuttals process created with the publication of today's rule. This is important because a domestic steel or aluminum manufacturer that may not have had the capacity to produce when reviewing the previously approved exclusion request may be able to produce ''immediately'' at the time a later exclusion request is filed.

Country of Origin (Various Recommendations for How It Should Be Used in the Exclusion Process)

Comment (f)(10)(i): Exclusions should not be country specific. One commenter recommended the Department allow companies granted product exclusions to import the product tariff-free from any country, given that the basis of the exclusion request is that the U.S. company cannot source the product domestically.

BIS response: As noted above, the Department, in consultation with other Federal agencies, has the authority to grant exclusions from the additional duties imposed in the Proclamations for products that are not produced in sufficient quantity or quality in the United States or for specific national security considerations. Parties applying for exclusions are required to identify the source countries for the single product for which the exclusion is requested, the annual quantity to be supplied, the name of the current manufacturer(s)/supplier(s), and the country of the manufacturer(s)/supplier(s). The exclusion request, if granted, will only pertain to the identified supplier(s) listed in the exclusion request form and the specific country of origin identified by the requester. The Secretary does have the discretion to make broader exclusions available to importers if the Department finds the circumstances warrant it, and the Secretary will exercise this discretion as appropriate, but only after an exclusion request in the ordinary course.

Comment (f)(10)(ii): Department should consider country of origin when assessing a request. A commenter recommended that the Department consider the country of origin, and prioritize the requests of those countries that are national security allies, such as members of the European Union. In the commenter's view, such an approach would be in consonance with the national security aims of the tariffs.

BIS response: The review criteria based on the Proclamations and the two supplements added in the March 19 rule do not take into account the country of origin, so it would be inappropriate for the Department to make the proposed change. However, as described below, today's rule does add a new Note to paragraph (c)(2) to both supplements to allow for product exclusions for countries subject to country-based quantitative limitations.

Validity Periods for Exclusions

Comment (f)(11)(i): Concerns that one year is insufficient and arbitrary. Commenters thought that granting of the exclusion for one year is arbitrary. A commenter asked if the product is not available domestically now, why the Department believes it will be available next year, or the year after, or ever. Commenters requested that instead of forcing importing manufacturers to go through this arduous exclusion petition process every year, the Department require aluminum and steel manufacturers to prove that the domestic supply exists in the quantities and the quality specifications necessary before ending any exclusion.

BIS response: Generally, an exclusion is granted for one year from the date of signature. Parties should review the decision document for this information. As described below, the Department does have discretion to approve varying validity dates depending on the facts surrounding an exclusion. Also as referenced above and described in more detail below, today's rule is adding a new paragraph (h)(2)(iii) to provide more information on the criteria the Department uses to determine the appropriate validity date for an exclusion.

Comment (f)(11)(ii): Clarify that approvals can be less than one year when warranted. One commenter requested that the final rule clarify that although exclusions generally will be granted for one year, a shorter time period may be granted if the objector provides information showing that an exclusion is only warranted for a shorter period of time (*e.g.,* that the objector can begin or expand domestic production in less than one year).

BIS response: The Department agrees and confirms approvals can be less than one year when warranted. Today's final rule is adding a new paragraph (h)(2)(iv) to provide additional context on the general one year validity date and when a shorter or longer validity date may be warranted. New paragraph (h)(2)(iv) includes application examples for when a longer period may be warranted for the validity period.

Comment (f)(11)(iii): Should be five years or longer. One commenter requested that the Department explicitly provide for exclusion validity periods of

five years, subject to renewal thereafter, and for the length of specific projects discussed in submitted exclusion requests where U.S. domestic parties cannot demonstrate sufficient capacity to meet the long-term requirements set forth in an individual exclusion request or multiple exclusion requests for the same specific product. This commenter supported its position by noting that while one year is an easily definable time period, it does not reflect the reality of business planning, particularly where long-term, large-scale investments and purchasing contracts are involved, such as are typical in the oil and natural gas industry. In the commenter's view, a five-year product exclusion is required to accommodate project planning and to reflect the reality of the long lead time from purchase order to delivery of products. The commenter recommended that U.S. manufacturers be provided the opportunity, regarding any exclusions granted, to prove that they have developed new capacity to meet quantity and/or quality specifications of entities granted petitions.

BIS response: As described above, today's final rule is adding a new paragraph (h)(2)(iv) to provide additional context on the general one year validity date and when a shorter or longer validity date may be warranted. The commenter's recommendation to allow objectors to provide additional information to permit re-reviewing an approved exclusion request would likely require adding provisions to revoke existing approvals. The Department did not add such provisions in this rule because the Department believes there are likely many other members of the public who believe such changes would add unpredictability and undermine their ability for long range planning. The Department does, however, welcome comments in response to today's rule on this commenter's idea of allowing longer validity periods, with the understanding that potential objectors could come back at any time during such periods to request a readjudication of the product exclusion.

Comment (f)(11)(iv): Exclusions should not be limited to an annual basis. Commenters requested that exclusions be indefinite until challenged and domestic production is demonstrated. These commenters asserted that a year is not a long time in the manufacturing cycle, and companies will need to plan out their supply chains further into the future. They also asserted that requiring all companies granted exclusion requests to go through this process yearly to ensure continuous supply would be a massive waste of the Department's resources and overly burdensome to domestic steel users. These commenters believe that if the Department has found in the first instance that an exclusion should be granted because of the lack of domestic supply, it should be up to the domestic suppliers to demonstrate that their capabilities have changed.

BIS response: As described above, today's rule is adding a new paragraph (h)(2)(iv) to provide additional context on the general one year validity date and when a shorter or longer validity date may be warranted. The new paragraph (h)(2)(iv) includes examples for when a longer period may be warranted.

Comment (f)(11)(v): Product exclusions should be permanent, not temporary (and on a universal basis). One commenter believes that temporary exclusions inject significant uncertainty into the business planning of companies and will only increase costs for companies as they have to alter their supply chains.

BIS response: The Department does not believe that permanent exclusions would be consistent with the intent of the Proclamations and is concerned that such exclusions might in fact undermine the resurgence of certain steel and aluminum manufacturing critical to protecting U.S. national security. The Secretary does have the discretion to make broader exclusions available to all importers if the Department finds the circumstances warrant it, and the Secretary will exercise this discretion as appropriate.

Comment (f)(12): Allow supporters of exclusion requests an opportunity to submit comments. One commenter was concerned that while the March 19 rule provides an opportunity for any individual or organization in the United States to file objections to exclusion requests, it does not provide a similar opportunity for such persons to make submissions in support of other parties' exclusion requests. This commenter recommends the Department permit such filings.

BIS response: The Department disagrees. The Department understands the desire of affected or similarly situated parties to provide submissions of support. However, the original submitter of an exclusion request is best situated to provide the specific information for the exclusion request and, under the new process for rebuttals and surrebuttals adopted in this rule, will be allowed to submit rebuttals to any objection received. Allowing other parties to submit statements of support is not needed in order for the Department to conduct its review of the exclusion request and would likely slow the entire process down. The number of exclusion requests being reviewed is substantial, and one of the purposes of today's rule is to make improvements in the efficiency of the process. Where warranted to improve the transparency or fairness of the process, the Department has implemented changes that may increase its workload, but otherwise the focus is on trying to streamline the process to improve it for all parties involved.

Add Rebuttal Process and Specify Criteria for Review of Objections

Comment (f)(13)(i): Must add a rebuttal process (to allow exclusion request submitters to respond to objectors). An area of significant concern for commenters was the absence of a formal rebuttal process in the March 19 rule. Commenters recommended that the final rule should provide an even-handed, reciprocal process that allows interested parties to respond to objections. The supplements added in the March 19 rule currently provide an unbalanced rebuttal process under which any interested party may respond to a request, but the requester is not permitted a response. These commenters believe that requesters must have the ability as a matter of procedural due process to respond to objections. These commenters recommended that the Department should therefore provide requesters a 15-day period to respond to any objections. These commenters asserted that a rebuttal process is consistent with due process and responsible administrative decision making.

Therefore, these commenters recommended that the final rule should provide: A limitation on rebuttals to potentially aggrieved domestic manufacturers of specific articles sought to be excluded, plus a response by the applicant; in the alternative, if rebuttals are not limited to domestic manufacturers, a response by an interested party. These commenters said that it is important to allow the requester an opportunity to reply to the objections raised to make certain that the Department has all the information necessary to determine whether domestic steel producers can actually fulfill their needs. For U.S. companies using steel in their production process, determining which suppliers to use is a decision that is carefully considered based on their economic and manufacturing needs. One commenter remarked, ''Without carefully assessing and soliciting reasons why certain steel suppliers are used in this process, the

Department runs the risk of creating lasting damage to the U.S. manufacturing sector.'' The commenters thus warned against finalizing product exclusion requests without a complete record, arguing that decisions in such cases could be arbitrary and capricious, unfairly biased against U.S. businesses that rely on imported articles, or exacerbate risks to national security.

BIS response: The Department agrees that adding a rebuttal and surrebuttal process will improve the process. The Department has accordingly developed and is adding with the publication of today's rule a rebuttal process described under paragraph (f) in the two supplements to allow exclusion requesters to provide evidence refuting objectors' claims of domestic capacity, as well as a surrebuttal process to allow the objector to respond to the rebuttal. The rebuttal and surrebuttal process will enhance the review process to ensure Department decision makers have as much relevant information as possible when assessing exclusion requests.

Comment (f)(13)(ii): More criteria needs to be added for objections. One commenter asserted that while the March 19 rule indicated a 90-day response time, it does not state the standards for reviewing an application or what consideration the Department will give to objections, including those that readily admit to not currently producing the subject material in the quantity, or the quality, needed. Along similar lines, another commenter raised concern that the March 19 rule says very little about the nature of or criteria for lodging the objection, other than it should ''clearly identify, and provide support for, its opposition'' to the exclusion. The objection form provides some additional requirements (including production capabilities in the U.S. relative to the exclusion request production), but it simply allows the objector to assert that it makes ''similar'' merchandise.

BIS response: The Department agrees that it would be beneficial to add additional information to the two supplements to better define the review criteria for objections. Today's rule amends paragraph (d)(4) to better define how the Department will review objections, including providing application examples and important considerations for objectors to take into account when they are making representations in an objection. Today's rule also makes changes to paragraph (h) to provide additional information for the disposition of objections. These changes will improve the transparency of the objection review process for the public.

Comment (f)(13)(iii): Failure to object should result in automatic approval. A commenter asserted that the supplements added in the March 19 do not indicate what happens if there is no objection filed to a request within 30 days. This commenter recommends that the Department should make clear in the final rule that the failure of any party to object to an exclusion request should result in automatic approval of the request, and the approval should be issued within 15 days of the end of the 30-day period.

BIS response: The Department will grant properly filed exclusion requests which meet the requisite criteria, receive no objections, and present no national security concerns. After an exclusion request's 30-day comment period on *regulations.gov*, BIS will work with CBP to ensure that the requester provided an accurate HTSUS statistical reporting number. If so, BIS will immediately assess the request for satisfaction of the requisite criteria and any national security concerns. If BIS concludes that the request satisfies the criteria and identifies no national security concerns with granting the request, BIS will expeditiously post a decision on *regulations.gov* granting the exclusion request. Today's rule adds in a new paragraph (h)(2)(ii) a streamlined process for approving exclusion requests that do not receive objections.

Comment (f)(13)(iv): Objection based on ability to produce. One commenter recommended that the objector be required to ensure that it can produce the precise product described in the exclusion form and not merely similar products. Many other commenters asserted similar concerns and recommendations in this area about not falling into an equivalent trap that would undermine the ability of these downstream users of steel and aluminum to function effectively.

BIS response: The Department agrees that an objector must be able to make the same steel or aluminum product or one that is equivalent, meaning ''substitutable for,'' the one identified in the exclusion request that is the subject of the objection. As discussed above, today's rule adds new paragraphs (c)(6)(ii) to better define what constitutes satisfactory quality and (c)(6)(i) to better define what constitutes sufficient and reasonably available steel or aluminum. The rebuttal and surrebuttal process that today's rule is adding to paragraphs (f) and (g) in the two supplements will enhance the review process and the information the Department is receiving to ensure appropriate decisions based on a common understanding of the facts at hand.

Comment (f)(13)(v): Objections based on future capacity. One commenter requested that any objector objecting based on anticipated capacity coming on line be required to provide specific evidence of when such capacity will come on line and that it can and actually will make the exact same product that is the subject of the exclusion. Many commenters hit on similar concerns and made similar type of recommendations.

BIS response: The Department agrees that representations made by objectors must be supported by information that identifies clearly whether the capacity is currently available or will be ''immediately.'' As described above, today's rule is adding a new paragraph (c)(6)(i) and revising paragraph (d)(4) to make these requirements clear to objectors. The information required on the objection form will assist the Department in making these determinations whether sufficient supply is available in the U.S. to warrant denying an exclusion request. The rebuttal and surrebuttal process in today's rule is adding to paragraphs (f) and (g) in the two supplements will enhance this process and the information the Department is receiving to ensure appropriate decisions are being made based on a common understanding of the facts at hand.

Comment (f)(14): Add fair administrative and judicial review procedures for exclusion determinations. One commenter requested that the final rule articulate fair administrative and judicial review procedures for exclusion determinations. This same commenter recommended that final action by the Department be immediately appealable to an appropriate administrative appellate body, and/or the Court of International Trade. The commenter provided its thoughts on what courts may be appropriate, including the limitations that may make those suggested courts not the right legal venue. The commenter asserted that while it believes the Court of International Trade may be the appropriate forum for some appeals, there are clear exceptions to the Court's jurisdiction where Presidential Proclamations involve matters other than tariffs, such as national security.

BIS response: There is no specific appeals process. However, if a request is denied, a party is free to submit another request for exclusion that may provide additional details or information to support the request. As described above,

today's rule is also adding a rebuttal and surrebuttal process to allow those individuals and organizations that submitted an exclusion request that received objections to submit rebuttals during a 7 day review period of the final objection posted for their exclusion request. These changes will improve the process and allow such parties an opportunity to provide additional information to the Department that they believe should be considered.

The Department Should Provide Detailed Information on the Process for Extending an Exclusion Request Beyond the Initial One Year

Comment (f)(15)(i): Allow submissions of renewals prior to expiration date of approved exclusions. A commenter recommended that the final rule be revised to clarify that requests for the extension of an exclusion be submitted prior to the exclusion's expiration to avoid any disruption to the supply chain.

BIS response: The Department agrees, but also clarifies that the existing provisions from the March 19 rule already allow renewal requests at any time. Technically, each new submission is a new exclusion request, but an applicant may, as an additional supporting document in a letter of explanation, reference a previous approval whether that is still valid or not. Individuals and companies will need to file a new exclusion request before the expiration of any granted exclusions to avoid any interruptions in their tariff relief. A copy of the previous approval is not needed, simply referring to the previous *regulations.gov* approval number in the new application is sufficient. The existing approved exclusion would not be amended, but may assist the Department in reviewing a new exclusion request. Each approved exclusion is limited to a set time period because there will be changing domestic production capabilities and product availability as U.S. steel and aluminum manufacturers increase production. Each exclusion request is reviewed on its own merit and on a case-by-case basis, so the existence of a previous exclusion approval is not a guarantee a new exclusion request will be approved. As a time saving tip, requesters may reuse the original form submission and just update the fields that need to be updated by downloading the form, making any needed updates, and then submitting the updated form in *regulations.gov* as a new submission.

Comment (f)(15)(ii): Renewal process should be simple, streamlined and burden placed on U.S. steel and aluminum manufacturers to make the case if circumstances have changed in terms of their capacity. Commenters were concerned about the lack of information provided on how the Department plans to review granted exclusions at the conclusion of their one-year approval period. They asserted that lack of information about the process injects a huge amount of uncertainty into supplier agreements, which typically extend well beyond one year. These commenters requested that additional information on the process for requesting renewal of an exclusion be provided and that such process be clearly explained and not overly burdensome. Commenters recommended that the Department require the domestic producers to provide evidence that the circumstances leading to the grant of the original exclusion order have changed. Several commenters recommended that the Department amend the supplements added in the March 19 rule such that, if no facts or circumstances regarding the original exclusion request have changed, a filing company would not be required to file a completely new exclusion request to retain the benefit of a request that has already been approved.

BIS response: The Department believes the renewal process outlined in the response to Comment (f)(15)(i) appropriately complies with the Proclamations and balances the competing interests.

Comments on the Exclusion Form

Comment (g)(1): Provide more guidance on using regulations.gov. A commenter requested BIS provide direction on the steps needed to use *regulations.gov* to submit an exclusion request. This commenter was having difficulty determining which link or button in *regulations.gov* it needed to use to submit the exclusion application submission itself.

BIS response: The Department agrees that providing guidance on the use of *regulations.gov* is needed and has already taken steps to address this issue. As described above, the Department has posted step-by-step guidance documents and various helpful tips on *regulations.gov* under the two docket numbers, as well as on the Commerce website, to assist the public's understanding and to reduce the burden in getting used to using *regulatons.gov.* Today's rule also, as described below, adds an Annex 1 to Supplements No. 1 and 2 to Part 705, which will assist the public in using *www.regulations.gov* for application issues specific to submissions under the exclusion, objection, rebuttal, surrebuttal process. As with any new process, there has been a learning curve for the public using *regulations.gov*, and this will continue to a lesser degree with the rebuttals and surrebuttals today's rule is adding. The Department has significantly increased the number of people working on exclusion requests and objections, including adding many new people who previously had not used *regulations.gov*, so we understand that it takes some time to get familiar with the system. The Department has also found for itself, as well as members of the public that we have spoken to on the phone regarding using *regulations.gov*, that the comfort level is increasing, and we anticipate this will continue.

Comment (g)(2): Ensure exclusion and objection criteria are limited to that covered by the Proclamation. A commenter was concerned whether the exclusion form was introducing criteria that was not consistent with the Proclamations. The commenter asserted that the Proclamation is clear that if a steel article is not produced in the United States in a sufficient and reasonably available amount or of satisfactory quality, the Department should grant an exclusion. However, the exclusion request form contains many fields beyond those factors. The commenter recommended that the Department make it clear that it will not be considering if ''substitute products'' are available, nor the ability of CBP to easily distinguish the product when making its decision as to whether an exclusion is approved.

BIS response: The Department does not agree that information being requested on the forms is inconsistent with the criteria included in the Proclamations and the supplements added in the March 19 rule. The information being requested is needed by the Department to make a determination whether one of the three criteria identified in the Proclamations can be met. As described above, today's rule is making various changes to clarify these types of issues and to add greater transparency to the process. The changes being made in today's rule will give the public a better understanding of the criteria that the Department is using to review exclusion requests, objections, and rebuttals and surrebuttals being added with today's rule. Today's rule also clarifies the references to CBP and how they fit into the process to ensure that what is being approved is implementable. Providing false information to CBP in the form or providing a HTSUS statistical reporting number that is not correct may result in other import or export clearance related penalties from the U.S. Government, so

ensuring that an individual or organization that submitted an exclusion request used the correct HTSUS statistical reporting number will ensure an approved exclusion is implementable, as well as being consistent with other U.S. regulations.

Comment (g)(3): Concern over the use of ranges on the forms. Commenters raised concern that the form has caused confusion in the industry due to the seemingly contradictory language wherein field 2.j. notes that ''Ranges . . . are allowed,'' but field 3.b. prohibits ''a range of products and or sizes.'' These commenters believe these inconsistencies have added additional uncertainty to an already opaque process, with requesters unsure if and when ranges are permissible. Therefore, these commenters recommended that the Department clarify what it means regarding permissible use of ranges and do so with specific examples, including illustrative examples demonstrating the outer bounds of any impermissible range for each such physical dimension (*e.g.,* width range generally may not exceed 100 mm; thickness range may not exceed 50 mm).

BIS response: The Department designed both the steel and aluminum exclusion/objection forms with input from a variety of U.S. Government experts and industry association material experts. The goal was to create a balance of information requested from the exclusion filer to allow a U.S. manufacturer of steel or aluminum to file a credible objection to that specific exclusion. The forms allow for a product that may be within a range but not products across a wide range. A permissible range must be within the minimum and maximum range that is specified in the tariff provision and applicable legal notes for the provision. As referenced above, today's rule is adding two sentences to paragraph (c)(2) to clarify these types of issues.

Comments on the Objection Form

Comment (h)(1): Rule and the objection form are not in sync for who may submit an objection because of certain questions on the objection form. A commenter asserted the March 19 rule indicates that ''any individual or organization in the United States may file objections to steel exclusion requests.'' However, the commenter asserted that the *Response Form for Objections to Posted Section* 232 *Exclusion Requests—Steel* (the Response Form) is structured to accept only the information of a single company, which would not appear to provide an opportunity for a joint submission by an *ad hoc* association of companies in opposition to a request, even if the association included the specific data requested for evaluating the objection. The commenter believes the submission of a single objection representing the views of a range of steel producing companies is a far more efficient way for the Department to receive comments in opposition to an exclusion request.

BIS response: The Department agrees that there is an inconsistency between the objection form and the supplements added in the May 19 rule. In order to address this inconsistency, today's rule is revising paragraph (d) in both supplements to clarify that the individuals and organizations in the U.S. that may submit objections are limited to those using aluminum or steel in business activities (*e.g.,* construction, manufacturing, or supplying steel or aluminum products to users). The purpose of the objection process (as well as the surrebuttal process being adding in today's rule) is to determine whether an exclusion should be approved or denied, so the objector needs to be able to provide information relevant to the fields identified on the form. The Department needs the information identified in those fields to fairly and consistently make determinations on the disposition of exclusion requests when objections are submitted, as well as rebuttals and surrebuttals being added to the process with the publication of today's rule. The need for efficiency requires that objectors be able to address all of the applicable fields on the objection form in order to submit a credible objection that may warrant the Department's denying an exclusion request. Today's rule addresses this inconsistency by revising paragraph (d)(1) to clarify who may submit an objection to a submitted exclusion request.

Comment (h)(2): Specific fields on the objection form that would appear to prevent certain parties from being able to submit objections. Question 2b on the objection form asks respondents to ''discuss the suitability of your organization's steel products'' and question 3 asks ''what percentage of the total steel product tonnage requirement covered under the exclusion request . . . can your organization manufacture?'' These questions appear to create a bias against opposition comments from organizations that are not actual producers of steel product, given that the March 19 rule indicates that objections that do not include the information requested on the objection form ''will not be considered.''

BIS response: The Department disagrees that there is any bias in the process, but this commenter, similar to commenter (h)(1) above, did highlight an inconsistency that needs to be addressed between the objection form and the two supplements added in the March 19 rule. As described in the BIS response to comment (h)(1) above, today's rule is making changes to address this inconsistency between the objection form and the two supplements added in the March 19 rule by revising paragraph (d)(1).

Comment (h)(3): Consolidated objections from industry would allow for better analysis by the Department and reduce burden on industry and the Department. A commenter asserted that for particularly large volume exclusion requests, one domestic steel manufacturer may not have the entire unutilized capacity to meet the needs that form the basis of that exclusion request. However, the domestic industry may very well have capacity in the aggregate to meet such orders. Absent permitting a single combined submission by members of the domestic industry that can provide aggregate data for the Department to review, the Department would need to collect that information from each of the members, expending unnecessary time and resources and increasing the risk that complete information will not be available to consider. Thus, at the very least, the commenter requested that the Department revise the supplements added in the March 19 rule and objection form to provide for joint submissions of *ad hoc* associations of companies to oppose ''insufficient volume''-based exclusion requests.

BIS response: The Department does not agree. The Department is relying on the product expertise of ITA, as well as the information that the Department is receiving through the exclusion requests and objections, which will be enhanced further with the rebuttal and surrebuttal process being added by today's rule. Because of the significant amount of exclusion request and objection activity the Department has been managing since March 19, the information that the Department has on the U.S. market for steel and aluminum production and its gaps (both in supply and quality) is deepening quickly. The Department is the party that will identify when broader based exclusions may be warranted for approval after consideration and approval by the Secretary. The Department acknowledges that this process may not be the most efficient for approving these types of broader exclusions, but it will ensure that any approved exclusions do not undermine the larger objectives of

the tariffs and the need to protect critical U.S. national security interests.

Suggestions for Examples of Broad Based Product Exclusions That Could Be Implemented

A number of commenters representing a wide range of industries submitted their initial suggestions for what should be included in broad based product exclusions. These requests for broad based product exclusions included primary aluminum and fabricated can sheet, aluminum foil, Grain Oriented Electric Steel (''GOES''), tinplate and tin free steel, specialty chrome products used in deepwater oil and gas wells, products used across the entire crude oil and natural gas production industry, and certain steel and aluminum products that are critical to motor vehicle parts manufacturers. At this time, the Department does not believe it is warranted to add a broad based product exclusion for any of the examples provided in the comments received on the March 19 rule. This does not preclude the Department from reevaluating this determination once additional exclusion requests are submitted and additional information provided to the Department in the objection, rebuttal, and surrebuttal processes is evaluated further and patterns begin to develop that may warrant granting broad product based exclusions for some or all of these referenced items. The intent of the March 19 rule was for the Department to identify these candidates for broad product exclusions over time based on experience with reviewing and approving exclusion requests submitted by individuals or companies. This is the reason why the March 19 rule did not have any provisions that described how individuals or organization could request broad based product exclusion requests. The Department believes this is the correct approach and is continuing this same regulatory framework in today's rule.

Process and Timing for Obtaining Tariff Refunds for Approved Exclusion Requests

Comment (j)(1): Clarify effective date for exclusions. Commenters were concerned that the slowness of the process may nullify exclusions for many interested parties. A commenter was concerned that exclusions (once granted) appear to apply only to imports of a specific product arriving *after* the request was posted for public comment. This means merchandise imported *prior* to the posting of the request will not receive the benefits of the exclusion, even if the exclusion is ultimately granted. The commenter is concerned that this creates huge disadvantages for those seeking and obtaining exclusions because any merchandise on the water (or about to be shipped) remains subject to potential duties until the forms are posted, regardless of eligibility for exclusion.

BIS response: The date for applying duty refunds is established in the Proclamations as amended.

Comment (j)(2): Clarify who pays and the process for obtaining refunds for tariffs paid before exclusion granted? Commenters were concerned about the lack of information on the process for obtaining refunds for tariffs once an exclusion request is approved. Commenters asserted that the supplements are silent on the issue of whether a company that successfully obtains a product exclusion may obtain a refund of duties paid on such products already entered through U.S. customs procedures. Commenters recommended that the rule should be amended to describe this refund process in detail.

BIS response: The Department clarifies here that if an exclusion is granted, the party would then work with CBP on the refund mechanism. CBP has provided public guidance on the process for requesting refunds in CBP's Cargo Systems Messaging Service message #18–000378 available at *https://csms.cbp.gov/viewmssg.asp?Recid=23577&page=&srch_argv=232&srchtype=&btype=&sortby=&sby=.*

Comments Dealing With CBP Enforcement and Implementation of Product Based Exclusions and Country Based Exclusions

Comment (k)(1): Concerns with CBP implementation and enforcement of exclusions. A commenter raised concerns that the detailed and individualized nature of the exclusion requests (*i.e.,* product specificity and supply chain specificity) virtually ensures that compliance and enforcement will be complicated. A commenter requested that the Department clarify the following details to facilitate enforcement by CBP:

Amendments to Entry Forms: The commenter argued that the Department should recommend changes to CBP entry forms to allow easier enforcement. Such changes might include creation of a separate line item on the 7501 form to declare such duties, similar to the way CBP enforces the collection of antidumping and countervailing duties.

Entry Documentation: The commenter suggested that the Department specify the documents required to be produced at entry by each party in the supply chain to create predictability and to help simplify the process for importing excluded merchandise without delay or duties, *e.g.,* mill test certificates, origin certificates, and export licenses.

A commenter requested that the Department clarify how it will instruct and assist CBP in enforcing and administering exclusion requests, including whether it will adopt any type of import licensing system.

A commenter requested that the Department address how it will enforce and administer product exclusions simultaneously with country exemptions, particularly given the current temporary nature of some of the country exemptions. A country exemption establishes a quantitative limit for steel or aluminum that may be imported from a specific country, but once the quantitative limitation is reached no additional quantity of that steel or aluminum may be imported from that country. Commenters assert they are concerned about the quantitative limitations because if the supply of steel or aluminum is needed from such a country once the quantitative limitation is reached, there will be no alternative supply. For countries not subject to quantitative limitations an unlimited amount of steel or aluminum may be imported, but if not subject to a product exclusion, would be required to pay the applicable tariff of 25 percent for steel and 10% for aluminum. The commenter requested that if country exemptions are tied to quotas (referred to henceforth as quantitative limitations) (or any other type of import restriction), the Department work with the USTR and CBP to develop a workable solution to simultaneously monitor and enforce product exclusions, country exemptions, and any quantitative limitations used to enforce country exemptions.

BIS response: The Department has been working closely with CBP in the development and implementation of the product exclusion process. BIS will not issue a decision granting an exclusion until CBP confirms that the exclusion is administrable, meaning the exclusion request designates the correct HTSUS statistical reporting number. The Department will provide CBP with information that will identify each approved exclusion request, as described in the preceding paragraph. Individuals or organizations whose exclusion requests are approved must report information concerning any applicable exclusion to CBP.

Comment (k)(2): Department should clarify that CBP's ability to distinguish a steel product is not a criterion for granting an exclusion request. One

commenter asserted that neither the Proclamations nor the March 19 rule say anything about weighing the burden on the CBP to administer an exclusion as being part of the criteria for whether to approve an exclusion request. Therefore, this commenter requests the Department not use this field on the exclusion form as the basis for rejecting a request.

BIS response: The Department does not agree. In order for critical U.S. national security interests to be protected and to be consistent with the Proclamations, the items included in an approved exclusion must be able to be adequately identified by CBP to ensure importers are not exceeding the scope of approvals. Also as referenced above on a similar comment, importers are responsible for providing a correct HTSUS statistical reporting number to CBP, so the Department's process of ensuring the HTS number is correct also helps the importer to ensure the information that they are otherwise required to provide to CBP is correct. BIS will not issue a decision granting an exclusion until CBP confirms that the exclusion is administrable. In cases where a request is denied for HTSUS issues, companies are encouraged to work with CBP to confirm the proper classifications and resubmit.

Country Based Exclusions Must Be Taken Into Account When Determining U.S. Supply

Comment (l)(1): Country based exclusions must also be taken into account when determining U.S. supply. A commenter was concerned that the March 19 rule and the exclusion request process and exclusion and objection forms appear to place too much emphasis on the availability of supply in the U.S. market. The fact that U.S. production cannot meet 100 percent of demand for a product should not itself be the basis for a product-specific exclusion. This commenter recommended the proper interpretation of short-supply should be that the product cannot be produced at all in either the U.S. or one of the other exempted countries.

BIS response: The Department does not agree. The Proclamations authorize the Secretary of Commerce to grant exclusions from the duties only if the Secretary determines that the steel or aluminum article for which the exclusion is requested is not produced in the United States in a sufficient and reasonable available amount or of a satisfactory quality or should be excluded based upon specific national security considerations. As described in more detail below, today's rule is adding paragraph (c)(6)(i)–(iii) to be responsive to these types of comments.

Comment (l)(2): Product exclusion requests must be coordinated with country exemptions to prevent ''double-dipping.'' A commenter requested in order to ensure that the tariffs serve their purpose of boosting U.S. steel production, the Department and the USTR coordinate the allocation of product-specific requests with any country-specific exemptions and any applicable quantitative limitations to prevent ''double-dipping.''

BIS response: The Department does not agree. The product based exclusions process and the country exemptions process are separate processes. The Department does not take into account approved country exemptions when evaluating whether to approve an exclusion request. Questions specific to country exemptions should be directed to USTR. Today's rule does, however, add a new Note to paragraph (c)(2) to allow for product exclusion requests for countries subject to quantitative exclusions using the same criteria specified in the supplements added in the March 19 rule and the Proclamations. The review criteria for whether to grant exclusion requests from countries subject to quantitative limitations does not take into account the current level remaining of a quantitative limitation for a particular country, but today's rule does, for consistency with the August 29, 2018, Presidential Proclamation 9777 and the August 29, 2018, Presidential Proclamation 9776, takes steps along with CBP to ensure that the exclusions granted under the scope of paragraph (c) do not undermine the purpose of the country based quantitative limitations.

Country Based Exemptions Must Not Be Taken Into Account When Determining U.S. Supply

Comment (n)(1): No way to guarantee foreign supply would be available to a U.S. based user. A commenter asserted that the ability to potentially source from a foreign country does not mean that a U.S. manufacturer would be able to receive supplies from that foreign country and that such a consideration serves no purpose with regard to the goal of the Section 232 tariffs. Therefore, this commenter recommends it should not be considered in this context.

BIS response: The exclusion process is intended to be as narrowly focused as possible to ensure the larger objective of the tariffs—to protect critical U.S. national security—is achieved. The Proclamations authorize the Secretary to grant exclusions from the duties only 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 reasonable available amount or of a satisfactory quality or for specific national security considerations. As described above and in more detail below, today's rule adds a Note to paragraph (c)(2) that will be partially responsive to these types of comments.

Comment (n)(2): Country exemptions have been fluid, so difficult to include that in the product exclusion analysis. One commenter asserted that the country exemptions are fluid or not finalized, with caveats that the President ''will consider re-imposing the tariff'' or ''revisit this determination, as appropriate,'' which makes it difficult to reliably include country exemptions as part of the analysis for product based exclusions.

BIS response: The product exclusion process operates independently of country exemption discussions. Decisions about country exemptions are made by the President, based on his assessment of the factors described in his Proclamations. Under the authority granted by the earlier Proclamations, an exclusion request only applies to aluminum or steel imported from a country subject to a tariff. However, the Proclamations 9777 and 9776 of August 29, 2018, allowed the Secretary to grant exclusions from quantitative limitations as described in this rule with the addition of Note to paragraph (c)(2). As noted above, the Proclamation 9777 under clause 2 also created a separate process that requires the Secretary to grant exclusions from quantitative limitations. The Department cannot grant exclusion requests for aluminum or steel products imported from a country subject to a quantitative limitation, except as specified in the Note to paragraph (c)(2) for purposes of today's rule, or under clause 2 of Proclamation 9777.

Comment (n)(3): Product based exclusions should not be country specific and should be available for countries with quantitative limitations. A commenter requested the Department authorize all companies granted product exclusions to import tariff-free from any available market economy source country because the basis of the exclusion request is that the U.S. company cannot source the product domestically. While the exclusion request process, managed by the Department, is separate from the country exemption process being managed by the USTR, the commenter urged the Department and USTR to coordinate and allow companies to apply for and be granted exclusion

requests or pay the tariffs on products that go beyond a country's quantitative limitation.

BIS response: As noted above, the exclusion request and objection process operates independently of country exemption discussions. Decisions about exemptions are made by the President, based on his assessment of the factors described in his Proclamations. Under the authority granted by the Proclamations, an exclusion request only applies to aluminum or steel imported from a country subject to a tariff. The Department cannot grant exclusion requests for aluminum or steel products imported from a country subject to a quantitative limitation, except as specified in the Note to paragraph (c)(2) (in Supplements No. 1 and 2 for aluminum and steel).

Comment (n)(4): Concerns that country quantitative limitations will further restrict U.S. supply. A trade association commenter asserted that it understands that the Department will not entertain exclusion requests covering steel from South Korea subject to a filled quantitative limitation and urges the Department to reverse this policy. The commenter argues that the policy treats steel from countries with exemptions, such as South Korea, less favorably than those countries that have not been granted exemptions, such as Russia and China. In this example, Russian and Chinese steel and aluminum would be permitted to be imported into the U.S. with an exclusion or be subject to tariffs. After the steel quantitative limitation for South Korea is reached, however, companies would not be permitted to apply for exclusions or pay tariffs on additional South Korean steel, and steel shipments would have to be returned or destroyed. Another commenter had concerns that since these are absolute quantitative limitations, there is no opportunity for importers to pay the tariff and import the product if the quantitative limitation is filled, which constrains supply even further. These commenters requested the that Department allow interested parties who are subjected to quantitative limitations be able to use the Section 232 exclusion process to request an exclusion from the quantitative limitations for ''short supply'' or similar reasons regarding lack of domestic availability.

BIS response: As noted above, the exclusion request and objection process operates independently of country exemption discussions. Decisions about exemptions are made by the President, based on his assessment of the factors described in his Proclamations. Under the authority granted by the Proclamations, an exclusion request only applies to aluminum or steel imported from a country subject to a tariff, except as specified in the Note to paragraph (c)(2)(in Supplements No. 1 and 2 for steel and aluminum). Under today's rule, the Department will be able to grant exclusion requests for aluminum or steel products imported from a country subject to a quantitative limitation under the conditions specified in the Note to paragraph (c)(2) (in Supplements No. 1 and 2 for steel and aluminum).

Changes Made in This Interim Final Rule to the Exclusion and Objection Process

In order to improve the fairness, transparency and efficiency of the exclusion and objection process, as well as add a rebuttal and surrebuttal process, BIS, on behalf of the Secretary, is publishing today's interim final rule to make a number of changes to improve the process. These changes are responsive to the comments received on the March 19 rule and should improve the process significantly. Because the two supplements are nearly identical, with the same paragraph structure and regulatory provisions, this interim final rule makes the same changes to both Supplement No. 1 and No. 2 to Part 705. The only places where the regulatory changes made in this rule differ slightly is in the application examples that are specific to steel or aluminum and the samples of naming conventions for submissions in *regulations.gov* that use the respective docket numbers in the examples (BIS–2018–0006 (steel) and BIS–2018–0002 (aluminum)).

Today's rule makes conforming edits throughout the two supplements to add references to the new rebuttal and surrebuttal process that today's rule is adding. The new rebuttal process is described below under paragraph (f). The new surrebuttal process is described below under paragraph (g). Except for the changes to new paragraphs (f) and (g), the additional references to rebuttal and surrebuttal are being added when the process is being referenced as a whole in the two supplements—meaning whenever the terms ''exclusion request'' and ''objection'' are used to describe the process. References to these two terms will, after the publication of today's rule, encompass exclusion requests, objections, rebuttals and surrebuttals.

It is important to understand that the Department is committed to having as fair, transparent and efficient a process as possible for managing product exclusion requests. As asserted above by the commenters and confirmed by the experience of the Department, the number of submissions for exclusion requests and objections have far exceeded original expectations, and the Department is taking steps in this rule to improve the efficiency of adjudicating those requests. In addition, the Department is making changes to improve the fairness of the process by allowing the individual or organization that submitted an exclusion request or an objection to have an opportunity to respond to information provided by the other party, leading to better and more informed decisions on exclusion requests.

In paragraph (b)(5)(*Public disclosure*), today's rule is making explicit the procedures for protecting and submitting confidential business information. Changes to paragraph (b)(5) will result in additional submissions by email that the Department will need to review and address, but the overall benefit of creating a more transparent process outweighs any possible reduction in the overall efficiencies of the overall process. This rule revises the paragraph (b)(5) heading to add the phrase ''and information protected from public disclosure,'' splits paragraph (b)(5) into new paragraphs (b)(5)(i) and (ii), and adds a new paragraph (b)(5)(iii). Paragraph (b)(5)(i) specifies that, except for the information described in the new paragraph (b)(5)(iii), individuals and organizations must otherwise fully complete the relevant forms. Paragraph (b)(5) as added in the March 19 rule already included this requirement, but based on the comments received, there was some confusion about whether all fields needed to be completed on the exclusion and objection forms and whether that requirement changed if the submission included confidential business information. Today's rule is addressing those issues and will state clearly in the regulatory text that all fields have to be completed.

New paragraph (b)(5)(ii)(*Information not subject to public disclosure should not be submitted*) contains provisions to explain clearly what information should not be included on the forms, or in the information provided in rebuttals and surrebuttals, because these submissions and documents will be made publicly available on *regulations.gov*. The revisions made to paragraph (b)(5)(ii) include adding a cross reference to new paragraph (b)(5)(iii)(*Procedures for identifying, but not disclosing confidential or propriety business information (CBI) in the public version, and procedures for submitting confidential business information*). Paragraph (b)(5)(iii) describes in detail

how to submit confidential business information as a separate email submission to the Department that would not be disclosed to the public, but would still inform the Department's review process of exclusion requests, objections, rebuttals, and surrebuttals. These new requirements include specifying that an individual or organization filing a submission that contains information for which CBI treatment is claimed must file a public version of the submission and then follow on the same day the public version was submitted, the requirements in paragraph (b)(5)(iii). These requirements include specifying how the information that will be submitted separately by email as confidential business information will be summarized in a public version. New paragraph (b)(5)(iii) includes timelines for the separate email submission of confidential business information in relation to the public submission. The new paragraph (b)(5)(iii) also specifies that submissions that contain confidential business information that is not for public release must follow the procedures in paragraphs (b)(5)(iii)(A)–(C). The requirements in these paragraphs for email submission assist the Department in identifying these submissions to allow the Department to properly associate these email submissions with the respective 232 submissions posted in *regulations.gov*. Today's rule adds a limitation in new paragraph (b)(5)(iii)(C) to specify the confidential business information is limited to a maximum of 5 pages per rebuttal or surrebuttal.

In paragraph (c)(2)(*Identification of exclusion requests*), today's rule adds two sentences to clarify certain aspects of the forms and the two supplements that caused confusion for several commenters on whether ranges or multiple dimensions were permissible. The first new sentence specifies that the exclusion request forms allow for minimum and maximum dimensions. The second new sentence specifies that ranges are acceptable if the manufacturing process permits small tolerances. A permissible range must be within the minimum and maximum range that is specified in the tariff provision and applicable legal notes for the provision. When additional context or explanation is needed on these types of issues, the Department encourages submitters—both requesters and objectors—to provide additional explanation as warranted.

Today's rule also adds a new Note to paragraph (c)(2) to describe the process for how an individual or organization may submit an exclusion request for importing steel or aluminum from a country that has a country exemption. The exclusion form has been revised to include one additional field for these types of exclusion requests. In requesting one of these types of exclusions, the requester will select the field on the exclusion request form to indicate that the exclusion request is for importing from a country eligible for a country exemption. This is important to assist the Department in identifying these types of exclusion requests, assisting the Department in coordinating its review with other parts of the U.S. Government as warranted, and when coordinating with CBP on the implementation of these product based exclusions from countries subject to quantitative limitations. Today's rule also adds examples of the types of information that a requester is required to include in support of these types of exclusion requests.

In paragraph (c)(*Exclusion requests*), today's rule is adding a new paragraph (c)(6)(*Criteria used to review exclusion requests*). As described above, several commenters on the May 19 rule had concerns regarding whether the Department was managing the process in a fair and transparent manner. Several commenters said that because of the lack of specificity surrounding the three criteria included in the Proclamations and used in the supplements and exclusion request and objection forms, it was difficult for the public to judge whether the process was being conducted in a fair and transparent manner. Today's rule adds new paragraph (c)(6) to specify in much greater detail the criteria the Department is using to review the exclusion requests. These additions to the two supplements will be responsive to the various comments the Department received on the May 19 rule. The introductory text of paragraph (c)(6) specifies that the Department, as has been the case since the March 19 rule was published, will review each exclusion request in a fair and transparent manner to determine whether an article described in an exclusion request meets any of the three criteria included in the Proclamations. Specifically, whether the article is not produced in the United States in a sufficient and reasonably available amount, is not produced in the United States in a satisfactory quality, or for specific national security considerations. New paragraphs (c)(6)(i)–(iii) provide more information on the criteria used to review requests, including by defining keys terms used in the review criteria and adding illustrative application examples of the criteria to enhance understanding in new paragraph (c)(6)(i)(*Not produced in the United States in a sufficient and reasonably available amount*), paragraph (c)(6)(ii)(*Not produced in the United States in a satisfactory quality*), and paragraph (c)(6)(iii)(*For specific national security considerations*).

In paragraph (d)(*Objections to submitted exclusion requests*), today's rule makes two changes, the first by revising paragraph (d)(1) to narrow the scope of the phrase ''any individual or organization in the United States'' to also require that these individuals or organizations must be using steel or aluminum in business activities (*e.g.,* construction, manufacturing, or supplying steel product or aluminum product to users) to file objections to steel or aluminum exclusion requests. The Department views this change as a clarification to the two supplements added in the March 19 rule to better align the regulatory text with the text and intent of the Proclamations and the objection forms. Commenters on the March 19 rule correctly asserted that there was an inconsistency in the supplements that appeared to allow for any individual or organization in the United States to file objections to steel or aluminum exclusion requests where the objection form itself required answering a series of questions that could only reasonably be completed by an individual or organization in the United States that manufactures steel or aluminum articles. As asserted by the commenters, this inconsistency in the text created confusion for the submitters on who may be eligible to submit an objection. Taking into account the intended purpose of an objection (*i.e.,* identifying whether the criteria described above being added to new paragraph (c)(6)(i) and (ii) are met), the Department has determined that the most appropriate way to resolve the inconsistency between the supplements and the forms is to revise the regulatory text to more closely align with the objection form. As described above, this is an example where the revisions made to the two supplements differ to make each revision specific to the supplement—meaning that steel is referenced in the revision to Supplement No. 1 to part 705 and aluminum is referenced in the revisions to Supplement No. 2 to part 705. The Department also is making this change to improve the fairness of the exclusion request and objection process. Commenters correctly asserted that in the March 19 rule the criteria for who may submit an exclusion request under

paragraph (c) was more restrictive than who may submit an objection. Commenters thought that difference was not treating parties consistently or fairly. The changes being made to paragraph (d)(1) in today's rule will resolve that issue.

Secondly, in paragraph (d)(4)(*Substance of objections to submitted exclusion requests*), today's rule is making changes to make the criteria the Department uses to review objections to submitted exclusion requests clearer and more transparent. Similar to the addition of new paragraph (c)(6) described above, today's rule is better defining the criteria, including the key term ''immediately.'' These revisions to paragraph (d)(4) will also better align the regulatory text with the text used in the objection form. These changes will improve the transparency of the review process, and reduce the burden on all parties involved in the exclusion request, objection, rebuttal, and surrebuttal process. Many comments from individuals or organizations that submit exclusion requests requested that objectors be required to be more specific about timelines and disclosing any potential hurdles that may limit their ability to truly start producing the needed steel or aluminum to which they are objecting. Commenters were concerned about objection forms that seem to broadly assert that an objector could conceivably make a steel or aluminum item, but do not provide much specificity on how they would meet the target to start producing the steel or aluminum. The Department agreed with these commenters that adding greater specificity in the requirements for objections would aid both objectors to more easily understand what information would be helpful to include in an objection and requesters in understanding when a legitimate objection is filed that would warrant denying their exclusion request or at least warrant the submission of a rebuttal. Today's rule makes those changes to paragraph (d)(4). As described above, the exclusion request, objection, rebuttal, and surrebuttal process has the potential to be adversarial in nature, so the Department believes it important to establish clear criteria to allow all parties to better understand the facts at hand.

In paragraph (e)(*Limitations on the size of submissions*) today's rule makes two conforming changes. First, today's rule excludes any CBI that is submitted from the 25 page exclusion and objection limit. As described above regarding paragraph (b)(5), submission made under (b)(5)(iii) will be a separate email submission to the Department. The page limit for confidential business information is limited to a maximum of 5 pages pursuant to paragraph (b)(5)(iii)(B). Therefore, the 25 page limitation does not apply for CBI included in the original submission of an exclusion or objection, or for a rebuttal or a surrebuttal as described below regarding new paragraphs (f) and (g). The page limit for rebuttals and surrebuttals is limited to a maximum of 10 pages pursuant to new paragraphs (f)(2) and (g)(2). Because the maximum size that may be submitted is less than 10 MB, today's rule is including a maximum 10 MB file size requirement to paragraph (e). The Department of Commerce has included this in our step-by-step guides and quick tips for submissions that are posted in *regulations.gov*. User manual for *regulations.gov* also make reference to this file size limitation, so adding this less than 10 MB file size limitation to the two supplements should reduce the number of occasions where the submission exceeds the limitation and the submitter has to follow up with the BIS support telephone number or email, or has to call to the *regulations.gov* support telephone number. This type of confusion wastes the time of the submitter, as well as the United States Government, so adding this to paragraph (e) should likely help reduce this problem.

Today's rule redesignates paragraphs (f) and (g) as paragraphs (h) and (i), respectively, to account for adding a new paragraph (f) for the rebuttal process and a new paragraph (g) for the surrebuttal process.

Paragraph (f)(*Rebuttal process*) is being added as a new paragraph to both supplements. Paragraph (f) creates 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 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 formal objection process in paragraph (d) that was included in the March 19 rule already established a process for objections to exclusions, but commenters expressed strongly that fairness required providing parties that submitted an exclusion request with a transparent opportunity to formally respond, in particular if they disagreed with some or all of the representations being made by an objector.

Paragraph (f)(1)*(Identification of rebuttals)* describes the process for submitting a rebuttal in *regulations.gov*. Paragraph (f)(1) specifies that when submitting a rebuttal, the individual or organization that submitted the exclusion request would submit a comment on the submitted objection to the submitted exclusion request in *regulations.gov*. Paragraph (f)(1) also includes guidance on the naming convention to use for rebuttals to ease the burden on the Department in identifying rebuttals.

Paragraph (f)(2)(*Format and size limitations for rebuttals)* describes the format for submitting rebuttals. Paragraph (f)(2) includes guidance on the same types of size limitations noted above to ensure that submitters do not include an attachment as part of their rebuttal that exceeds the size of 10 MB. Paragraph (f)(2) limits rebuttals to a maximum of 10 pages inclusive of all exhibits and attachments, but exclusive of the rebuttal form and any confidential business information (CBI is limited to a maximum of 5 pages) provided to the Department.

Paragraph (f)(3) (*Substance of rebuttals*) provides the criteria that a good rebuttal must address. First, rebuttals must address an objection to the exclusion request made by the requester. If multiple objections were received on a particular exclusion, the requester may submit a rebuttal to each objector. Paragraph (f)(3) specifies that the most effective rebuttals will be those that aim to correct factual errors or misunderstandings in the objection(s). A good rebuttal should assist the parties involved to come to a common understanding of the facts at hand. Coming to a common understanding regarding the facts of a particular exclusion or objection will better inform the Department's review process. Although the rebuttal process will add an additional step, it should lead to better and fairer outcomes for all parties involved in the product exclusion request process.

Paragraph (f)(4)(*Time limit for submitting rebuttals)* specifies the timing for submitting rebuttals. The rebuttal period will begin on the date the Department opens the rebuttal period, after posting the last objection in *regulations.gov*, and will last for 7 days. There will be a single rebuttal period that will apply for all objections received on an exclusion request. The Department will open the 7 day rebuttal period once the Department has posted all of the complete objections received on an exclusion request. As described

below, the opening of the rebuttal comment period will be specified in a daily list the Department will prepare that will be available on *www.commerce.gov/232.* The 7 day period is intended to allow for the individual or organization that submitted an exclusion request to submit any written rebuttals that they believe are warranted. The Department of Commerce will not notify the individual or organization that submitted the exclusion request, other than posting the last objection and opening the rebuttal comment period for 7 days. If you submitted an exclusion request, after the objection comment period closes for your exclusion request, you should search for all the objections on the *www.regulations.gov* website using the tutorial available on *www.regulations.gov.* Commerce will also prepare a daily list available on *www.commerce.gov/232* that will assist you with determining whether an objection was filed for your product exclusion request, that will supplement the information included in Annex 1 to Supplements No. 1 and 2 and in *regulations.gov*. It will be the responsibility of submitters of exclusion requests to monitor the status in *regulations.gov* or on *www.commerce.gov/232* to determine if objections have been received and, if they believe it is warranted to submit a rebuttal(s), to do that once the last objection received in their exclusion request is posted by the Department following the procedures specified in new paragraph (f) being added to both supplements.

Today's rule is also adding a Note to paragraph (f)(4) to add grandfathering provisions to allow for exclusion requests already posted, but not yet fully adjudicated, to be reopened to allow for rebuttals, as well as surrebuttals, as described in Note to paragraph (g)(4) below. The grandfathering provisions will be available for any pending exclusion request that meets all three of the following criteria included in the Note to paragraph (f)(4), as of September 11, 2018. In order to be eligible for grandfathering, the exclusion request must meet the following: The exclusion request received an objection(s), the 30 day objection review period has closed, and the Department has not posted a final determination on the exclusion request. The Note to paragraph (f)(4) specifies that the date of reopening will start the review periods identified in paragraph (f)(4) for those grandfathered exclusions. The Department will reopen the requests on a rolling basis starting on the date of publication of today's rule, and will seek to complete the reopening process on the date that is seven days after the date of publication of today's rule, on September 18, 2018, to serve as the start date for the review periods identified in paragraph (f)(4) for those requests.

Paragraph (g)(*Surrebuttal process*) is being added as a new paragraph to both supplements. Paragraph (g) creates 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 have most elements in common. The differences between paragraphs (f) and (g) are primarily the party in the process that is responding (the party that submitted the 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.

Many commenters 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. The commenters on the March 19 rule described conceptually what they thought was needed to create a fair process for all parties and these types of additional opportunities to provide input with a rebuttal, followed by surrebuttal process, were recommended. The Department agrees this would improve the process and is making these changes with the addition of paragraph (g) described here and (f) above. The formal objection process in paragraph (d) that was included in the March 19 rule already established a process for objectors to respond to exclusion requests in their objections. However, because today's rule is adding a rebuttal process, for fairness it is also adding a surrebuttal process for objectors. The detailed exclusion request and objection forms help to establish an important baseline for allowing the Department to evaluate exclusion requests and objections, but the Department agrees that allowing the rebuttals and surrebuttals described here will provide the Department with better information and lead to better decisions even though it does add more time to the overall process.

Paragraph (g)(1)*(Identification of surrebuttals)* describes the process for submitting a surrebuttal in *regulations.gov.* Paragraph (g)(1) specifies that when submitting a surrebuttal, the individual or organization that submitted the objection would submit a comment on the rebuttal submitted on the objection to the exclusion request in *regulations.gov.* Paragraph (g)(1) also includes guidance on the naming convention to use for surrebuttals to ease the burden on the Department in identifying surrebuttals.

Paragraph (g)(2)(*Format and size limitations for surrebuttals)* describes the format for submitting surrebuttals. Paragraph (g)(2) also includes guidance on the same types of size limitations noted above to ensure submitters do not include an attachment as part of their surrebuttal that exceeds the size of 10 MB. Paragraph (g)(2) limits surrebuttals to a maximum of 10 pages inclusive of all exhibits and attachments, but exclusive of the surrebuttal form and any confidential business information (CBI is limited to a maximum of 5 pages) provided to the Department.

Paragraph (g)(3)(*Substance of surrebuttals*) provides the criteria that a good surrebuttal must address. First, surrebuttals must address a rebuttal to the objection to the exclusion request made by the submitter of the objection. Paragraph (g)(3) specifies that the most effective surrebuttals will be those that aim to correct factual errors or misunderstandings in the rebuttal to an objection. The surrebuttal process, although it will add an additional step in the process, should lead to better and fairer outcomes for all parties involved in the product exclusion request process.

Paragraph (g)(4)(*Time limit for submitting surrebuttals)* specifies the timing for submitting surrebuttals. Paragraph (g)(4) specifies that the surrebuttal period will begin on the date the Department opens the surrebuttal period, after posting the last rebuttal to an objection to an exclusion request in *regulations.gov*, and will last for 7 days. The 7 day period is intended to allow for the individual or organization that submitted an objection and received a rebuttal to submit any written surrebuttals that they believe are warranted. The Department of Commerce will not notify the individual or organization that submitted the objection request that received a rebuttal, other than posting the rebuttal received for each objection and opening the surrebuttal comment period for 7 days. If you submitted an objection to an exclusion request, after the rebuttal

comment period closes on an exclusion request, you should search for all the rebuttals on the *www.regulations.gov* website using the tutorial available on *www.regulations.gov.* Commerce will also prepare a daily list available on *www.commerce.gov/232* that will assist you with determining whether a rebuttal was filed on your objection. You must have the exclusion request ID # (BIS–2018–000X–XXXXX) to locate rebuttals to your objection. It will be the responsibility of submitters of objections to monitor the status in *regulations.gov* or on *www.commerce.gov/232* to determine if their objection has received a rebuttal and, if they believe it is warranted, to submit a surrebuttal following the procedures specified in new paragraph (g) being added to both supplements.

In newly redesignated paragraph (h)(*Disposition of 232 submissions),* previously paragraph (f), today's rule is revising the heading, along with making several other changes. In newly redesignated paragraph (h)(1)(*Disposition of incomplete submissions*), today's rule is adding new paragraphs (h)(1)(iii) for rebuttals and (h)(1)(iv) for surrebuttals to specify that filings that do not satisfy the reporting requirements specified in paragraph (f) for rebuttals or specified in paragraph (g) for surrebuttals will not be considered.

In newly redesignated paragraph (h)(2)*(Disposition of complete submissions),* today's rule is revising the existing text, along with adding new text to broaden the scope of this paragraph and provide more specificity to make these provisions more transparent for the public. These changes include designating some of the existing text as paragraph (h)(2)(i)*(Posting of responses),* including adding a reference to rebuttal and surrebuttal where needed.

In new paragraph (h)(2)(ii)(*Streamlined review process for* ''*No Objection*'' *requests*), today's rule makes a change to improve the efficiency of the exclusion process. Under this streamlined review process, the Department will grant properly filed exclusion requests which meet the requisite criteria, receive no objections, and present no national security concerns. After the 30-day comment period on *regulations.gov*, BIS will work with CBP to ensure that the requester provided an accurate HTSUS statistical reporting number. If the HTSUS is correct, BIS will immediately assess the request to determine whether it satisfies the criteria and for any national security concerns (see paragraph (c)(6)(iii)(*For specific national security considerations*) and if it satisfies the criteria and presents no national security concerns, BIS will expeditiously post a decision on *regulations.gov* granting the exclusion request. The Department has already made this process change as an important step in helping to resolve the initial backlog of the exclusion requests that were received as of March 19. The Department believes going forward that creating a streamlined review process for exclusion requests when no objections are received will benefit those requesting exclusions and the Department in more efficiently managing the exclusion, objection, rebuttal, and surrebuttal process. The more efficient process being added under paragraph (h)(2)(ii) will provide more time for the Department to focus on exclusions where there are objections, and after the publication of today's rule for exclusions and objections that also include rebuttals and surrebuttals. As described above in the discussion of adding a rebuttal and surrebuttal process, those new submissions will increase the fairness and transparency of the process, but will result in more overall submissions. The changes described in new paragraph (h)(2)(ii) are an important efficiency improvement to the overall process that the Department anticipates will help deserving requesters receive exclusions in an expedited fashion when no objection has been filed.

In new paragraph (h)(2)(iii)(*Effective date for approved exclusions and date used for calculating duty refunds*), today's rule is adding new paragraphs (h)(2)(iii)(A) and (B). Paragraph (h)(2)(iii)(A)(*Effective date for approved exclusions*) includes the original text from paragraph (f) that was redesignated, and some minor conforming changes today's rule makes to this paragraph. The date used for calculating tariff refunds will be set by Proclamation, so today's rule does not make any changes to paragraph (h)(2)(iii)(A) to address providing additional guidance for calculating duty refunds. Commenters also requested more guidance on and greater specificity in the supplements for what part of the government should be contacted for obtaining refunds on the duties. Today's rule adds new paragraph (h)(2)(iii)(B)(*Contact for obtaining tariffs refunds*), to clarify that the Department is not involved with providing duty refunds and to direct individuals and organizations with approved exclusions to contact CBP for questions regarding obtaining duty refunds.

In new paragraph (h)(2)(iv)(*Validity period for exclusion requests*), today's rule is moving the redesignated text from paragraph (f) that stated that exclusions would generally be approved for one year to new paragraph (h)(2)(iv) introductory text. The Department emphasizes that the supplements added in the March 19 rule used the term ''generally,'' so it was never the intent for the Department to make all exclusions fit into a one year validity. Commenters questioned whether one year was an arbitrary number, but as noted above the Department believes that a general one year validity is appropriate for purposes of the criteria included in the supplements and the purpose of the Proclamations. However, because a large number of comments requested more information on when the Department may grant a longer validity or a shorter validity period, today's rule is adding text to the introductory text of paragraph (h)(2)(iv) to make clearer for the public the criteria that the Department, and other agencies as warranted, will take into account when determining when a non-standard validity period may be warranted. The Department also is adding paragraphs (h)(2)(iv)(A)(*Examples of what fact patterns may warrant a longer exclusion validity period*), (B)(*Examples of what criteria may warrant a shorter exclusion validity period*), and (C) to make the application of these criteria even more transparent through illustrative examples under paragraphs (h)(2)(iv)(A) and (B). Today's rule adds new paragraph (h)(2)(iv)(C) to qualify that the fact patterns identified in paragraphs (h)(2)(iv)(A) or (B) will not be determinant in themselves for determining the appropriate validity period, but still encouraging submitters to reference this type of information when warranted to justify a shorter or longer validity period.

For example, if a company that requested an exclusion for one year determines during the objection, rebuttal, and surrebuttal process that a U.S. manufacturer may be able to make the product within nine months, it may assist the company that requested the exclusion to have a shorter nine month exclusion validity and make business plans to start purchasing steel from the U.S. manufacturer. This would allow for advanced business planning (a concern that was asserted by a number of commenters as being important) for both the party with the granted exclusion request and the objector, eliminate the need to apply for a subsequent exclusion request that likely would be denied if the U.S. manufacturer's production did come online at nine

months with suitable quality, and help improve the efficiency of the system by reducing the number of new exclusions the Department would need to review and allowing the Department to focus on other exclusion requests.

Under newly redesignated paragraph (h)(3)*(Review period and implementation of any needed conforming changes),* today's rule revises existing text and adds new text to make these provisions more transparent for the public, in particular to address how BIS interacts with CBP on determining whether to approve an exclusion request. Commenters were confused whether the references to CBP in the supplements and on the exclusion form in particular meant CBP's approval was an additional criterion that needed to be met for an exclusion request to be approved. It is not, but the comments identified an area where adding greater specificity to the regulatory provisions would improve the public's understanding of how the Department interacts with CBP, in particular the important role CBP plays in confirming the HTSUS statistical reporting number is correct, which is a prerequisite in order for an exclusion request to implementable at the border. New paragraph (h)(3)(i) (*Review period*) specifies that the review period normally will not exceed 106 days, increased from 90 days to account for the additional time added to the review process for the rebuttal and surrebuttal process described above being added to paragraphs (f) and (g). In addition, as a conforming change for the addition of the streamlined ''No Objections'' process described under paragraph (h)(2)(ii) described above, today's rule is qualifying that the 106 days does not apply to that streamlined review process for ''No Objection'' requests.

New paragraph (h)(3)(ii)(*Coordination with other agencies on approval and implementation*), adds existing text that references coordination with other agencies of the U.S. Government, such as the United States International Trade Commission (USITC) and CBP, to take any additional steps needed to implement an approved exclusion request. Because the USITC is not involved with the exclusion process, today's rule removes it from the illustrative list of government agencies. To add greater transparency on the type of coordination that is occurring with CBP on exclusion requests, this rule adds a sentence to paragraph (h)(3)(ii) to clarify that these additional steps in coordination with CBP are needed to implement an approved exclusion request. The new sentence clearly states that this coordination is not part of the review criteria used by the Department to determine whether to approve an exclusion request, but it does emphasize that this coordination is an important component in ensuring the approved exclusion request can be properly implemented—meaning the HTSUS statistical reporting number provided by the requester is in fact correct.

In newly redesignated paragraph (i)(*For further information),* previously paragraph (g), today's rule is adding one sentence to highlight some of the training sources that the Department has created and posted on *regulations.gov* under the *regulations.gov* docket numbers for steel and aluminum and on the BIS website. These include FAQs, best practices other companies have used for submitting exclusion requests and objections, and helpful checklists to improve understanding.

Today's final rule adds a new Annex 1 to Supplements No. 1 and 2 to Part 705. This Annex provides instructions on the steps to follow to file (submit) rebuttal comments in *www.regulations.gov.* The Annex includes five steps that will assist the public in using *www.regulations.gov* for application issues that are specific to submitting rebuttals under the product exclusion request process. The *www.regulations.gov* website already includes various guidance on using the website portal for submitting comments on publications, but the guidance in the Annex will supplement that existing guidance with information that is specific to the rebuttal process. For example, the Annex provides guidance on how to identify whether an exclusion request has received objections and information on how to see when the rebuttal comment period opens in *regulations.gov* for an exclusion request that received an objection, including an exclusion request that received more than one objection. For the same reasons, the new Annex also includes five steps to follow to file surrebuttal comments in *www.regulations.gov.* Because of the additional complexity being added to the process for using *www.regulations.gov* with the addition of rebuttals and surrebuttals, the Department is adding these instructions as part of an Annex to assist the pubic to better understand using *regulations.gov* when submitting rebuttals and surrebuttals.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The March 19 rule was determined to be a ''significant regulatory action,'' although not economically significant, under section 3(f) of Executive Order 12866. Today's rule has also been determined to be to be a ''significant regulatory action,'' although not economically significant, under section 3(f) of Executive Order 12866. However, as stated under Section 4 of Presidential Proclamation 9704 and Section 4 of Proclamation 9705 of March 8, 2018, this rule is exempt from Executive Order 13771 (82 FR 9339, February 3, 2017).

2. The Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA) provides that an agency generally cannot conduct or sponsor a collection of information, and no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, unless that collection has obtained Office of Management and Budget (OMB) approval and displays a currently valid OMB Control Number.

The Department requested and OMB authorized emergency processing of two information collections involved in this rule, consistent with 5 CFR 1320.13. OMB approved these two information collections as emergency collections on March 18, 2018. The Presidential Proclamations authorized 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, to grant exclusions for the import of goods not currently available in the United States in a sufficient quantity or satisfactory quality, or for other specific national security reasons. He further directed the Secretary to establish the process for submitting and granting these requests for exclusions within 10 days, and the publication of the March 19 interim final rule fulfilled that directive. Based on the comments received in response to the comment period for the interim final rule, however, the agency has determined that changes need to be made to the March 19 rule to achieve the stated obectives of the March 19 rule and the President's directive to establish an

efficient exclusion process to ensure downstream users of steel and aluminum in the United States were not unnecessarily hurt by the tariffs that have been implemented on steel and aluminum. The immediate implementation of an effective exclusion request process, consistent with the intent of the Presidential Proclamations, also required creating a process to allow any individual or organization in the United States to submit objections to submitted exclusion requests, and based on the comments received on the March 19 rule also requires adding a rebuttal and surrebuttal process. In the March 19 rule, the Department determined the following conditions had been met:

a. The collection of information was needed prior to the expiration of time periods 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 was essential to the mission of the Department, in particular to the adjudication of exclusion requests and objections to exclusions requests and, with the publication of today's interim final rule that makes revisions to the two supplements added in the March 19 rule to the adjudication of rebuttals and surrebuttals.

c. The use of normal clearance procedures would have prevented the collection of information of exclusion requests and objections to exclusion requests, for national security purposes, as well as for rebuttals and surrebuttals being added in today's rule, as discussed under section 232 of the Trade Expansion Act of 1962 as amended and the Presidential Proclamations issued on March 8, 2018.

The Commerce Department provided a separate 60-day notice in the **Federal Register** requesting public comment on the information collections contained within the March 19 rule. This notice was published in the **Federal Register** on May 1, 2018, 83 FR 19044 and 19045. The Commerce Department intends to provide separate 60-day notice in the **Federal Register** requesting public comment on the two revised and expanded information collections contained within today's interim final rule.

Agency: Commerce Department.

Type of Information Collection: Revised and Expanded Collections.

Title of the Collection [0694–0139]: Procedures for Submitting Requests for Exclusions from the Remedies Instituted by the President in the Presidential Proclamations 9705 and 9704 of March 8, 2018 Adjusting Imports of Steel into the United States and Adjusting Imports of Aluminum into the United States.

Revised Collection Estimates for Exclusion Request Filings Based on Data Since March 19, 2018

Affected Public: Private Sector—Businesses.

Total Estimated Number of Respondents: [96,954].

Average Responses per Year: [1].

Total Estimated Number of Responses: [96,954].

Average Time per Response: 4 hours.

Total Annual Time Burden: [387,816].

Type of Information Collection: [Revised Collection].

Title of the Collection [0694–0138]: Objection Filing to Posted Section 232 Exclusion Request: Steel; and Objection Filing to Posted Section 232 Exclusion Request: Aluminum, respectively.

Revised Collection Estimates for Objection Filings Based on Data Since March 19, 2018

Affected Public: Private Sector—Businesses.

Total Estimated Number of Respondents: [38,781].

Average Responses per Year: [1].

Total Estimated Number of Responses: [38,781].

Average Time per Response: [4].

Total Annual Time Burden: [155,124].

Type of Information Collection: [Revised Collection].

OMB Control Number: [0694–0138].

In addition to the two collections referenced above for the March 19 rule, the Commerce Department requested, and OMB authorized, emergency processing of an additional information collection involved in today's rule, consistent with 5 CFR 1320.13. 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 today's rule to establish the process for submitting rebuttals and surrebuttals to help better inform the process of granting these requests for exclusions. This action is needed immediately to protect national security interests of the United States.

If 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 during the finalization of the collection, 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.

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.

The Commerce Department intends to provide separate 60-day notice in the **Federal Register** requesting public comment on the information collections contained within this rule.

Agency: Commerce Department.

Type of Information Collection: New Collection.

Title of the Collection 0694–0141: 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.

Submissions of Rebuttals (To Respond to Objections to Exclusions)

Affected Public: Private Sector—Businesses.

Total Estimated Number of Respondents: [34,902].

Average Responses per Year: [1].

Total Estimated Number of Responses: [34,902].

Average Time per Response: 1 hours.

Total Annual Time Burden: [34,902].

Type of Information Collection: [New Collection].

OMB Control Number: [0694–0141].

Submissions of Surrebuttals (To Respond to Rebuttals to Objections)

Affected Public: Private Sector—Businesses.

Total Estimated Number of Respondents: [27,921].

Average Responses per Year: [1].

Total Estimated Number of Responses: [27,921].

Average Time per Response: 1 hours.

Total Annual Time Burden: [27,921].

Type of Information Collection: [New Collection].

OMB Control Number: [0694–0141].

3. This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public comment, and a delay in effective date are inapplicable because this regulation involves a military or foreign affairs function of the United States. (*See* 5 U.S.C. 553(a)(1)). As explained in the reports 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 the President is implementing these remedial actions (as described Proclamations 9704 and 9705 of March 8, 2018) to protect U.S. national security interests. That implementation includes the creation of an effective process by which affected domestic parties can obtain exclusion requests ''based upon specific national security considerations.'' The Department started this process with the publication of the March 19 rule and is continuing this process with the publication of today's interim final rule. The revisions to the exclusion request process are informed by the comments received in response to the March 19 rule and the Department's experience with managing the exclusion request and objection process. Commenters were generally supportive and welcomed the idea of creating an exclusion process, but most of the commenters believe the exclusion process is not working well and needs to be significantly improved in order for it to achieve the intended purpose. The commenters identified a number of areas where transparency, effectiveness, and fairness of the process could be improved. The Department understands the importance of having a transparent, fair and efficient product exclusion request process, consistent with the directive provided by the President to create this type of process to mitigate any unintended consequences of imposing the tariffs on steel and aluminum in order to protect critical U.S. national security interests. 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 an interim final rule with request for comments.

In addition, the Department finds that there is good cause under 5 U.S.C. 553(b)(B) to waive the provisions of the Administrative Procedure Act requiring prior notice and the opportunity for public comment and under 5 U.S.C. 553(d)(3) to waive the delay in effective date because such delays would be either impracticable or contrary to the public interest. In order to ensure that the actions taken to adjust imports do not undermine users of steel or aluminum that are subject to the remedial actions instituted by the Proclamations and are critical to protecting the national security of the United States, the Presidential Proclamations authorized 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, to grant exclusions for the import of goods not currently available in the United States in a sufficient quantity or satisfactory quality, or for other specific national security reasons. He further directed the Secretary to, within 10 days, issue procedures for submitting and granting these requests for exclusions and this interim final rule fulfills that direction. As described above, the Secretary complied with the directive from the President with the publication of the March 19 rule and is taking the next step in improving the exclusion and objection process by making needed changes with the publication of today's rule, as well as adding the needed rebuttal and surrebuttal process. The immediate implementation of an effective exclusion request process, consistent with the intent of the Presidential Proclamations, also required creating a process to allow any individual or organization in the United States to submit objections to submitted exclusion requests. The objection process was created with the publication of the March 19 rule. This publication of today's rule makes needed changes in the objection process and adds a rebuttal and surrebuttal process to create the type of fair, transparent, and efficient process that was intended in the March 19 rule, but was found lacking by the commenters in several key respects. Today's rule makes critical changes to ensure a fair, transparent, and efficient exclusion process.

If this interim final rule were delayed to allow for public comment or for thirty days before companies in the U.S. were allowed to benefit from the improvements made in the exclusion, objection, and newly added rebuttal and surrebuttal process from the remedies instituted by the President, those entities could face significant economic hardship that could potentially create a detrimental effect on the general U.S. economy. The comments received on

the March 19 rule were clear whether they were supportive of tariffs or against tariffs, that an efficient exclusion request, objection, and rebuttal and surrebuttal process was needed, that the March 19 rule had not sufficiently created such a process; if specific improvements are not made, dire economic consequences could occur. Commenters also thought the inefficiencies of the process could undermine other critical U.S. national security interests. Likewise, our national security could be impacted if particular national security considerations justify an exclusion, but the process for obtaining such exclusion were delayed, or the Department lacked adequate information to make a fair, transparent and efficient determination for all parties involved and to ensure the critical national security considerations are being protected.

Finally, the 30 day delay in effectiveness for final rules is inapplicable under 5 U.S.C. 553(d)(1) because this rule relieves a restriction.

Because a notice of proposed rulemaking and an opportunity for prior public comment are not required for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* are not applicable. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

Pursuant to Proclamations 9704 and 9705 of March 8, 2018, the establishment of procedures for an exclusion process under each Proclamation shall be published in the **Federal Register** and are exempt from Executive Order 13771.

List of Subjects in 15 CFR Part 705

Administrative practice and procedure, Business and industry, Classified information, Confidential business information, Imports, Investigations, National security.

For the reasons set forth in the preamble, part 705 of subchapter A of 15 CFR chapter VII is amended as follows:

PART 705—[AMENDED]

■ 1. The authority citation for part 705 continues to read as follows:

Authority: Section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. 1862) and Reorg. Plan No. 3 of 1979 (44 FR 69273, December 3, 1979).

■ 2. Revise Supplement No. 1 and Supplement No. 2 to Part 705 to read as follows:

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

On March 8, 2018, the President issued Proclamation 9705 concurring with the findings of the January 11, 2018 report of the Secretary of Commerce on the effects of imports of steel mill articles (steel articles) identified in Proclamation 9705 (''steel'') on the national security and determining that adjusting steel imports through the imposition of duties is necessary so that imports of steel will no longer threaten to impair the national security. Clause 3 of Proclamation 9705 also authorized 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, to grant exclusions from the duties at the request of directly affected parties located in the United States if the steel articles are determined not to be produced in the United States in a sufficient and reasonably available amount or of a satisfactory quality or based upon specific national security considerations. On August 29, 2018, the President issued Proclamation 9776. Clause 1 of Proclamation 9776 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, at the request of a directly affected party located in the United States for any steel article determined by the Secretary to not be produced in the United States in a sufficient and reasonably available amount or of a satisfactory quality. The Secretary is also authorized to provide such relief based upon specific national security considerations.

(a) *Scope.* This supplement specifies the requirements and process for how directly affected parties located in the United States may submit requests for exclusions from the remedies instituted by the President. This supplement also specifies the requirements and process for how parties in the United States may submit objections to submitted exclusion requests for relief from the duties or quantitative limitations imposed by the President, and rebuttals to submitted objections and surrebuttals (collectively, ''232 submissions''). This supplement identifies the time periods for such submissions, the method of submission, and the information that must be included in such submissions.

(b) *Required forms.* The U.S. Department of Commerce has posted four separate fillable forms on the BIS website at *https://www.bis.doc.gov/index.php/232-steel* 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 four forms for steel exclusion requests, objections to exclusion requests, rebuttals to objections, and surrebuttals by searching for its *regulations.gov* docket number, which is BIS–2018–0006. The U.S. Department of Commerce requires requesters and objectors to use the appropriate form as specified under paragraphs (b)(1) and (2) of this supplement for submitting exclusion requests and objections to submitted exclusion requests, and the forms specified under paragraphs (b)(3) and (4) for submitting rebuttals and surrebuttals.

(1) *Form required for submitting exclusion requests.* The name of the form used for submitting exclusion requests is *Request for Exclusion from Remedies: Section 232 National Security Investigation of Steel Imports.* The Title in *www.regulations.gov* is *Exclusion Request—Steel* and is posted under ID # BIS–2018–0006–0002.

(2) *Form required for submitting objections to submitted exclusion requests.* The name of the form used for submitting objections to submitted exclusion requests is *Objection Filing to Posted Section 232 Exclusion Request: Steel.* The Title in *www.regulations.gov* is *Objection Filing—Steel* and is posted under ID # BIS–2018–0006–0003.

(3) *Form required for submitting rebuttals.* The name of the form used for submitting rebuttals to objections is *Rebuttal to Objection Received for Section* 232 *Exclusion Request: Steel.* The Title in *www.regulations.gov* is *Rebuttal Filing—Steel* and is posted under ID # BIS–2018–0006–45144.

(4) *Form required for submitting surrebuttals.* The name of the form used for submitting surrebuttals to objections is *Surrebuttal to Rebuttal Received on Section 232 Objection: Steel.* The Title in *www.regulations.gov* is *Surrebuttal Filing—Steel* and is posted under ID # BIS–2018–0006–45145.

(5) *Public disclosure and information protected from public disclosure.*

(i) Information submitted in 232 submissions will be subject to public review and made available for public inspection and copying, except for the information described in paragraph (b)(5)(iii) of this supplement. Individuals and organizations must fully complete the relevant forms.

(ii) *Information not subject to public disclosure should not be submitted.* Personally identifiable information, including social security numbers and employer identification numbers, should not be provided. 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 232 submissions. Individuals and organizations that have confidential business information (''CBI'') that they believe relevant to the Secretary's consideration of the 232 submission should so indicate in the appropriate field of the relevant form, or on the rebuttal or surrebuttal submission, following the procedures in paragraph (b)(5)(iii) of this supplement.

(iii) *Procedures for identifying, but not disclosing confidential or proprietary business information (CBI) in the public version, and procedures for submitting CBI.* For persons seeking to submit confidential or proprietary business information (CBI), the 232 submission available to the public must contain a summary of the CBI in sufficient detail to permit a reasonable understanding of the substance of the information. If the submitting person claims that summarization is not possible, the claim must be accompanied by a full explanation of the reasons supporting that claim. Generally, numerical data will be considered adequately summarized if grouped or presented in terms of indices or figures within 10 percent of the actual figure. If an individual portion of the numerical data is voluminous (*e.g.,* 5 pages of numerical data), at least one percent of the numerical data, representative of that portion, must be summarized. In order to submit CBI that is not for public release as a separate email submission to the U.S. Department of Commerce, you must follow the procedures in paragraphs (b)(3)(iii)(A)–(C) of this supplement to assist the U.S. Department of Commerce in identifying these submissions and associating these submissions with the respective 232 submission posted in *regulations.gov*. Submitters with classified information should contact the U.S. Department of Commerce for instructions on the appropriate methods to send this type of information. If you are submitting a rebuttal or a surrebuttal, Annex 1 to Supplements No. 1 and 2 includes additional guidance for submitting CBI.

(A) On the same day that you submit your 232 submission in *www.regulations.gov,* send an email to the U.S. Department of Commerce. The email address used is different depending on the type of submission the emailed CBI is for, as follows: CBI for rebuttals use *232rebuttals@doc.gov*; and CBI for surrebuttals use *232surrebuttals@doc.gov*.

(B) The email subject line must only include the original exclusion request ID # (BIS–2018–000X–XXXXX) and the body of the email must include the 11-digit alphanumeric tracking number (XXX–XXXX–XXXX) you received from *regulations.gov* when you successfully submitted your rebuttal, or surrebuttal. This naming convention will assist the U.S. Department of Commerce to associate the CBI, that will not be posted in *regulations.gov*, with the information included in the public submission.

(C) Submit the CBI as an attachment to that email. The CBI is limited to a maximum of 5 pages per rebuttal, or surrebuttal. The email is to be limited to sending your CBI. All other information for the public submission, and public versions of the CBI, where appropriate, for a 232 submission must be submitted using *www.regulations.gov* following the procedures identified in this supplement.

Note to Paragraph (b) for Submission of Supporting Documents (Attachments): Supporting attachments must be emailed as PDF documents.

(c) *Exclusion requests.*

(1) *Who may submit an exclusion request*? Only directly affected individuals or organizations located in the United States may submit an exclusion request. An individual or organization is ''directly affected'' if they are using steel in business activities (*e.g.,* construction, manufacturing, or supplying steel product to users) in the United States.

(2) *Identification of exclusion requests.* The file name of the submission must include the submitter's name, date of submission, and the 10-digit Harmonized Tariff Schedule of the United States (HTSUS) statistical reporting number. For example, if Company A is submitting an exclusion request on June 1, 2018, the file should be named as follows: ''Company A exclusion request of 6–1–18 for 7207200045 HTSUS.'' Separate exclusion requests must be submitted for steel products with chemistry by percentage breakdown by weight, metallurgical properties, surface quality (*e.g.,* galvanized, coated), and distinct critical dimensions (*e.g.,* 0.25-inch rebar, 0.5-inch rebar, 0.5-inch sheet, or 0.75 sheet) covered by a common HTSUS subheading. The exclusion request forms allow for minimum and maximum dimensions. Ranges are acceptable if the manufacturing process permits small tolerances. A permissible range must be within the minimum and maximum range that is specified in the tariff provision and applicable legal notes for the provision. Separate exclusion requests must also be submitted for products falling in more than one 10-digit HTSUS statistical reporting number. The U.S. Department of Commerce will approve exclusions on a product basis, and the approvals will be limited to the individual or organization that submitted the specific exclusion request, unless Commerce approves a broader application of the product-based exclusion request to apply to additional importers. Other directly affected individuals or organizations located in the United States that wish to submit an exclusion request for a steel product that has already been the subject of an approved exclusion request may submit an exclusion request under this supplement. These additional exclusion requests by other directly affected individuals or organizations in the United States are not required to reference the previously approved exclusion but are advised to do so, if they want Commerce to take that into account when reviewing a subsequent exclusion request. Directly affected individuals and organizations in the United States will not be precluded from submitting a request for exclusion of a product even though an exclusion request submitted for that product by another requester or that requester was denied or is no longer valid.

Note to Paragraph (c)(2): For directly affected individuals or organizations located in the United States seeking exclusions from quantitative limitations imposed on certain countries, the requester must select the field on the exclusion form to indicate that the exclusion request is for importing from a country subject to a quantitative limitation. In addition to selecting this field on the exclusion request form, a requester must provide information that it believes supports allowing the requester to import steel that may otherwise exceed the quantitative limitation for this country. For example, the requester may indicate it believes the steel identified in the exclusion request is not available from any U.S. suppliers, and indicate that the quantitative limitation has been exceeded or will likely soon be exceeded leading to this individual or organization not being able to import or otherwise obtain (from any other country) the needed steel. Providing information as part of the exclusion requests that supports these types of statements is required for the U.S. Department of Commerce to consider these types of exclusion requests.

(3) *Where to submit exclusion requests?* All exclusion requests must be in electronic form and submitted to the Federal rulemaking portal (*http://www.regulations.gov*). You can find the interim final rule that added this supplement by searching for the *regulations.gov* docket number, which is BIS–2018–0006.

(4) *No time limit for submitting exclusion requests.* All exclusion requests must be in electronic form and submitted to the Federal rulemaking portal (*http://www.regulations.gov*), but may be submitted at any time.

(5) *Substance of exclusion requests.* An exclusion request must specify the business activities in the United States within which the requester is engaged that qualify the individual or organization to be directly affected and thus eligible to submit an exclusion request. The request should clearly identify, and provide support for, the basis upon which the exclusion is sought. An exclusion will only be granted if an article is not produced in the United States in a sufficient and reasonably available amount, is not produced in the United States in a satisfactory quality, or for specific national security considerations.

(6) *Criteria used to review exclusion requests.* The U.S. Department of Commerce will review each exclusion request to determine whether an article described in an exclusion request meets any of the following three criteria: the article is not produced in the United States in a sufficient and reasonably available amount, is not produced in the United States in a satisfactory quality, or for specific national security considerations. To provide additional context on the meaning and application of the criteria, paragraphs (c)(6)(i)–(iii) of this supplement define keys terms used in the review criteria and provide illustrative application examples. The U.S. Department of Commerce will use the same criteria identified in paragraphs (c)(6)(i)–(iii) of this supplement when determining whether it is warranted to approve broader product-based exclusions based on trends the Department may see over time with 232 submissions. The

public is not permitted to request broader product-based exclusions that would apply to all importers, because the Department makes these determinations over time by evaluating the macro trends in 232 submissions.

(i) *Not produced in the United States in a sufficient and reasonably available amount.* The exclusion review criterion ''not produced in the United States in a sufficient and reasonably available amount'' means that the amount of steel that is needed by the end user requesting the exclusion is not available immediately in the United States to meet its specified business activities. ''Immediately'' means whether a product is currently being produced or could be produced ''within eight weeks'' in the amount needed in the business activities of the user of steel in the United States described in the exclusion request. The U.S. Department of Commerce reviews an exclusion request based on the information included in the exclusion request, any objections to an exclusion request, any rebuttals to the objections made by an individual or organization that submitted the exclusion request, and any surrebuttals. If the Department denies an exclusion request based on a representation made by an objector, which later is determined to be inaccurate (*e.g.,* if the objector was not able to meet the requirement of being able to ''immediately'' supply the steel that was included in a denied exclusion request in the quantity needed), the requester may submit a new exclusion request that refers back to the original denied exclusion request and explains that the objector was not able to supply the steel. The U.S. Department of Commerce would take that into account in reviewing a subsequent exclusion request.

(ii) *Not produced in the United States in a satisfactory quality.* The exclusion review criterion ''not produced in the United States in a satisfactory quality'' does not mean the steel needs to be identical, but it does need to be equivalent as a substitute product. ''Substitute product'' for purposes of this review criterion means that the steel being produced by an objector can meet ''immediately'' (*see* paragraph (c)(6)(i) of this supplement) the quality (*e.g.,* industry specs or internal company quality controls or standards), regulatory, or testing standards, in order for the U.S. produced steel to be used in that business activity in the United States by that end user. For example, if a U.S. business activity requires that steel plates to be provided must meet certain military testing and military specification standards in order to be used in military combat vehicles, that requirement would be taken into account when reviewing the exclusion request and any objections, rebuttals and surrebuttals submitted. As another example, if a U.S. business activity requires that steel tubing to be provided must meet certain Food and Drug Administration (FDA) approvals to be used in medical devices, that requirement would be taken into account when reviewing the exclusion request and any objections, rebuttals, and surrebuttals submitted. Another example would be a food manufacturer that requires tin-plate approval from the U.S. Department of Agriculture (USDA) to make any changes in the tin-plate it uses to make cans for fruit juices. An objector would not have to make steel for use in making the cans that was identical, but it would have to be a ''substitute product'' meaning it could meet the USDA certification standards.

(iii) *For specific national security considerations.* The exclusion review criterion ''or for specific national security considerations'' is intended to allow the U.S. Department of Commerce, in consultation with other parts of the U.S. Government as warranted, to make determinations whether a particular exclusion request should be approved based on specific national security considerations. For example, if the steel included in an exclusion request is needed by a U.S. defense contractor for making critical items for use in a military weapons platform for the U.S. Department of Defense, and the duty or quantitative limitation will prevent the military weapons platform from being produced, the exclusion will likely be granted. The U.S. Department of Commerce, in consultation with the other parts of the U.S. Government as warranted, can consider other impacts to U.S. national security that may result from not approving an exclusion, *e.g.,* the unintended impacts that may occur in other downstream industries using steel, but in such cases the demonstrated concern with U.S. national security would need to be tangible and clearly explained and ultimately determined by the U.S. Government.

(d) *Objections to submitted exclusion requests.*

(1) *Who may submit an objection to a submitted exclusion request*? Any individual or organization that manufactures steel articles in the United States may file objections to steel exclusion requests, but the U.S. Department of Commerce will only consider information directly related to the submitted exclusion request that is the subject of the objection.

(2) *Identification of objections to submitted exclusion requests.* When submitting an objection to a submitted exclusion request, the objector must locate the exclusion request and submit a comment on the submitted exclusion request in *regulations.gov*. The file name of the objection submission should include the objector's name, date of submission of the objection, name of the organization that submitted the exclusion request, and date the exclusion request was posted. For example, if Company B is submitting on April 1, 2018, an objection to an exclusion request submitted on March 15, 2018 by Company A, the file should be named: ''Company B objection_4–1–18 for Company A exclusion request_3–15–18.'' In *regulations.gov* once an objection to a submitted exclusion request is posted, the objection will appear as a document under the related exclusion request.

(3) *Time limit for submitting objections to submitted exclusions requests.* All objections to submitted exclusion requests must be in electronic form and submitted to the Federal rulemaking portal (*http://www.regulations.gov*) no later than 30 days after the related exclusion request is posted.

(4) *Substance of objections to submitted exclusion requests.* The objection should clearly identify, and provide support for, its opposition to the proposed exclusion, with reference to the specific basis identified in, and the support provided for, the submitted exclusion request. If the objector is asserting that it is not currently producing the steel identified in an exclusion request but can produce the steel within eight weeks (meaning the objector meets the definition of being able to supply the steel ''immediately'' in order to meet the demand identified in the exclusion request), the objector must identify how it will be able to produce the article within eight weeks. This requirement includes specifying in writing to the U.S. Department of Commerce as part of the objection, the timeline the objector anticipates in order to start or restart production of the steel included in the exclusion request to which it is objecting. For example, a summary timeline that specifies the steps that will occur over the weeks needed to produce that steel would be helpful to include, not only for the U.S. Department of Commerce review of the objection, but also for the requester of the exclusion and its determination whether to file a rebuttal to the objection. The U.S. Department of Commerce understands that in certain cases regulatory approvals, such as from the Environmental Protection Agency (EPA) or some approvals at the state or local level may be required to start or restart production and that some of these types of approvals may be not controllable by an objector.

(e) *Limitations on the size of submissions.* Each exclusion request and each objection to a submitted exclusion request is to be limited to a maximum of 25 pages, inclusive of all exhibits and attachments, but exclusive of the respective forms and any CBI provided to the U.S. Department of Commerce. Each attachment to a submission must be less than 10 MB.

(f) *Rebuttal process.* Only individuals or organizations that have submitted an exclusion request pursuant to this supplement may submit a rebuttal to any objection(s) posted to their exclusion request in the Federal rulemaking portal (*http://www.regulations.gov*). The objections to submitted exclusion requests process identified under paragraph (d) of this supplement already establish a formal response process for steel manufacturers in the United States. The objection process is an important part of ensuring the duties and quantitiative limitations are working as intended to achieve the stated purposes of the President's Proclamations and the objectives of implementing these duties and quantitative limitations to protect U.S. national security interests. In order to enhance the fairness of this process and to allow the individual or organization that submitted an exclusion request to respond to any objections submitted to its exclusion request, this paragraph (f) allows for subsequent written submissions under the rebuttal process.

(1) *Identification of rebuttals.* When submitting a rebuttal, the individual or organization that submitted the exclusion request submits a comment on the objection submitted to the exclusion request in the

Federal rulemaking portal (*http://www.regulations.gov*). *See* Annex 1 to Supplements No. 1 and 2 to Part 705 for a five-step process for how to submit rebuttals. Annex 1 describes the naming convention used for identification of rebuttals and the steps needed to identify objections to exclusion requests when using *www.regulations.gov* to submit a rebuttal. Submitters of rebuttals must follow the steps described in Annex 1, including following the naming convention of rebuttals. In *regulations.gov* once a rebuttal to an objection to a submitted exclusion request is posted, the rebuttal will appear as a document under the related exclusion request.

(2) *Format and size limitations for rebuttals.* Similar to the exclusion process identified under paragraph (c) and the objection process identified under paragraph (d) of this supplement, the rebuttal process requires the submission of a government form as specified in paragraph (b)(3). The rebuttal must be in writing and submitted in *regulations.gov.* Each rebuttal is to be limited to a maximum of 10 pages, inclusive of all exhibits and attachments, but exclusive of the rebuttal form and any CBI provided to the U.S. Department of Commerce. Each attachment to a submission must be less than 10 MB.

(3) *Substance of rebuttals.* Rebuttals must address an objection to the exclusion request made by the requester. If multiple objections were received on a particular exclusion, the requester may submit a rebuttal to each objector. The most effective rebuttals will be those that aim to correct factual errors or misunderstandings in the objection(s).

(4) *Time limit for submitting rebuttals.* The rebuttal period begins on the date the Department opens the rebuttal period after posting the last objection in *regulations.gov.* This beginning date will be sometime between thirty-one to forty-five days (a fifteen day range) after an exclusion request has been posted. The range of days is needed to account for time needed by the U.S. Department of Commerce to review any objections submitted to determine whether the objections are complete and should be posted in *regulations.gov.* The rebuttal period ends seven days after the rebuttal comment period is opened. This seven day rebuttal period allows for the individual or organization that submitted an exclusion request pursuant to this supplement to submit any written rebuttals that it believes are warranted.

Note to Paragraph (f)(4): For exclusion requests that received an objection(s) but for which the U.S. Department of Commerce has not posted a final determination on the exclusion request as of September 11, 2018, the Department will reopen the requests to allow for the submission of rebuttals. The Department will reopen the requests on a rolling basis starting on September 11, 2018, and will seek to complete the reopening process on the date that is seven days after the date of publication of this notice in the **Federal Register**, September 18, 2018, to serve as the start date for the review periods identified in paragraph (f)(4) for those requests.

(g) *Surrebuttal process.* Only individuals or organizations that have a posted objection to a submitted exclusion request pursuant to this supplement may submit a surrebuttal to a rebuttal (*see* paragraph (f)) posted to their objection to an exclusion request in the Federal rulemaking portal (*http://www.regulations.gov*). The objections process identified under paragraph (d) of this supplement already establishes a formal response process for steel manufacturers in the United States and is an important part of ensuring the duties and quantitative limitations are working as intended to achieve the stated purposes of the President's Proclamations and the objectives of implementing these duties and quantitative limitations to protect U.S. national security interests. In order to enhance the fairness of this process and to allow the individual or organization that submitted an objection to a submitted exclusion request to respond to any rebuttals submitted pursuant to paragraph (f) of this supplement, paragraph (g) allows for subsequent written submissions under this surrebuttal process.

(1) *Identification of surrebuttals.* When submitting a surrebuttal, the individual or organization that submitted the objection to an exclusion request would submit a comment on the submitted rebuttal to the objection submitted in the Federal rulemaking portal (*http://www.regulations.gov*). *See* Annex 1 to Supplements No. 1 and 2 to Part 705 for a five-step process for how to submit surrebuttals. Annex 1 describes the naming convention used for identification of surrebuttals and the steps needed to identify rebuttals in regulations when using *www.regulatons.gov* to submit a surrebuttal. Submitters of surrebuttals must follow the steps described in Annex 1, including following the naming convention of surrebuttals. In *regulations.gov* once a surrebuttal to a rebuttal to an objection to a submitted exclusion request is posted, the surrebuttal will appear as a document under the related exclusion request.

(2) *Format and size limitations for surrebuttals.* Similar to the exclusion process identified under paragraph (c) of this supplement, the objection process identified under paragraph (d), and the rebuttal process identified under paragraph (f), the surrebuttal process requires the submission of a government form as specified in paragraph (b)(4). The surrebuttal must be in writing and submitted in *regulations.gov.* Each surrebuttal is to be limited to a maximum of 10 pages, inclusive of all exhibits and attachments, but exclusive of the surrebuttal form and any CBI provided to the U.S. Department of Commerce. Each attachment to a submission must be less than 10 MB.

(3) *Substance of surrebuttals.* Surrebuttals must address a rebuttal to an objection to the exclusion request made by the requester. The most effective surrebuttals will be those that aim to correct factual errors or misunderstandings in the rebuttal to an objection.

(4) *Time limit for submitting surrebuttals.* The surrebuttal period begins on the date the Department opens the surrebuttal comment period after posting the last rebuttal to an objection to an exclusion request in *regulations.gov.* This will be sometime within a fifteen-day range after the rebuttal period has closed. The range of days is needed to account for time needed by the U.S. Department of Commerce to review any rebuttals to objections submitted to determine whether the rebuttals are complete and should be posted in *regulations.gov.* The surrebuttal period ends seven days after the surrebuttal comment period is opened. This seven-day surrebuttal period allows for the individual or organization that submitted an objection to a submitted exclusion request pursuant to this supplement to submit any written surrebuttals that it believes are warranted to respond to a rebuttal.

(h) *Disposition of 232 submissions.*

(1) *Disposition of incomplete submissions.*

(i) Exclusion requests that do *not* satisfy the requirements specified in paragraphs (b) and (c) of this supplement will be denied.

(ii) Objection filings that do not satisfy the requirements specified in paragraphs (b) and (d) will not be considered.

(iii) Rebuttal filings that do not satisfy the requirements specified in paragraphs (b) and (f) will not be considered.

(iv) Surrebuttal filings that do not satisfy the requirements specified in paragraphs (b) and (g) will not be considered.

(2) *Disposition of complete submissions.*

(i) *Posting of responses.* The U.S. Department of Commerce will post responses in *regulations.gov* to each exclusion request submitted under docket number BIS–2018–0006. The U.S. Department of Commerce response to an exclusion request will also be responsive to any of the objection(s), rebuttal(s) and surrebuttal(s) for that submitted exclusion request submitted under docket number BIS–2018–0006.

(ii) *Streamlined review process for ''No Objection'' requests.* The U.S. Department of Commerce will expeditiously grant properly filed exclusion requests which meet the requisite criteria, receive no objections, and present no national security concerns. If an exclusion request's 30-day comment period on *regulations.gov* has expired and no objections have been submitted, the U.S. Department of Commerce will work with U.S. Customs and Border Protection (CBP) to ensure that the requester provided an accurate HTSUS statistical reporting number. If so, BIS will immediately assess the request for any national security concerns. If BIS identifies no national security concerns, it will expeditiously post a decision on *regulations.gov* granting the exclusion request.

(iii) *Effective date for approved exclusions and date used for calculating duty refunds.*

(A) *Effective date for approved exclusions.* Approved exclusions will be effective five business days after publication of the U.S. Department of Commerce response granting an exclusion in *regulations.gov.* Starting on that date, the requester will be able to rely upon the approved exclusion request in calculating the duties owed on the product imported in accordance with the terms listed in the approved exclusion request.

(B) *Contact for obtaining duty refunds.* The U.S. Department of Commerce does not provide refunds on tariffs. Any questions on

the refund of duties should be directed to CBP.

(iv) *Validity period for exclusion requests.* Exclusions will generally be approved for one year, but may be valid for shorter or longer than one year depending on the specifics of the exclusion request; any objections filed; and analysis by the U.S. Department of Commerce and other parts of the U.S. Government, as warranted, of the current supply and demand in the United States, including any limitations or other factors that the Department determines should be considered in order to achieve the national security objectives of the duties and quantitative limitations.

(A) *Examples of what fact patterns may warrant a longer exclusion validity period.* Individuals or organizations submitting exclusion requests or objections may specify and are encouraged to specify how long they believe an exclusion may be warranted and specify the rationale for that recommended time period. For example, an individual or organization submitting an exclusion request may request a longer validity period if there are factors outside of their control that may make it warranted to grant a longer period. These factors may include regulatory requirements that make a longer validity period justified, *e.g.,* for an aircraft manufacturer that would require a certain number of years to make a change to an FAA approved type certificate or for a manufacturer of medical items to obtain FDA approval. Business considerations, such as the need for a multi-year contract for steel with strict delivery schedules in order to complete a significant U.S. project by an established deadline, *e.g.,* a large scale oil and gas exploration project, is another illustrative example of the types of considerations that a person submitting an exclusion request may reference.

(B) *Examples of what criteria may warrant a shorter exclusion validity period.* Objectors are encouraged to provide their suggestions for how long they believe an appropriate validity period should be for an exclusion request. In certain cases, this may be an objector indicating it has committed to adding new capacity that will be coming online within six months, so a shorter six-month period is warranted. Conversely, if an objector knows it will take two years to obtain appropriate regulatory approvals, financing and/or completing construction to add new capacity, the objector may, in responding to an exclusion that requests a longer validity period, *e.g.,* three years, indicate that although they agree a longer validity period than one year may be warranted in this case, that two years is sufficient.

(C) None of the illustrative fact patterns identified in paragraphs (h)(2)(iv)(A) or (B) of this supplement will be determinative in and of themselves for establishing the appropriate validity period, but this type of information is helpful for the U.S. Department of Commerce to receive, when warranted, to help determine the appropriate validity period if a period other than one year is requested.

(3) *Review period and implementation of any needed conforming changes.*

(i) *Review period.* The review period normally will not exceed 106 days for requests that receive objections, including adjudication of objections submitted on exclusion requests and any rebuttals to objections, and surrebuttals. The estimated 106 day period begins on the day the exclusion request is posted in *regulations.gov* and ends once a decision to grant or deny is made on the exclusion request.

(ii) *Coordination with other agencies on approval and implementation.* Other agencies of the U.S. Government, such as CBP, will take any additional steps needed to implement an approved exclusion request. These additional steps needed to implement an approved exclusion request are not part of the review criteria used by the U.S. Department of Commerce to determine whether to approve an exclusion request, but are an important component in ensuring the approved exclusion request can be properly implemented. The U.S. Department of Commerce will provide CBP with information that will identify each approved exclusion request pursuant to this supplement. Individuals or organizations whose exclusion requests are approved must report information concerning any applicable exclusion in such form as CBP may require. These exclusion identifiers will be used by importers in the data collected by CBP in order for CBP to determine whether an import is within the scope of an approved exclusion request.

(i) *For further information.* If you have questions on this supplement, you may contact Director, Industrial Studies, Office of Technology Evaluation, Bureau of Industry and Security, U.S. Department of Commerce, at (202) 482–5642 or *Steel232@bis.doc.gov* regarding steel exclusion requests. *See* Annex 1 to Supplements Nos. 1 and 2 to Part 705 for application issues that are specific to using *www.regulations.gov* for submitting rebuttals and surrebuttals under these two supplements. The U.S. Department of Commerce has posted in *regulations.gov* training documents to assist your understanding when submitting exclusion requests and objections, including step- by-step screen shots of the process when using *regulations.gov.* The U.S. Department of Commerce website also includes FAQs, best practices other companies have used for submitting exclusion requests and objections, and helpful checklists.

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

On March 8, 2018, the President issued Proclamation 9704 concurring with the findings of the January 17, 2018 report of the Secretary of Commerce on the investigation into the effects of imports of aluminum identified in Proclamation 9704 (''aluminum'') on the national security and determining that adjusting aluminum imports through the imposition of duties is necessary so that imports of aluminum will no longer threaten to impair the national security. Clause 3 of Proclamation 9704 also authorized 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, to grant exclusions from the duties at the request of directly affected parties located in the United States if the aluminum articles are determined not to be produced in the United States in a sufficient and reasonably available amount or of a satisfactory quality or based upon specific national security considerations. On August 29, 2018, the President issued Proclamation 9776. Clause 1 of Proclamation 9776 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 9704 and Proclamation 9758 and their accompanying annexes, as amended, at the request of a directly affected party located in the United States for any aluminum article determined by the Secretary to not be produced in the United States in a sufficient and reasonably available amount or of a satisfactory quality. The Secretary is also authorized to provide such relief based upon specific national security considerations.

(a) *Scope.* This supplement specifies the requirements and process for how directly affected parties located in the United States may submit requests for exclusions from the remedies instituted by the President. This supplement also specifies the requirements and process for how parties in the United States may submit objections to submitted exclusion requests for relief from the duties or quantitative limitations imposed by the President, and rebuttals to submitted objections and surrebuttals (collectively, ''232 submissions''). This supplement identifies the time periods for such submissions, the method of submission, and the information that must be included in such submissions.

(b) *Required forms.* The U.S. Department of Commerce has posted four separate fillable forms on the BIS website at *https://www.bis.doc.gov/index.php/232-aluminum* and on the Federal rulemaking portal (*http://www.regulations.gov*) that are to be used by organizations for submitting exclusion requests, objections to exclusion requests, rebuttals, and surrebuttals described in this supplement. On *regulations.gov*, you can find these four forms for aluminum exclusion requests, objections to exclusion requests, rebuttals to objections, and surrebuttals by searching for its *regulations.gov* docket number, which is BIS–2018–0002. The U.S. Department of Commerce requires requesters and objectors to use the appropriate form as

specified under paragraphs (b)(1) and (2) of this supplement for submitting exclusion requests and objections to submitted exclusion requests, and the forms specified under paragraphs (b)(3) and (4) for submitting rebuttals and surrebuttals.

(1) *Form required for submitting exclusion requests.* The name of the form used for submitting exclusion requests is *Request for Exclusion from Remedies: Section 232 National Security Investigation of Aluminum Imports.* The Title in *www.regulations.gov* is *Exclusion Request—Aluminum* and is posted under ID # BIS–2018–0002–0002.

(2) *Form required for submitting objections to submitted exclusion requests.* The name of the form used for submitting objections to submitted exclusion requests is *Objection Filing to Posted Section 232 Exclusion Request: Aluminum.* The Title in *www.regulations.gov* is *Objection Filing—Aluminum* and is posted under ID # BIS–2018–0002–0003.

(3) *Form required for submitting rebuttals.* The name of the form used for submitting rebuttals to objections is *Rebuttal to Objection Received for Section* 232 *Exclusion Request: Aluminum.* The Title in *www.regulations.gov* is *Rebuttal Filing—Aluminum* and is posted under ID # BIS–2018–0002–4393.

(4) *Form required for submitting surrebuttals.* The name of the form used for submitting surrebuttals to objections is *Surrebuttal to Rebuttal Received on Section 232 Objection: Aluminum*. The Title in *www.regulations.gov* is *Surrebuttal Filing—Aluminum* and is posted under ID # BIS–2018–0002–4394.

(5) *Public disclosure and information protected from public disclosure.*

(i) Information submitted in 232 submissions will be subject to public review and made available for public inspection and copying, except for the information described in paragraph (b)(5)(iii) of this supplement. Individuals and organizations must otherwise fully complete the relevant forms.

(ii) *Information not subject to public disclosure should not be submitted.* Personally identifiable information, including social security numbers and employer identification numbers, should not be provided. 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 232 submissions. Individuals and organizations that have confidential business information (''CBI'') that they believe relevant to the Secretary's consideration of the 232 submission should so indicate in the appropriate field of the relevant form, or on the rebuttal or surrebuttal submission, following the procedures in paragraph (b)(5)(iii) of this supplement.

(iii) *Procedures for identifying, but not disclosing, confidential or proprietary business information (CBI) in the public version, and procedures for submitting CBI.* For persons seeking to submit CBI, the 232 submission available to the public must contain a summary of the CBI in sufficient detail to permit a reasonable understanding of the substance of the information. If the submitting person claims that summarization is not possible, the claim must be accompanied by a full explanation of the reasons supporting that claim. Generally, numerical data will be considered adequately summarized if grouped or presented in terms of indices or figures within 10 percent of the actual figure. If an individual portion of the numerical data is voluminous (*e.g.,* 5 pages of numerical data), at least one percent of the numerical data, representative of that portion must be summarized. In order to submit CBI that is not for public release as a separate email submission to the U.S. Department of Commerce, you must follow the procedures in paragraphs (b)(3)(iii)(A)–(C) of this supplement to assist the U.S. Department of Commerce in identifying these submissions and associating these submissions with the respective 232 submission posted in *regulations.gov.* Submitters with classified information should contact the U.S. Department of Commerce for instructions on the appropriate methods to send this type of information. If you are submitting a rebuttal or a surrebuttal, Annex 1 to Supplements No. 1 and 2 includes additional guidance for submitting CBI.

(A) On the same day that you submit your 232 submission in *www.regulations.gov,* send an email to the U.S. Department of Commerce. The email address used is different depending on the type of submission the emailed CBP is for, as follows: CBI for rebuttals use *232rebuttals@doc.gov*; and CBI for surrebuttals use *232surrebuttals@doc.gov.*

(B) The email subject line must only include the original exclusion request ID # (BIS–2018–000X–XXXXX) and the body of the email must include the 11-digit alphanumeric tracking number (XXX–XXXX–XXXX) you received from *regulations.gov* when you successfully submitted your rebuttal, or surrebuttal. This naming convention will assist the U.S. Department of Commerce to associate the CBI, that will not be posted in *regulations.gov*, with the information included in the public submission.

(C) Submit the CBI as an attachment to that email. The CBI is limited to a maximum of 5 pages per rebuttal, or surrebuttal. The email is to be limited to sending your CBI. All other information for the public submission, and public versions of the CBI, where appropriate, for a 232 submission must be submitted using *www.regulations.gov* following the procedures identified in this supplement.

Note to Paragraph (B) for Submission of Supporting Documents (Attachments): Supporting attachments must be emailed as PDF documents.

(c) *Exclusion requests.*

(1) *Who may submit an exclusion request*? Only directly affected individuals or organizations located in the United States may submit an exclusion request. An individual or organization is ''directly affected'' if they are using aluminum in business activities (*e.g.,* construction, manufacturing, or supplying aluminum product to users) in the United States.

(2) *Identification of exclusion requests.* The file name of the submission must include the submitter's name, date of submission, and the 10-digit Harmonized Tariff Schedule of the United States (HTSUS) statistical reporting number. For example, if Company A is submitting an exclusion request on June 1, 2018, the file should be named as follows: ''Company A exclusion request of 6–1–18 for 7604293050 HTSUS.'' Separate exclusion requests must be submitted for aluminum products with distinct critical dimensions (*e.g.,* 10 mm diameter bar, 15 mm bar, or 20 mm bar) covered by a common HTSUS statistical reporting number. The exclusion request forms do allow for minimum and maximum dimensions. Ranges are acceptable if the manufacturing process permits small tolerances. A permissible range must be within the minimum and maximum range that is specified in the tariff provision and applicable legal notes for the provision. Separate exclusion requests must also be submitted for products falling in more than one 10-digit HTSUS statistical reporting number. The U.S. Department of Commerce will approve exclusions on a product basis and the approvals will be limited to the individual or organization that submitted the specific exclusion request, unless Commerce approves a broader application of the product-based exclusion request to apply to additional importers. Other directly affected individuals or organizations located in the United States that wish to submit an exclusion request for an aluminum product that has already been the subject of an approved exclusion request may submit an exclusion request under this supplement. These additional exclusion requests by other directly affected individuals or organizations in the United States are not required to reference the previously approved exclusion but are advised to do so, if they want Commerce to take that into account when reviewing a subsequent exclusion request. Directly affected individuals and organizations in the United States will not be precluded from submitting a request for exclusion of a product even though an exclusion request submitted for that product by another requester or that requester was denied or is no longer valid.

Note to Paragraph (c)(2): For directly affected individuals or organizations located in the United States seeking exclusions from quantitative limitations imposed on certain countries, the requester must select the field on the exclusion form to indicate that the exclusion request is for importing from a country subject to a quantitative limitation. In addition to selecting this field on the exclusion request form, a requester must provide information that it believes supports allowing the requester to import aluminum that may otherwise exceed the quantitative limitation for this country. For example, the requester may indicate it believes the aluminum identified in the exclusion request is not available from any U.S. suppliers, and indicate that the quantitative limitation has been exceeded or will likely soon be exceeded leading to this individual or organization not being able to import or

otherwise obtain (from any other country) the needed aluminum. Providing information as part of the exclusion requests that supports these types of statements is required for the U.S. Department of Commerce to consider these types of exclusion requests.

(3) *Where to submit exclusion requests*? All exclusion requests must be in electronic form and submitted to the Federal rulemaking portal (*http://www.regulations.gov*). You can find the interim final rule that added this supplement by searching for the *regulations.gov* docket number, which is BIS–2018–0002.

(4) *No time limit for submitting exclusion requests.* All exclusion requests must be in electronic form and submitted to the Federal rulemaking portal (*http://www.regulations.gov*), but may be submitted at any time.

(5) *Substance of exclusion requests.* An exclusion request must specify the business activities in the United States in which the requester is engaged that qualify the individual or organization to be directly affected and thus eligible to submit an exclusion request. The request should clearly identify, and provide support for, the basis upon which the exclusion is sought. An exclusion will only be granted if an article is not produced in the United States in a sufficient and reasonably available amount, is not produced in the United States in a satisfactory quality, or for specific national security considerations.

(6) *Criteria used to review exclusion requests.* The U.S. Department of Commerce will review each exclusion request to determine whether an article described in an exclusion request meets any of the following three criteria: The article is not produced in the United States in a sufficient and reasonably available amount, is not produced in the United States in a satisfactory quality, or for specific national security considerations. To provide additional context on the meaning and application of the criteria, paragraphs (c)(6)(i)–(iii) of this supplement define keys terms used in the review criteria and provide illustrative application examples. The U.S. Department of Commerce will use the same criteria identified in paragraphs (c)(6)(i)–(iii) of this supplement when determining whether it is warranted to approve broader product-based exclusions based on trends the Department may see over time with 232 submissions. The public is not permitted to request broader product-based exclusions that would apply to all importers, because the Department makes these determinations over time by evaluating the macro trends in 232 submissions.

(i) *Not produced in the United States in a sufficient and reasonably available amount.* The exclusion review criterion ''not produced in the United States in a sufficient and reasonably available amount'' means that the amount of aluminum that is needed by the end user requesting the exclusion is not available immediately in the United States to meet its specified business activities. ''Immediately'' means whether a product is currently being produced or could be produced ''within eight weeks'' in the amount needed in the business activities of the user of aluminum in the United States described in the exclusion request. The U.S. Department of Commerce reviews an exclusion request based on the information included in the exclusion request, any objections to an exclusion request, any rebuttals to the objections made by an individual or organization that submitted the exclusion request, and any surrebuttals. If the U.S. Department denies an exclusion request based on a representation made by an objector, which later is determined to be inaccurate (*e.g.,* if the objector was not able to meet the requirement of being able to ''immediately'' supply the aluminum that was included in a denied exclusion request in the quantity needed), the requester may submit a new exclusion request that refers back to the original denied exclusion request and explains that the objector was not able to supply the aluminum. The U.S. Department of Commerce would take that into account in reviewing a subsequent exclusion request.

(ii) *Not produced in the United States in a satisfactory quality.* The exclusion review criterion ''not produced in the United States in a satisfactory quality'' does not mean the aluminum needs to be identical, but it does need to be equivalent as a substitute product. ''Substitute product'' for purposes of this review criterion means that the aluminum being produced by an objector can meet ''immediately'' (*see* paragraph (c)(6)(i) of this supplement) the quality (*e.g.,* industry specs or internal company quality controls or standards), regulatory, or testing standards, in order for the U.S. produced aluminum to be used in that business activity in the United States by that end user. For example, if a U.S. business activity requires that aluminum to be provided must meet certain military testing and military specification standards in order to be used in military aircraft, that requirement would be taken into account when reviewing the exclusion request and any objections, rebuttals, and surrebuttals submitted. Another example, would be a U.S. pharmaceutical manufacturer that requires approval from the Food and Drug Administration (FDA) to make any changes in its aluminum product pill bottle covers. An objector would not have to make aluminum for use in making the product covers that was identical, but it would have to be a ''substitute product'' meaning it could meet the FDA certification standards.

(iii) *For specific national security considerations.* The exclusion review criterion ''or for specific national security considerations'' is intended to allow the U.S. Department of Commerce, in consultation with other parts of the U.S. Government as warranted, to make determinations whether a particular exclusion request should be approved based on specific national security considerations. For example, if the aluminum included in an exclusion request is needed by a U.S. defense contractor for making critical items for use in a military weapons platform for the U.S. Department of Defense, and the duty or quantitative limitation will prevent the military weapons platform from being produced, the exclusion will likely be, the exclusion will likely be granted. The U.S. Department of Commerce, in consultation with the other parts of the U.S. Government as warranted, can consider other impacts to U.S. national security that may result from not approving an exclusion, *e.g.,* the unintended impacts that may occur in other downstream industries using aluminum, but in such cases the demonstrated concern with U.S. national security would need to be tangible and clearly explained and ultimately determined by the U.S. Government.

(d) *Objections to submitted exclusion requests.*

(1) *Who may submit an objection to a submitted exclusion request*? Any individual or organization that manufactures aluminum articles in the United States may file objections to aluminum exclusion requests, but the U.S. Department of Commerce will only consider information directly related to the submitted exclusion request that is the subject of the objection.

(2) *Identification of objections to submitted exclusion requests.* When submitting an objection to a submitted exclusion request, the objector must locate the exclusion request and submit a comment on the submitted exclusion request in *regulations.gov.* The file name of the objection submission should include the objector's name, date of submission of the objection, name of the organization that submitted the exclusion request, and date the exclusion request was posted. For example, if Company X is submitting on April 1, 2018, an objection to an exclusion request submitted on March 15, 2018 by Company A, the file should be named: ''Company X objection_4–1–18 for Company A exclusion request_3–15–18.'' In *regulations.gov* once an objection to a submitted exclusion request is posted, the objection will appear as a document under the related exclusion request.

(3) *Time limit for submitting objections to submitted exclusions requests.* All objections to submitted exclusion requests must be in electronic form and submitted to the Federal rulemaking portal (*http://www.regulations.gov*) no later than 30 days after the related exclusion request is posted.

(4) *Substance of objections to submitted exclusion requests.* The objection should clearly identify, and provide support for, its opposition to the proposed exclusion, with reference to the specific basis identified in, and the support provided for, the submitted exclusion request. If the objector is asserting that it is not currently producing the aluminum identified in an exclusion request but can produce the aluminum within eight weeks (meaning the objector meets the definition of being able to supply the aluminum ''immediately'' in order to meet the demand identified in the exclusion request), the objector must identify how it will be able to produce the article within eight weeks. This requirement includes specifying in writing to the U.S. Department of Commerce as part of the objection, the timeline the objector anticipates in order to start or restart production of the aluminum included in the exclusion request to which it is objecting. For example, a summary timeline that specifies the steps that will occur over the weeks needed to produce that aluminum would be helpful to include, not

only for the U.S. Department of Commerce review of the objection, but also for the requester of the exclusion and its determination whether to file a rebuttal to the objection. The U.S. Department of Commerce understands that in certain cases regulatory approvals, such as from the Environmental Protection Agency (EPA) or some approvals at the state or local level may be required to start or restart production and that some of these types of approvals may be not controllable by an objector.

(e) *Limitations on the size of submissions.* Each exclusion request and each objection to a submitted exclusion request is to be limited to a maximum of 25 pages, respectively, inclusive of all exhibits and attachments, but exclusive of the respective forms and any CBI provided to the U.S. Department of Commerce. Each attachment to a submission must be less than 10 MB.

(f) *Rebuttal process.* Only individuals or organizations that have submitted an exclusion request pursuant to this supplement may submit a rebuttal to any objection(s) posted to their exclusion request in the Federal rulemaking portal (*http://www.regulations.gov*). The objections to submitted exclusion requests process identified under paragraph (d) of this supplement already establish a formal response process for aluminum manufacturers in the United States. The objection process is an important part of ensuring the duties and quantitative limitations are working as intended to achieve the stated purposes of the President's Proclamations and the objectives of implementing these duties and quantitative limitations to protect U.S. national security interests. In order to enhance the fairness of this process and to allow the individual or organization that submitted an exclusion request to respond to any objections submitted to its exclusion request, this paragraph (f) allows for subsequent written submissions under the rebuttal process.

(1) *Identification of rebuttals.* When submitting a rebuttal, the individual or organization that submitted the exclusion request submits a comment on the objection to the submitted exclusion request in the Federal rulemaking portal (*http://www.regulations.gov*). *See* Annex 1 to Supplements No. 1 and 2 to Part 705 for a five-step process for how to submit rebuttals. Annex 1 describes the naming convention used for identification of rebuttals and the steps needed to identify objections to exclusion requests when using *www.regulations.gov* to submit a rebuttal. Submitters of rebuttals must follow the steps described in Annex 1, including following the naming convention of rebuttals. In *regulations.gov* once a rebuttal to an objection to a submitted exclusion request is posted, the rebuttal will appear as a document under the related exclusion request.

(2) *Format and size limitations for rebuttals.* Similar to the exclusion process identified under paragraph (c) of this supplement and the objection process identified under paragraph (d), the rebuttal process requires the submission of a government form as specified in paragraph (b)(3). The rebuttal must be in writing and submitted in *regulations.gov*. Each rebuttal is to be limited to a maximum of 10 pages, inclusive of all exhibits and attachments, but exclusive of the rebuttal form and any CBI provided to the U.S. Department of Commerce. Each attachment to a submission must be less than 10 MB.

(3) *Substance of rebuttals.* Rebuttals must address an objection to the exclusion request made by the requester. If multiple objections were received on a particular exclusion, the requester may submit a rebuttal to each objector. The most effective rebuttals will be those that aim to correct factual errors or misunderstandings in the objection(s).

(4) *Time limit for submitting rebuttals.* The rebuttal period begins on the date the Department opens the rebuttal period after posting the last objection in *regulations.gov*. This beginning date will be sometime between thirty-one to forty-five days (a fifteen day range) after an exclusion request has been posted. The range of days is needed to account for time needed by the U.S. Department of Commerce to review any objections submitted to determine whether the objections are complete and should be posted in *regulations.gov*. The rebuttal period ends seven days after the rebuttal comment period is opened. This seven day rebuttal period allows for the individual or organization that submitted an exclusion request pursuant to this supplement to submit any written rebuttals that it believes are warranted.

Note to Paragraph (f)(4): For exclusion requests that received an objection(s) but for which the U.S. Department of Commerce has not posted a final determination on the exclusion request as of September 11, 2018, the Department will reopen the requests to allow for the submission of rebuttals. The Department will reopen the requests on a rolling basis starting on September 11, 2018, and will seek to complete the reopening process on the date that is seven days after the date of publication of this notice in the **Federal Register**, September 18, 2018, to serve as the start date for the review periods identified in paragraph (f)(4) for those requests.

(g) *Surrebuttal process.* Only individuals or organizations that have a posted objection to a submitted exclusion request pursuant to this supplement may submit a surrebuttal to a rebuttal (*see* paragraph (f)) posted to their objection to an exclusion request in the Federal rulemaking portal (*http://www.regulations.gov*). The objections process identified under paragraph (d) of this supplement already establishes a formal response process for aluminum manufacturers in the United States and is an important part of ensuring the duties and quantitative limitations are working as intended to achieve the stated purposes of the President's Proclamations and the objectives of implementing these duties and quantitative limitations to protect U.S. national security interests. In order to enhance the fairness of this process and to allow the individual or organization that submitted an objection to a submitted exclusion request to respond to any rebuttals pursuant to paragraph (f) of this supplement, paragraph (g) allows for subsequent written submissions under this surrebuttal process.

(1) *Identification of surrebuttals.* When submitting a surrebuttal, the individual or organization that submitted the objection to an exclusion request would submit a comment on the submitted rebuttal to the objection submitted in the Federal rulemaking portal (*http://www.regulations.gov*). *See* Annex 1 to Supplements No. 1 and 2 to Part 705 for a five-step process for how to submit surrebuttals. Annex 1 describes the naming convention used for identification of surrebuttals and the steps needed to identify rebuttals in regulations when using *www.regulations.gov* to submit a surrebuttal. Submitters of surrebuttals must follow the steps described in Annex 1, including following the naming convention of surrebuttals. In *regulations.gov* once a surrebuttal to a rebuttal to an objection to a submitted exclusion request is posted, the surrebuttal will appear as a document under the related exclusion request.

(2) *Format and size limitations for surrebuttals.* Similar to the exclusion process identified under paragraph (c) of this supplement, the objection process identified under paragraph (d), and the rebuttal process identified under paragraph (f), the surrebuttal process requires the submission of a government form as specified in paragraph (b)(4). The surrebuttal must be in writing and submitted in *regulations.gov*. Each surrebuttal is to be limited to a maximum of 10 pages, inclusive of all exhibits and attachments, but exclusive of the surrebuttal form and any CBI provided to the U.S. Department of Commerce. Each attachment to a submission must be less than 10 MB.

(3) *Substance of surrebuttals.* Surrebuttals must address a rebuttal to an objection to the exclusion request made by the requester. The most effective surrebuttals will be those that aim to correct factual errors or misunderstandings in the rebuttal to an objection(s).

(4) *Time limit for submitting surrebuttals.* The surrebuttal period begins on the date the Department opens the surrebuttal period, after posting the last rebuttal to an objection to an exclusion request in *regulations.gov*. This will be sometime within a fifteen-day range after the rebuttal period has closed. The range of days is needed to account for time needed by the U.S. Department of Commerce to review any rebuttals to objections submitted to determine whether the rebuttals are complete and should be posted in *regulations.gov*. The surrebuttal period ends seven days after the surrebuttal period is opened. This seven-day surrebuttal period allows for the individual or organization that submitted an objection to a submitted exclusion request pursuant to this supplement to submit any written surrebuttals that it believes are warranted to respond to a rebuttal.

(h) *Disposition of 232 submissions.*

(1) *Disposition of incomplete submissions.*

(i) Exclusion requests that do *not* satisfy the requirements specified in paragraphs (b) and (c) of this supplement will be denied.

(ii) Objection filings that do not satisfy the requirements specified in paragraphs (b) and (d) will not be considered.

(iii) Rebuttal filings that do not satisfy the requirements specified in paragraphs (b) and (f) will not be considered.

(iv) Surrebuttal filings that do not satisfy the requirements specified in paragraphs (b) and (g) will not be considered.

(2) *Disposition of complete submissions.*

(i) *Posting of responses.* The U.S. Department of Commerce will post responses in *regulations.gov* to each exclusion request submitted under docket number BIS–2018–0002. The U.S. Department of Commerce response to an exclusion request will also be responsive to any of the objection(s), rebuttal(s), and surrebuttal(s) for that submitted exclusion request submitted under docket number BIS–2018–0002.

(ii) *Streamlined review process for ''No Objection'' requests.* The U.S. Department of Commerce will expeditiously grant properly filed exclusion requests which meet the requisite criteria, receive no objections, and present no national security concerns. If an exclusion request's 30-day comment period on *regulations.gov* has expired and no objections have been submitted, the U.S. Department of Commerce will work with U.S. Customs and Border Protection (CBP) to ensure that the requester provided an accurate HTSUS statistical reporting number. If so, BIS will immediately assess the request for any national security concerns. If BIS identifies no national security concerns, it will expeditiously post a decision on *regulations.gov* granting the exclusion request.

(iii) *Effective date for approved exclusions and date used for calculating duty refunds.*

(A) *Effective date for approved exclusions.* Approved exclusions will be effective five business days after publication of the U.S. Department of Commerce response granting an exclusion in *regulations.gov*. Starting on that date, the requester will be able to rely upon the approved exclusion request in calculating the duties owed on the product imported in accordance with the terms listed in the approved exclusion request.

(B) *Contact for obtaining duty refunds.* The U.S. Department of Commerce does not provide refunds on tariffs. Any questions on the refund of duties should be directed to CBP.

(iv) *Validity period for exclusion requests.* Exclusions will generally be approved for one year, but may be valid for shorter or longer than one year depending on the specifics of the exclusion request; any objections filed; and analysis by the U.S. Department of Commerce and other parts of the U.S. Government, as warranted, of the current supply and demand in the United States, including any limitations or other factors that the Department determines should be considered in order to achieve the national security objectives of the duties and quantitative limitations while not unduly burdening other parts of U.S. industry.

(A) *Examples of what fact patterns may warrant a longer exclusion validity period.* Individuals or organizations submitting exclusion requests or objections may specify and are encouraged to specify how long they believe an exclusion may be warranted and specify the rationale for that recommended time period. For example, an individual or organization submitting an exclusion request, may request a longer validity period if there are factors outside of their control that may make it warranted to grant a longer period. These factors may include regulatory requirements that make a longer validity period justified, *e.g.,* for an aircraft manufacturer that would require a certain number of years to make a change to an FAA approved type certificate or for a manufacturer of medical items to obtain FDA approval. Business considerations, such as the need for a multi-year contract for aluminum with strict delivery schedules in order to complete a significant U.S. manufacturing project by an established deadline, *e.g.,* a large scale petrochemical project, is another illustrative example of the types of considerations that a person submitting an exclusion request may reference.

(B) Examples of what criteria may warrant a shorter exclusion validity period. Objectors are encouraged to provide their suggestions for how long they believe an appropriate validity period should be for an exclusion request. In certain cases, this may be an objector indicating it has committed to adding new capacity that will be coming online within six months, so a shorter six-month period is warranted. Conversely, if an objector knows it will take two years to obtain appropriate regulatory approvals, financing and/or completing construction to add new capacity, the objector may, in responding to an exclusion that requests a longer validity period, *e.g.,* three years, indicate that although they agree a longer validity period than one year may be warranted in this case, that two years is sufficient.

(C) None of the illustrative fact patterns identified in paragraphs (h)(2)(iv)(A) or (B) of this supplement will be determinative in and of themselves for establishing the appropriate validity period, but this type of information is helpful for the U.S. Department of Commerce to receive, when warranted, to help determine the appropriate validity period if a period other than one year is requested.

(3) *Review period and implementation of any needed conforming changes.*

(i) *Review period.* The review period normally will not exceed 106 days for requests that receive objections, including adjudication of objections submitted on exclusion requests and any rebuttals to objections, and surrebuttals. The estimated 106-day period begins on the day the exclusion request is posted in *regulations.gov* and ends once a decision to grant or deny is made on the exclusion request.

(ii) *Coordination with other agencies on approval and implementation.* Other agencies of the U.S. Government, such as CBP, will take any additional steps needed to implement an approved exclusion request. These additional steps needed to implement an approved exclusion request are not part of the review criteria used by the U.S. Department of Commerce to determine whether to approve an exclusion request, but are an important component in ensuring the approved exclusion request can be properly implemented. The U.S. Department of Commerce will provide CBP with information that will identify each approved exclusion request pursuant to this supplement. Importers are directed to report information concerning any applicable exclusion granted by Commerce in such form as CBP may require. These exclusion identifiers will be used by importers in the data collected by CBP in order for CBP to determine whether an import is within the scope of an approved exclusion request.

(i) *For further information.* If you have questions on this supplement, you may contact Director, Industrial Studies, Office of Technology Evaluation, Bureau of Industry and Security, U.S. Department of Commerce, at (202) 482–4757 or *Aluminum232@bis.doc.gov* regarding aluminum exclusion requests. *See* Annex 1 to Supplements Nos. 1 and 2 to Part 705 for application issues that are specific to using *www.regulations.gov* for submitting rebuttals and surrebuttals under these two supplements. The U.S. Department of Commerce has posted in *regulations.gov* training documents to assist your understanding when submitting 232 submissions. These documents include step-by-step screen shots of the process for using *regulations.gov.* The U.S. Department of Commerce website also includes FAQs and best practices other companies have used for submitting exclusion requests and objections.

■ 1. Add Annex 1 to Supplements No. 1 and 2 to Part 705, to read as follows:

Annex 1 to Supplements No. 1 and 2 to Part 705—Steps for Using *Regulations.gov* To File Rebuttals and Surrebuttals

How To File Rebuttal Comments

Step 1: After the objection comment period closes for your exclusion request, you should search for all the objections on the *www.regulations.gov* website using the tutorial available on *www.regulations.gov.* Commerce will also prepare a daily list available on *www.commerce.gov/232* that will assist you with determining whether an objection was filed for your product exclusion request. You must have your request ID # (BIS–2018–000X–XXXXX) to locate a specific exclusion request.

Step 2: Using the list on *www.commerce.gov/232* and your exclusion request ID #, filter the list for your request. If your request ID # is not on this list, it did not receive any objections and no rebuttal period will be opened and Commerce will process it accordingly. If your request ID # is on this list, locate the objections filed for your request. Please note that your request ID # will be listed more than once if it received more than one objection. Be advised that you should continue to monitor *www.regulations.gov* and the list on *www.commerce.gov/232* to determine if objections were filed on your exclusion request.

Step 3: To review the objections filed, go to *www.regulations.gov* and enter the objection ID # that corresponds to your exclusion request. Some exclusion requests may have multiple objections.

Step 4: If you decide to file a rebuttal to an objection, visit *www.regulations.gov* to

locate the rebuttal submission form. Submit one rebuttal form for each objection you wish to rebut along with no more than 10 pages of supporting documentation. The 10 pages should include public documents and the public version of your confidential or proprietary business information (CBI) documentation. All rebuttal materials must be submitted within the 7-day rebuttal period.

Step 5: If you wish to submit CBI as part of your rebuttal, you must mark the appropriate box in the rebuttal form. The CBI document must be emailed to *232rebuttals@doc.gov* on the same day you submit your rebuttal on *regulations.gov*. The email subject line must include the original exclusion request ID # (BIS–2018–000X–XXXXX) and the body of the email must include the 11-digit alphanumeric tracking number (XXX–XXXX–XXXX) you received from *regulations.gov* when you successfully submitted your rebuttal. Submit no more than 5 pages of supporting CBI documentation via email. As noted in Step 4 above, an adequate public version, adhering to the requirements outlined in the body of this regulation, must accompany the submission of each rebuttal form on *regulations.gov. If you do not file a public version of the CBI, Commerce will not consider your rebuttal to be properly submitted and exclude it from the analyses.*

For any questions, call (202) 482–5642 (steel) or (202) 482–4757 (aluminum).

How To File Surrebuttal Comments

Step 1: After the rebuttal comment period closes on an exclusion request, you should search for all the rebuttals on the *www.regulations.gov* website using the tutorial available on *www.regulations.gov.* Commerce will also prepare a daily list available on *www.commerce.gov/232* that will assist you with determining whether a rebuttal was filed on your objection. You must have the exclusion request ID # (BIS–2018–000X–XXXXX) to locate rebuttals to your objection.

Step 2: Using the list on *www.commerce.gov/232* filter the objection ID #, column using your objection ID #. If no rebuttals were filed for your objection, then the list will indicate, ''No Rebuttal'' under the Rebuttal ID column. Be advised that you should continue to monitor *www.regulations.gov* and the list on *www.commerce.gov/232* to determine if rebuttals were filed on your objection.

Step 3: To review the rebuttals filed, go to *www.regulations.gov* and enter the exclusion request ID # that corresponds to your objection.

Step 4: If you decide to file a surrebuttal, visit *www.regulations.gov* to locate the surrebuttal submission form. Submit one surrebuttal form for each rebuttal you wish to rebut along with no more than 10 pages of supporting documentation. The 10 pages should include public documents and the public version of your CBI documentation. All surrebuttal materials must be submitted within the 7-day surrebuttal period.

Step 5: If you wish to submit CBI as part of your surrebuttal, you must mark the appropriate box in the surrebuttal form. The CBI document must be emailed to *232surrebuttals@doc.gov* on the same day you submit your surrebuttal on *regulations.gov*. The email subject line must only include the original exclusion request ID # (BIS–2018–000X–XXXXX) and the body of the email must include the 11-digit alphanumeric tracking number (XXX–XXXX–XXXX) you received from *regulations.gov* when you successfully submitted your surrebuttal. Submit no more than 5 pages of supporting CBI documentation via email. As noted in Step 4 above, an adequate public version, adhering to the requirements outlined in the body of this regulation, must accompany the submission of each surrebuttal form on *regulations.gov. If you do not file a public version of the CBI, Commerce will not consider your surrebuttal to be properly submitted and exclude it from the analyses.*

For any questions, call (202) 482–5642 (steel) or (202) 482–4757 (aluminum).

Dated: September 5, 2018.

Wilbur L. Ross,

Secretary of Commerce.

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