



KYLE PITSOR

Vice President, Government Relations

May 17, 2018

Regulatory Policy Division
Bureau of Industry and Security
U.S. Department of Commerce,
14th Street and Pennsylvania Avenue, NW
Washington, DC 20230

Re: RIN 0694–AH55, Interim Final Rule on 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

Dockets BIS–2018–0006 and BIS–2018–0002

As the leading trade association representing the manufacturers of electrical and medical imaging equipment, the National Electrical Manufacturers Association (NEMA) provides the attached comments in response to the March 19, 2018, solicitation of public comments on the Interim Final Rule.

NEMA represents nearly 350 electrical equipment and medical imaging manufacturers that make safe, reliable, and efficient products and systems. Our combined industries account for 360,000 American jobs in more than 7,000 facilities covering every state. Our industry produces \$106 billion shipments of electrical equipment and medical imaging technologies per year with \$36 billion exports.

We are open to discussing these comments further and providing additional details at your request. Our Member companies count on your careful consideration and we look forward to outcomes that meet their expectations.

If you have any questions on these comments, please contact Craig Updyke of NEMA at 703-841-3294 or craig.updyke@nema.org.

Sincerely,

A handwritten signature in black ink that reads "Kyle Pitsor". The signature is written in a cursive, flowing style.

Kyle Pitsor
Vice President, Government Relations

Attachment

**NEMA Comments
on Bureau of Industry and Security Interim Final Rule
on 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**

Executive Summary

- The Bureau should amend its procedures to allow for trade associations to submit product exclusion requests on behalf of Member companies. Product exclusions should be extended beyond one year with minimal administrative burden for importers. The Bureau should approve and communicate broader product exclusions whenever possible.
- The Office of Management and Budget (OMB) Burden Estimates included in the introduction of the Interim Final Rule are well below the actual time companies are spending to file product exclusion requests.
- The Bureau should provide clear guidance on how parties can communicate Business Confidential Information without exposing it to public review.
- Importers should not be liable for additional duties paid after March 23, 2018 on steel or aluminum products that are later excluded by the Department. Additional duties paid by an importer since March 23 should be refunded.

Discussion

The National Electrical Manufacturers Association (NEMA) welcomes the Administration's efforts to institute processes to request specific product exclusions from the Presidential adjustments of steel and aluminum imports and to file objections to such requests. However, the Interim Final Rule as published falls short in several key areas from providing appropriate treatment to U.S. companies that import steel and/or aluminum covered by the Presidential measures.

Eligibility to File Exclusion Requests and Objections

First, the exclusion request process specifically excludes industry organizations, such as trade associations, from filing requests on behalf of their Member companies. ("Only individuals or organizations using steel [or aluminum] articles...in business activities in the United States may submit exclusion requests.") This stands in stark contrast to the open eligibility to file objections ("any individual or organization in the United States").

We understand the Bureau's desire and rationale to exclude entities outside the U.S. from filing exemption requests. However, it appears arbitrary and inefficient to prohibit Members of a trade association with shared interests to act collectively within that association to petition their government regarding policy.

On March 22, Secretary Wilbur Ross testified to the Committee on Ways and Means of the U.S. House of Representatives that he would have preferred a "less bureaucratic" system for submitting and issuing broad product-specific exclusions. Secretary Ross conceded that the Bureau could grant blanket requests for a particular item if it is generally accepted to be unavailable and could do so based on a single exclusion request from a single company. "Ones that have a broader impact we can take broader action on," the Secretary concluded.

NEMA encourages the Bureau to take broader action on products with a broader impact as quickly as possible. We submit that this action would be facilitated by industry-wide product-specific exclusion requests. NEMA recommends that this rule be modified to permit industry trade associations to file exemption requests for multiple Member companies, each of which would be clearly identified in the filing. Steel and aluminum industry interests would also benefit from industry-wide product-specific exclusion requests by gaining a more comprehensive view into the breadth and depth of the U.S. market demand for the steel/aluminum product at issue.

In addition, the Interim Final Rule specifies that product-specific exclusions issued for one year only and that a new request to extend the exclusion would need to be filed. We recommend that a product exclusion be extended beyond the first year with no need for action or petition by manufacturers or importers unless a petition is made by domestic suppliers that demonstrates a material change in the domestic supply situation for the excluded product. If the Bureau does not modify the rule in this regard, we recommend that trade associations be permitted to file exclusion extension requests on behalf of their steel/aluminum consuming Members of a specific product.

OMB Information Collection Burden Estimates

Second, the Supplementary Information portion of the March 19, 2018, *Federal Register* notice for the Interim Final Rule contains an inaccurate estimate of the Average Time per Response to the "information collection activities" of exclusion requests. The estimate of 4 man-hours per response is an unobtainable low value given the considerable attention to detail that is needed to complete the five-page "Request for Exclusion" form. The estimate completely disregards the time and level of effort necessary from multiple individuals – multidisciplinary teams – within manufacturing companies to compile, organize and submit the information requested on the form.

Of course, the administrative burden will be multiplied within a company by the number of product exclusion requests (with some discount factor for economies of scale and for similar but distinct steel/aluminum products).

Business Confidential Information

The Interim Final Rule clearly states:

Individuals and organizations that have proprietary or otherwise business confidential information that they believe relevant to the Secretary's consideration...should so indicate in the appropriate field of the relevant form

What is not clear is how that confidential information is to be communicated to the Bureau. The final rule should provide sufficient specific information in this regard to provide greater transparency to the process, assuage concerns over business-sensitive information being divulged and reduce uncertainty for potential petitioners.

Reimbursement for Duties Paid Since March 23, 2018

On March 28, 2018 after the March 19 publication of the Interim Final Rule in the *Federal Register*, the President's proclamations of March 8 were amended to provide tariff relief for importers of an excluded product based on the date that the request for exclusion was made public by BIS. While this amendment represents an improvement over the timeline specified in the Interim Final Rule, it nevertheless appears to leave importers no recourse to seek refunds of duties paid between March 23 and the publication date of the exclusion request.

It is NEMA view that our manufacturers and other importers requesting exclusions should not be burdened by tariffs on any relevant shipments entering the U.S. between March 23 and the exclusion request publication date. A determination by the Department to grant a product exclusion, using the criteria outlined in the Interim Final Rule, should remove retroactively any liability on the importer to pay the additional (25 percent or 10 percent) tariffs on imports of the excluded product that entered a U.S. port at or after 12:01 a.m. on March 23, 2018. Any tariffs paid since March 23, 2018, on imports of an excluded product should be refunded.

END COMMENTS