

**SUPPORTING STATEMENT  
U.S. Department of Commerce  
Bureau of Industry and Security  
Offsets in Military Exports  
OMB Control No. 0694-0084**

**A. JUSTIFICATION**

**This revision supports publication of the proposed rule entitled “Reporting of Offsets Agreements in Sales of Weapon Systems or Defense-Related Items to Foreign Countries or Foreign Firms” (RIN 0694-AE40).**

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

In 1984, the Congress enacted amendments to the Defense Production Act (DPA), including the addition of Section 309 addressing offsets in defense trade. See Pub. L. 98-265, April 17, 1984, 98 Stat. 149. Section 309 requires the President to submit an annual report on the impact of offsets on the U.S. defense industrial base to the Congress’ then-Committee on Banking, Finance, and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate.

The Office of Management and Budget (OMB) was appointed the interagency coordinator for preparing the report for Congress when Section 309 was first enacted. Section 309 of the DPA was amended in 1992, and the Secretary of Commerce was directed to function as the President’s Executive Agent for carrying out the responsibilities set forth in Section 309. See Pub. L. 102-558, Oct. 28, 1992, 106 Stat. 4198; see also Part IV of Exec. Order No. 12919, 59 Fed. Reg. 29525 (June 3, 1994).

Section 309 authorized the Secretary of Commerce to develop and administer the regulations necessary to collect offset data from U.S. firms. The Secretary of Commerce delegated this authority to the Bureau of Industry and Security (BIS). BIS published its offset reporting regulations in 1994. See 59 Fed. Reg. 61796, Dec. 2, 1994, codified at 15 C.F.R. § 701.

Virtually all defense trading partners of the United States impose some sort of offset requirement on large imports of U.S. military items into their country. The defense offsets are industrial compensation practices, such as requiring overseas co-production, foreign licensed production, overseas subcontractor production, overseas investment or counter trade.

U.S. firms are required to report annually on contracts for the sale of defense articles or defense services to foreign governments or foreign firms that are subject to offset agreements exceeding \$5,000,000 in value. They are also required to report offset transactions completed in performance of existing offset commitments for which offset credit of \$250,000 or more has been claimed from the foreign representative. The firms submit such reports for the preceding calendar year no later than June 15.

**The proposed rule would require companies to assign the appropriate North American Industry Classification System (NAICS) code to each offset agreement associated with a military export sale and each corresponding offset transaction that triggers a reporting requirement. Addition of the NAICS code is expected to increase the burden by three hours annually for each of the 30 exporters subject to this collection**

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

By statute, the Secretary must submit an annual report to Congress on the impact of offsets in defense trade on the United States. The reports are based on offset agreement and offset transaction data reported to BIS by industry on an annual basis. BIS/Commerce uses the data to determine the impact of offset activity on the defense preparedness, industrial competitiveness, employment, and trade of the United States.

In 2003, Section 123(c) of the DPA was amended, requiring the formation of an interagency group to consult with foreign nations on limiting the adverse effects of offsets in defense procurement. See Pub. L. 108-195, Dec. 19, 2003, 117 Stat. 2892. The interagency group is comprised of the Departments of Commerce, Defense, Labor, and State, and the Office of the United States Trade Representative. Commerce consults with members of the interagency group in completing this report, and briefs the group on the findings in the report. In addition, the data contained in this report is considered by representatives of the United States during bilateral and multilateral discussions with friends and allies to minimize the adverse effects of offsets.

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

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

Companies reporting data concerning their firm's offset activities are permitted to provide the information in the format most convenient with their particular computer capabilities. These firms already collect, analyze, and present this information to document their implementation and performance on each offset agreement and transaction to the foreign government to which offset commitments are made. The regulations require companies to submit offset activity in hardcopy via mail or as an attachment to an e-mail and in a computerized spreadsheet/database format.

**4. Describe efforts to identify duplication.**

A thorough background check of data sources continues to substantiate the original finding that no other government, industry or academic organizations are currently conducting research at a level of detail which duplicates this data collection.

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

The revision will not have a significant economic impact on a substantial number of small businesses or other small entities. Based on experience, the reporting requirement affects almost exclusively large defense contractors that engage in offset agreements with foreign governments and report related offset transactions to these governments. Moreover, these companies already keep track of offset agreement and offset transaction data for twice yearly reporting to the foreign government parties to the offset agreements.

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

The data concerning offset agreements and transactions must be collected yearly in order for Commerce to make accurate and timely assessments of the impact of offsets on the defense preparedness, industrial competitiveness, employment, and trade of the United States in its report to Congress, as required by statute.

Firms involved in offset agreements with foreign governments generally report the status of offset transactions to fulfill offset agreement obligations to those governments twice a year. Based on the data provided by industry for the past 15 years and numerous discussions with reporting firms, annual reporting does not present an increased burden for these firms.

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

No special circumstances apply that require the collection of information to be conducted in a manner inconsistent with the guidelines of 5 CFR '1320.6.

**8. Provide a copy of the PRA Federal Register notice that solicited public comments on the information collection prior to this submission. Summarize the public comments received in response to that notice and describe the actions taken by the agency in response to those comments. Describe the efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and**

**recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.**

Public comment on this proposed revision to the existing collection will be solicited as part of the proposed rule. The proposed rule is in ROCIS.

**Consultations**

a. The regulation published in 1994 was developed after extensive consultations with the Defense Industry Offset Association (DIOA), which represents the vast majority of U.S. firms engaging in defense offset agreements. Members of this association as well as the Aerospace Industries Association (AIA) were given a draft of the regulation and their comments were incorporated into the final regulation. Since implementation of the final regulation, industry has successfully provided Commerce with the necessary offset data required to meet the Congressional reporting requirement. Commerce periodically meets with DIOA and AIA representatives to discuss the preparation of the annual report to Congress.

b. In 2008, BIS initiated a rulemaking to update this regulation (RIN 0694-AE40). This is the rule associated with this revision request. BIS anticipates that the change will lead to less ambiguity and more consistency in submissions from industry, and thus, will allow BIS to improve the assessment of the economic effects of offsets in defense trade. This rulemaking is also in response to a recommendation made by the Government Accountability Office (GAO). See Defense Production Act: Agencies Lack Policies and Guidance for Use of Key Authorities (GAO-08-854). The GAO stated that in its annual report to Congress, Commerce provides useful summaries of offsets issues, but the type of data collected from prime contractors limits the analysis of the impact of offsets on the U.S. economy. Consequently, the GAO recommended that Commerce update its offset reporting regulation to request more industry specific information from prime contractors, which would improve the assessment of the economic effects of offsets.

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

Not applicable. BIS will not provide any reimbursement of any kind to respondents.

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

The Defense Production Act of 1950, as amended, requires the Secretary to establish regulations to collect this information, and to provide protection for such information from public disclosure. Commerce will not disclose individual or company reports or proprietary data in the report as required by Section 309 of the Defense Production Act of 1950, as amended. Rather, information provided by U.S. firms is presented in aggregated formats, protecting the identity

and proprietary data of individual respondents. Commerce has successfully met this requirement for the 15 years of data that it has reported and submitted to Congress.

**11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.**

No information related to the private affairs of individuals or information that could in any way be construed to be of a sensitive nature regarding individuals will be collected.

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

It is estimated that this amendment will increase public burden by 90 hours annually. This estimate is based on 30 firms requiring an extra three hours annually to determine the appropriate NAICS code and add this information to their annual report.

Based on the above estimates of 90 hours at \$25/hour, the total annual cost to the public of this amendment is \$2,250.

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

Not applicable.

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

This amendment will not result in additional costs to the Federal Government.

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

There is a burden increase of 90 hours annually for the 30 exporters subject to this collection. This is the result of a program change, requiring companies to assign the appropriate NAICS code (s) to each offset agreement associated with a military export sale and each corresponding offset transaction that triggers a reporting requirement.

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

**publication.**

Commerce now publishes a Federal Register notice annually reminding the public that U.S. firms are required to report annually on contracts for the sale of defense articles or defense services to foreign governments or foreign firms that are subject to offset agreements exceeding \$5,000,000 in value and to report on offset transactions completed in performance of existing offset commitments for which offset credit of \$250,000 or more has been claimed from the foreign representative. Companies submit such reports for the preceding calendar year no later than June 15. At present, BIS's offset database contains 15 years of data (1993-2007). The first report on Offsets in Defense Trade prepared by BIS was forwarded to Congress on May 20, 1996. Subsequent annual reports to Congress have been prepared using these data in aggregated format. Commerce generally completes its annual report to Congress in December.

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

Not applicable.

**18. Explain each exception to the certification statement identified in Item 19 of the OMB 83-I.**

Not applicable.

**B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS**

Not applicable. Statistical methods will not be used.