

**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 final rule entitled “Reporting of Offsets Agreements in Sales of Weapon Systems or Defense-Related Items to Foreign Countries or Foreign Firms” (RIN 0694-AE40) which will be published after OMB approval.

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. Commerce publishes a Federal Register Notice annually reminding the public of these requirements. At present, BIS's offset database contains 16 years of data (1993-2008). The first report on Offsets in Defense Trade prepared by BIS was forwarded to Congress on May 20, 1996.

BIS published its thirteenth report to Congress on offsets in defense trade in December 2008. This report reviews offset data for the 15-year period from 1993-2007.

The final 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 (from 9 hours to 12 hours) for each of the 30 exporters subject to this collection (Total from 270 to 360).

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 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 of this data collection 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, and cannot be collected less frequently.

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 information 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.

On April 29, 2009, BIS published a proposed rule (74 FR 19466) requesting comments on changes to its Offset Reporting Regulation and on this collection of information. No comments specific to the collection of information were received.

This request is associated with the final rulemaking which will be published after OMB approval. The final rule contains some additional language and examples to help provide additional clarity on the data being requested, but does not change any of the data being requested from industry.

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. 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.

The estimated total burden placed on those involved in offset agreements is 360 hours per year. Approximately 30 firms are expected to require an average of nine hours each to compile the data once a year. The average time to compile and submit the report is 12 hours. This estimate is based on the past industry reporting of offset agreements and offset transactions to Commerce.

Based on the above estimates of 360 hours at \$25/hour, the total annual cost to the public is \$9,000.

These estimates of reporting burden are subject to variations among individual organizations because of differences in record keeping, number of establishments, breadth of offset activities, organization size, area of specialization and other variables. Based on recent submissions from industry, the estimate seems to be accurate.

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

Not applicable.

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

The estimated cost to the Federal Government for the offset agreement and transaction data collection is \$24,963 annually. A major portion of this cost is related to collecting and verifying data and computerizing the information for analytical purposes. The direct costs were estimated by determining the total Federal employee hours allocated to the project and multiplying the total hours of the employees assigned to the assessment by average hourly pay of a GS-15 assigned to the project for approximately 60 hours each year; a GS-15 for 80 hours each year; a GS-14 assigned to the project for 150 hours each year;; and a GS-12 assigned to the project for 100 hours each year, as shown below. These estimates are based on 16 years of experience with this data collection.

Overhead costs associated with the assigned employee costs were derived by increasing the direct costs by 20 percent. A review of the budgets of the Office of Strategic Industries and Economic Security, BIS's office actually collecting and compiling the information, indicates overhead costs for building maintenance, telephone, and space rental charges generally run about 20 percent.

Employee Salaries (total 390 hours):

60 hours for one GS-15, step 4	\$ 3,834
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150 hours for one GS-14, step 7	\$ 8,890
80 hours for one GS-14, step 1	\$ 4,687
100 hours for one GS-12, step 1	\$ 3,514
<u>Federal Government Overhead</u>	<u>\$ 4,038</u>
Total	\$24,963

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

BIS is increasing the estimated burden associated with this collection by three hours as a result of a new requirement in the Offset Reporting Regulation that companies classify each of their offset agreements and transactions by six-digit North American Industry Classification System (NAICS) code. This new requirement will be published in the final rule BIS will publish before the end of calendar year 2009. This new requirement is outlined in the proposed rule published by BIS on April 29, 2009 (74 FR 19466).

BIS added this new requirement for two primary reasons. First is that the inclusion of data that includes six-digit NAICS codes provided by industry will allow BIS to better utilize certain economic models to provide a more accurate assessment of the economic impact of offsets in defense trade. This will allow BIS to better fulfill its mandate under Section 309 in its annual reports to Congress.

In addition, this new requirement responds to a recommendation made by the Government Accountability Office (“GAO”) in its June 26, 2008 report entitled Defense Production Act: Agencies Lack Policies and Guidance for Use of Key Authorities (GAO-08-854). In its report, the GAO stated that Commerce provides useful summaries of offsets issues in its annual report to Congress, but the type of data collected from prime contractors limits BIS’s ability to effectively analyze the impact of offsets on the U.S. economy. Consequently, the GAO recommended that Commerce update its Offset Reporting Regulation to require more precise information on the industry sectors in which offset activity occurs by requiring respondents to classify offset activities according to the NAICS.

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

The annual reports to Congress are 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.

Not applicable.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

Not applicable. Statistical methods will not be used.