

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

A. JUSTIFICATION

This is an extension request for the Office of Management and Budget approval of a currently approved information collection.

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

In 1984, the Congress enacted amendments to the Defense Production Act of 1950 (See 50 U.S.C. app. 2061 et seq.) (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 required 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.

In 2009, Congress amended the DPA, striking Section 309 and replacing it with Section 723. See Pub. L. 111-67, September 30, 2009 123 Stat. 2020. The most significant change in the amended regulation is the new requirement that companies report the appropriate North American Industry Classification System (NAICS) code(s) for each military sale that triggers an offset agreement and for each offset transaction reported under the regulation.

On March 16, 2012, the President signed an Executive Order Number 13603 amending the DPA renewing the authority of the Secretary of Commerce shall prepare and submit to the Congress the annual offset report to Congress. See Order No. 77 Fed. Reg. 16651, March 22, 2012. A copy of all materials was provided to OMB with this request.

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.

The regulation requires U.S. firms 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 19 years of data (1993-2011). The first report on Offsets in Defense Trade prepared by BIS was forwarded to Congress on May 20, 1996.

BIS published its sixteenth report to Congress on offsets in defense trade in February 2011. This report reviews offset data for the 18-year period from 1993-2010.

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 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, chaired by the Department of Defense (Defense) 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. 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 in defense priorities.

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 U.S. government, industry or academic organizations are currently conducting research at a level of detail which duplicates this data collection. [The European Defense Agency collects data among its member countries but does release the data.]

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

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.

The notice requesting public comment was published in the Federal Register on September 5, 2012 (77 Fed. Reg. 54559).

BIS received a response from the Aerospace Industries Association (AIA). In its response, AIA raised concerns about the value of the offsets report to the U.S. Government, and the accuracy of the time BIS estimates it would take U.S. prime defense contractors to gather and submit annual offsets data. AIA argued that the value of the report is far outweighed by the time and cost burden placed on contractors to compile information to submit to BIS for the report.

Regarding the value of the report, BIS notes, as stated in preceding sections, that the President is directed to compile this report annually under Section 723 of the DPA. The authority of the President to compile this report was delegated to the Secretary of Commerce in Executive Order 12919. On March 16, 2012, the President renewed the authority by Executive Order 13603. To date, the Congress has not indicated that the report has no value; indeed the information contained in the report is often referenced in discussions about the overall impact of offsets on U.S. companies. Therefore, Commerce will continue to comply with the DPA's offsets reporting requirement. Any changes to the reporting requirement would require an act of Congress.

With regard to the second issue of estimated time required by prime defense contractors to report offsets data activity, BIS bases its time estimate of 12 hours on the average time required by a U.S. prime defense contractor to provide offset data for the annual offsets report. BIS acknowledges that there may be some individual defense contractors that significantly exceed the average, but the BIS estimate is based on the known universe of U.S. prime defense contractors, which is approximately 30 companies. Additionally, although some responding prime defense contractors may significantly exceed the average, most report a few or no offsets agreements or transactions. For example, in a recent reporting year, less than half of the universe of U.S. prime defense contractors reported offsets agreement data and less than two thirds reported offset transaction data.

The majority of offsets agreements and transactions were reported by just a few companies.

It is our understanding that U.S. prime contractors are required to report annually or semi-annually to the offset authorities of offset-demanding countries on the progress of their offsets fulfillment obligations. Considering the fact that a reporting requirement exists already, it is assumed that the offsets reporting burden required by BIS would be less onerous than if no reporting function were in place. BIS assumes that any information compiled for these semi-annual reports could be applied to the BIS offsets report collection.

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

Not applicable.

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

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 723 (c) and 705 (d) 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 18 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 twelve hours each to compile the data once a year. 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 labor cost 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	\$ 4,165
150 hours for one GS-14, step 7	\$ 9,358
80 hours for one GS-14, step 1	\$ 5,236
100 hours for one GS-12, step 1	\$ 4,566
<u>Federal Government Overhead</u>	<u>\$ 4,665</u>
Total	\$32,655

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

Not applicable.

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.