§ 701.4 Procedures.

(a) To avoid double counting, firms should report only offset transactions for which they are directly responsible for reporting to the foreign customer (i.e., prime contractors should report for their subcontractors if the subcontractors are not a direct party to the offset agreement).

(b) Reports should be delivered to the Offsets Program Manager, U.S. Department of Commerce, Office of Strategic Industries and Economic Security, Bureau of Industry and Security, Room 3878, 14th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20230. The first industry reports should be submitted to the Bureau of Industry and Security not later than March 15, 1995 and should cover offset transactions completed during the calendar year 1993, as well as information regarding unfulfilled offset agreements. After this initial submission, companies should provide information once yearly not later than June 15 covering the preceding calendar year. All submissions should include a point of contact (name and telephone number) and should be by a company official authorized to provide such information.

(c) Companies may submit this information in computerized spreadsheet/database format (e.g., Lotus 1-2-3, Quattro Pro, dBASE IV) using a 3.5 inch 1.44 megabyte diskette, accompanied by a printed copy.

(d) Offset Transaction Reporting. (1) Reports should include an itemized list of offset transactions completed during the reporting period, including the following data elements (Estimates are acceptable when actual figures are unavailable; estimated figures should be followed by the letter "E"): (i) Name of Country—Country of entity purchasing the weapon system, defense item or service subject to offset. (ii) Name or Description of Weapon System, Defense Item, or Service Subject to Offset. (iii) Name of Offset Fulfilling Entity—Entity fulfilling offset transaction (including first tier subcontractors). (iv) Name of Offset Receiving Entity—Entity receiving benefits from offset transaction. (v) Offset Credit Value—Dollar value credits claimed by fulfilling entity including any intangible factors/multipliers. (vi) Actual Offset Value—Dollar value of the offset transaction without multipliers/ intangible factors. (vii) Description of Offset Product/Service—Short description of the type of offset (e.g., coproduction, technology transfer, subcontract activity, training, purchase, cash payment, etc.). (viii) Broad Industry Category—Broad classification of the industry in which the offset transaction was fulfilled (e.g., aerospace, electronics, chemicals, industrial machinery, textiles, etc.). Firms may request a list of the Standard Industry Classification (SIC) codes to assist in identifying an appropriate industry category. Forward such requests to the Offsets Program Manager, U.S. Department of Commerce, Office of Strategic Industries and Economic Security, Bureau of Industry and Security, Room 3878, 14th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20230 or Fax 202–482–5650.

(ix) Direct or Indirect Offset—Specify whether the offset transaction was direct or indirect offset.

(x) Name of Country in Which Offset was Fulfilled—United States, purchasing country, or third country.

(2) Offset transactions of the same type (same fulfilling entity, receiving entity, and offset product/service) completed during the same reporting period may be combined.

(3) Any necessary comments or explanations relating to the above information should be footnoted and supplied on separate sheets attached to the report.
§ 701.4 Procedures.

(a) Reporting period. The Department of Commerce publishes a notice in the Federal Register annually reminding the public that U.S. firms are required to report annually on contracts for the sale of defense-related items or defense-related services to foreign governments or foreign firms that are subject to offset agreements exceeding $5,000,000 in value. U.S. firms are also required to report annually 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. Such reports must be submitted to the Department of Commerce no later than June 15 of each year and must contain offset agreement and transaction data for the previous calendar year.

(b) Reporting instructions. (1) U.S. firms must only report on offset agreements they have entered into with a foreign customer. U.S. firms must report offset transactions that they are directly responsible for reporting to the foreign customer, regardless of who performs the transaction (i.e., prime contractors must report for their subcontractors if the subcontractors are not a direct party to the offset agreement).

(2) Reports must be submitted in hardcopy to the Offset Program Manager, U.S. Department of Commerce, Bureau of Industry and Security, Room 3076, 14th Street and Constitution Avenue, NW., Washington, DC 20230, and as an e-mail attachment to OffsetReport@bis.doc.gov. E-mail attachments must include the information in a computerized spreadsheet or database format. If unable to submit a report in computerized format, companies should contact the Offset Program Manager for guidance. All submissions must include a point of contact (name and telephone number) and must be submitted by a company official authorized to provide such information.

(c) Reports must include the information described below. Any necessary comments or explanations relating to the information shall be footnoted and supplied on separate sheets attached to the reports.

(1) Reporting on offset agreements. U.S. firms shall provide an itemized list of new offset agreements entered into during the reporting period, including the information about each such agreement described in paragraphs (c)(1)(i) through (c)(1)(ix) of this section.

(i) Name of foreign country. Identify the country of the foreign entity involved in the military export sale associated with the offset agreement.

(ii) Description of the military export sale. Provide a name and description of the defense article and/or defense service referenced in the military export sale, as well as the date (month and year) that the related offset agreement was signed.

(iii) Military export sale classification. Identify the six-digit North American Industry Classification System (‘‘NAICS’’) code(s) associated with the military export sale. Refer to U.S. Census Bureau’s U.S. NAICS Manual for a listing of applicable NAICS codes (http://www.census.gov/epcd/www/naics.html). Paragraphs (c)(1)(iii)(A) through (c)(1)(iii)(E) of this section provide examples that illustrate how to select the appropriate NAICS code(s).

(A) Example 1. Company A enters into an offset agreement associated with the sale of 24 fighter aircraft and guided missiles to country B. Fighter aircraft manufacturing is classified in the NAICS as NAICS 336411, Aircraft Manufacturing. Guided missiles are classified in the NAICS as NAICS 336414, Guided Missile and Space Vehicle Manufacturing. This military export sale should be classified under NAICS 336411 and NAICS 336414.

(B) Example 2. Company B enters into an offset agreement associated with the sale of a navigation system for a fleet of military aircraft to country C. Navigation system manufacturing is classified in the NAICS as NAICS 334511, Search, Detection, Navigation, Guidance, Aeronautical, and Nautical System and Instrument Manufacturing. This military export sale should be classified under NAICS 334511.

(C) Example 3. Company C enters into an offset agreement associated with the sale of radio communication equipment to country D. Radio communication equipment is classified in the NAICS as NAICS 334220, Radio and Television Broadcasting and Wireless Communication Equipment Manufacturing. This military export sale should be classified under NAICS 334220.
§ 701.4 15 CFR Ch. VII (1–1–10 Edition)

(D) Example 4. Company D enters into an offset agreement associated with the sale of 30 aircraft engines to country E. Aircraft engines are classified in the NAICS as NAICS 336412, Aircraft Engine and Engine Parts Manufacturing. This military export sale should be classified under NAICS 336412.

(E) Example 5. Company E enters into an offset agreement associated with the sale of armored vehicles to country F. Armored vehicles are classified in the NAICS as NAICS 336992, Military Armored Vehicle, Tank, and Tank Component Manufacturing. This military export sale should be classified under NAICS 336992.

(iv) Foreign party to offset agreement. Identify, by name, the entity performing the offset agreement on behalf of the U.S. entity that entered into the offset agreement.

(v) Offset agreement penalties for non-performance. Identify each category that describes the offset agreement’s penalties for non-performance. For example, the agreement may include penalties such as liquidated damages, debarment from future contracts, added offset requirements, fees, commissions, bank credit guarantees, or other (please describe).

(vi) Offset agreement type. Identify the offset transaction type. Identify the offset transaction as a direct offset transaction, an indirect offset transaction, or a combination of both.

(vii) Name of offset receiving entity. Identify the foreign entity receiving benefits from the offset transaction.
(viii) Actual offset value. Provide the U.S. dollar value of the offset transaction without taking into account multipliers or intangible factors. Should the offset transaction involve more than one NAICS code, please list the U.S. dollar values associated with each NAICS code.

(ix) Offset credit value. Provide the U.S. dollar value credits claimed by the offset performing entity, including any multipliers or intangible factors.

(x) Offset transaction performance location. Name the country where each offset transaction was fulfilled, such as the purchasing country, the United States, or a third country.

§ 701.5 Confidentiality.

(a) As provided by § 309(c) of the Defense Production Act of 1950, as amended, BIS shall not publicly disclose the information it receives pursuant to this part, unless the firm furnishing the information subsequently specifically authorizes public disclosure.

(b) Public disclosure must be authorized in writing by an official of the firm competent to make such an authorization.

(c) Nothing in this provision shall prevent the use of data aggregated from information provided pursuant to this part in the summary report to the Congress described in § 701.1.

§ 701.6 Violations, penalties, and remedies.

(a) Willful violation of the Defense Production Act may result in punishment by fine or imprisonment, or both. The maximum penalty provided by the Defense Production Act is a $10,000 fine, or one year in prison, or both.

(b) The Government may seek an injunction from a court of appropriate jurisdiction to prohibit the continuance of any violation of, or to enforce compliance with, the Defense Production Act and this regulation.

[74 FR 68141, Dec. 23, 2009]

EFFECTIVE DATE NOTE: At 74 FR 68141, Dec. 23, 2009, § 701.6 was added, effective Jan. 22, 2010.

PARTS 702–704 [RESERVED]