PART 701—REPORTING OF OFFSETS AGREEMENTS IN SALES OF WEAPON SYSTEMS OR DEFENSE-RELATED ITEMS TO FOREIGN COUNTRIES OR FOREIGN FIRMS

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SOURCE: 59 FR 61796, Dec. 2, 1994, unless otherwise noted.

§ 701.1 Purpose.

The Defense Production Act Amendments of 1992 require the Secretary of Commerce to promulgate regulations for U.S. firms entering into contracts for the sale of defense articles or defense services to foreign countries or foreign firms that are subject to offset agreements exceeding $5,000,000 in value to furnish information regarding such agreements. The Secretary of Commerce has designated the Bureau of Industry and Security as the organization responsible for implementing this provision. The information provided by U.S. firms will be aggregated and used to determine the impact of offset transactions on the defense preparedness, industrial competitiveness, employment, and trade of the United States. Summary reports are submitted annually to Congress pursuant to Section 309 of the Defense Production Act of 1950, as amended.

[59 FR 61796, Dec. 2, 1994, as amended at 74 FR 68140, Dec. 23, 2009]

§ 701.2 Definitions.

(a) *Offsets*. Compensation practices required as a condition of purchase in either government-to-government or commercial sales of:

(1) Defense articles and/or defense services as defined by the Arms Export Control Act and the International Traffic in Arms Regulations; or

(2) Items controlled under an Export Control Classification Number (ECCN) that has the numeral ‘‘6’’ as its third character in the Commerce Control List found in supplement no. 1 to part 774 of this chapter other than semi-submersible and submersible vessels specially designed for cargo transport and parts, components, accessories and attachments specially designed therefor controlled under ECCN 8A620.b; test, inspection and production equipment controlled in ECCN 8B620.b, software controlled in ECCN 8D620.b and technology controlled in ECCN 8E620.b.

(b) *Military Export Sales*. Exports that are either Foreign Military Sales (FMS) or commercial (direct) sales of:

(1) Defense articles and/or defense services as defined by the Arms Export Control Act and International Traffic in Arms Regulations; or

(2) Items controlled under an Export Control Classification Number (ECCN) that has the numeral ‘‘6’’ as its third character in the Commerce Control List found in supplement no. 1 to part 774 of this chapter other than semi-submersible and submersible vessels specially designed for cargo transport and parts, components, accessories and attachments specially designed therefor controlled under ECCN 8A620.b; test, inspection and production equipment controlled in ECCN 8B620.b; software controlled in ECCN 8D620.b; and technology controlled in ECCN 8E620.b.

(c) *Prime Contractor*. A firm that has a sales contract with a foreign entity or with the U.S. Government for military export sales.

(d) *United States*. Includes the 50 states, the District of Columbia, Puerto Rico, and U.S. territories.

(e) *Offset Agreement*. Any offset as defined above that the U.S. firm agrees to in order to conclude a military export sales contract. This includes all offsets, whether they are ‘‘best effort’’ agreements or are subject to penalty clauses.

(f) *Offset Transaction*. Any activity for which the U.S. firm claims credit for full or partial fulfillment of the offset agreement. Activities to implement offset agreements are categorized as co-production, technology transfer, subcontracting, credit assistance, training, licensed production, investment, purchases and other. Paragraphs (f)(1) through (f)(8) of this section provide examples of the categories of offset transactions.

(1) *Example 1.* Company A, a U.S. firm, contracts for Company B, a foreign firm located in country C, to produce a component of a U.S.-origin defense article subject to an offset agreement between Company A and country C. The defense article will be sold to country C pursuant to a Foreign Military Sale and the production role of Company B is described in the Letter of Offer and Acceptance associated with that sale and a government-to-government co-production memorandum of understanding. This transaction would be categorized as co-production and would, like all co-production transactions, be direct.

(2) *Example 2.* Company A, a U.S. firm, transfers technology to Company B, a foreign firm located in country C, which allows Company B to conduct research and development directly related to a defense article that is subject to an offset agreement between Company A and country C. This transaction would be categorized as technology transfer and would be direct because the research and development is directly related to an item subject to the offset agreement.

(3) *Example 3.* Company A, a U.S. firm, contracts for Company B, a foreign firm located in country C, to produce a component of a U.S.-origin defense article subject to an offset agreement between Company A and country C. The contract with Company B is for a direct commercial sale and Company A does not license Company B to use any technology. The transaction would be categorized as subcontracting and would, like all subcontracting transactions, be direct.

(4) *Example 4.* Company A, a U.S. firm, makes arrangements for a line of credit at a financial institution for Company B, a foreign firm located in country C, so that Company B can produce an item that is not subject to the offset agreement between Company A and country C. The transaction would be categorized as credit assistance and would be indirect because the credit assistance is unrelated to an item covered by the offset agreement.

(5) *Example 5.* Company A, a U.S. firm, arranges for training of personnel from Company B, a foreign firm located in country C. The training is related to the production and maintenance of a U.S.-origin defense article that is subject to an offset agreement between Company A and country C. The transaction would be categorized as training and would be direct because the training is directly related to the production and maintenance of an item covered by the offset agreement.

(6) *Example 6.* Company A, a U.S. firm, contracts for Company B, a foreign firm located in country C, to produce a component of a U.S.-origin defense article that is subject to an offset agreement between Company A and country C. The contract with Company B is a Foreign Military Sale and Company A licenses Company B to use Company A's production technology to produce the component. There is no co-production agreement between the United States and country C. The transaction would be categorized as licensed production and would be direct because it involves the item covered by the offset agreement.

(7) *Example 7.* Company A, a U.S. firm, makes an investment in Company B, a foreign firm located in country C, so that Company B can create a new production line to produce a component of a defense article that is subject to an offset agreement between Company A and country C. The transaction would be categorized as investment and would be direct because the investment involves an item covered by the offset agreement.

(8) *Example 8.* Company A, a U.S. firm, purchases various off-the-shelf items from Company B, a foreign firm located in country C, but none of these items will be used by Company A to produce the defense article subject to the offset agreement between Company A and country C. The transaction would be categorized as purchases and would, like all purchase transactions, be indirect.

(g) *Direct Offset.* An offset transaction directly related to the article(s) or service(s) exported or to be exported pursuant to the military export sales agreement. See the examples illustrating offset transactions of this type in §§ 701.2(f)(1), 701.2(f)(2), 701.2(f)(3), 701.2(f)(5), 701.2(f)(6) and 701.2(f)(7) of this part.

(h) *Indirect Offset.* An offset transaction unrelated to the article(s) or service(s) exported or to be exported pursuant to the military export sales agreement. See the examples illustrating offset transactions of this type in §§ 701.2(f)(4) and 701.2(f)(8) of this part.

[59 FR 61796, Dec. 2, 1994, as amended at 74 FR 68140, Dec. 23, 2009; 81 FR 10474, Mar. 1, 2016]

§ 701.3 Applicability and scope.

(a) This part applies to U.S. firms entering contracts that are subject to an offset agreement exceeding $5,000,000 in value and that are for the sale to a foreign country or foreign firm of:

(1) Defense articles and/or defense services as defined by the Arms Export Control Act and International Traffic in Arms Regulations; or

(2) Items controlled under an Export Control Classification Number (ECCN) that has the numeral "6" as its third character in the Commerce Control List found in supplement no. 1 to part 774 of this chapter other than semi-submersible and submersible vessels specially designed for cargo transport and parts, components, accessories and attachments specially designed therefor controlled under ECCN 8A620.b; test, inspection and production equipment controlled in ECCN 8B620.b; software controlled in ECCN 8D620.b and technology controlled in ECCN 8E620.b.

(b) This rule applies to all offset transactions completed in performance of existing offset commitments since January 1, 1993 for which offset credit of $250,000 or more has been claimed from the foreign representative, and new offset agreements entered into since that time.

[59 FR 61796, Dec. 2, 1994, as amended at 81 FR 10474, Mar. 1, 2016]

§ 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 3876, 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.

(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 the foreign government agency or branch that is the signatory to the offset agreement.

(v) *Military export sale value*. Provide the U.S. dollar value of the military export sale. Should the military export sale involve more than one NAICS code, please separately list the values associated with each NAICS code.

(vi) *Offset agreement value*. Provide the U.S. dollar value of the offset agreement.

(vii) *Offset agreement term*. Identify the term of the offset agreement in months.

(viii) *Offset agreement performance measures*. Identify each category that describes the offset agreement's performance measures: best efforts, accomplishment of obligation, or other (please describe).

(ix) *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).

(2) *Reporting on offset transactions*. U.S. firms shall provide an itemized list of offset transactions completed during the reporting period, including the elements listed in paragraphs (c)(2)(i) through (c)(2)(x) of this section for each such transaction (numerical estimates are acceptable when actual

figures are unavailable; estimated figures shall be followed by the letter "E").

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

(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 associated with the offset transaction, as well as the date the offset agreement was signed (month and year).

(iii) *Offset transaction category.* Identify each category that describes the offset transaction as co-production, technology transfer, subcontracting, training, licensing of production, investment, purchasing, credit assistance or other (please describe).

(iv) *Offset transaction classification.* Identify the six-digit NAICS code(s) associated with the offset transaction. 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)(2)(iv)(A) through (c)(2)(iv)(E) of this section provide examples that illustrate how to select the appropriate NAICS code in the instances described therein.

(A) *Example 1.* Company A completes an offset transaction by co-producing aircraft engines in country B. Aircraft engine manufacturing is classified in the NAICS as NAICS 336412, Aircraft Engine and Engine Parts Manufacturing. This offset transaction should be classified under NAICS 336412.

(B) *Example 2.* Company B completes an offset transaction by licensing the production of automotive electrical switches in country C. Company B also assists in structuring a wholesale distribution network for these products. Automotive electrical switch manufacturing is classified in the NAICS as NAICS 335931, Current Carrying Wiring Device Manufacturing, and the wholesale distribution network is classified in the NAICS as NAICS 423120, Motor Vehicle Supplies and New Parts Merchant Wholesalers. This offset transaction should be classified under NAICS 335931 and NAICS 423120.

(C) *Example 3.* Company C completes an offset transaction by transferring technology to establish a biotechnology research center in country D. Biotechnology research and development is classified in the NAICS as NAICS 541711, Research and Development in Biotechnology. This offset transaction should be classified under NAICS 541711.

(D) *Example 4.* Company D completes an offset transaction by purchasing steel forgings from a steel mill in country E. Steel forgings are classified in the NAICS as NAICS 331111, Iron and Steel Mills. This offset transaction should be classified under NAICS 331111.

(E) *Example 5.* Company E completes an offset transaction by providing training assistance services in country F to certain plant managers. Training assistance is classified in the NAICS as NAICS 611430, Professional and Management Development Training. This offset transaction should be classified under NAICS 611430.

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

(vi) *Name of offset performing entity.* Identify, by name, the entity performing the offset transaction on behalf of the U.S. entity that entered into the offset agreement.

(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.

[74 FR 68141, Dec. 23, 2009]

§ 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]

PART 702—INDUSTRIAL BASE SURVEYS—DATA COLLECTIONS

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SUPPLEMENT NO. 1 TO PART 702—GENERAL SURVEY INFORMATION

AUTHORITY: 50 U.S.C. 4501 *et seq.;* E.O. 13603, 77 FR 16651, 3 CFR, 2012 Comp., p. 225.

SOURCE: 80 FR 41430, July 15, 2015, unless otherwise noted.

§ 702.1 Introduction.

In accordance with 50 U.S.C. app. 2155, the Bureau of Industry and Security (BIS) may obtain such information from, require such reports and the keeping of such records by, make an inspection of the books, records, and other writings, premises or property of, take the sworn testimony of and administer oaths and affirmations to, any person as may be necessary or appropriate, in its discretion, to the enforcement or the administration of its authorities and responsibilities under the Defense Production Act of 1950 as amended (DPA) and any regulations or orders issued thereunder. BIS's authorities under the DPA (50 U.S.C. app. 2061 *et seq.*) include authority to collect data via surveys to perform industry studies assessing the capabilities of the United States industrial base to support the national defense and develop policy recommendations to improve both the international competitiveness of specific domestic industries and their ability to meet national defense program needs.

§ 702.2 Scope and purpose of surveys—avoiding duplicative requests for information.

(a) BIS will not send any survey to any person for completion unless the scope and purpose of the survey have been established, that scope and purpose are consistent with BIS's authorities under the DPA, and the data requested by the survey does not duplicate adequate and authoritative data already available to BIS from a Federal or other authoritative source.

(b) BIS personnel of appropriate competence and authority will ensure that the requirements of paragraph (a) of this section are met.

(c) This section shall not be construed as limiting the criteria that BIS may consider in determining whether to proceed with a survey. This paragraph shall not be construed as replacing or in any way modifying the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

§ 702.3 Confidential information.

This section implements section 705(d) of the DPA.

(a) BIS deems all information submitted in response to a survey issued pursuant to this part to be confidential.