

9. U.S. GOVERNMENT AGENCY INFORMATION	
<p>a. Name/complete address of cognizant sponsoring service/agency/activity headquarters office. Provide lower level activity, program, project, contract administration, or field office information in Continuation Block below, on duplicate of this page, or on separate sheet of paper.</p> <p>Name _____</p> <p>Address _____</p> <p>City _____ State _____ Zip _____</p> <p>Contact name _____</p> <p>Signature _____ Date _____</p> <p>Title _____</p> <p>Telephone _____ Fax _____</p> <p>E-mail address: _____</p>	<p>b. Case reference no. _____</p> <p>c. Government agency program or project to be supported by Block 2 item(s). Identify end-user agency if not sponsoring agency.</p>
<p>d. Statement of urgency of particular program or project and Applicant's part in it. Specify the extent to which failure to obtain requested assistance will adversely affect the program or project.</p>	
<p>e. Government agency/activity actions taken to attempt resolution of problem.</p>	
<p>f. RECOMMENDATION</p>	
<p>g. ENDORSEMENT by authorized Department or Agency headquarters official (omit signature if this form is electronically generated and transmitted – use of name is deemed authorization). This endorsement is required for all Department of Defense and foreign government requests for assistance.</p> <p>Signature of authorized official _____ Type name of authorized official _____</p> <p>Title _____ Date _____</p>	
<p>CONTINUATION BLOCK</p> <p><i>Identify each statement with appropriate block number</i></p>	

INSTRUCTIONS FOR FILING FORM BIS-999
<p>NOTE: You may fill out this form using your computer. Save the downloaded blank file to your computer and generate forms for submission via U.S. mail, e-mail, or fax. Navigate between the form's data fields using the tab key, back tab or backspace.</p> <p>REQUESTS FOR SPECIAL PRIORITIES ASSISTANCE (SPA) MAY BE FILED for any reason in support of the Defense Priorities and Allocations System (DPAS); e.g.: when its regular provisions are not sufficient to obtain delivery of item(s)¹ in time to meet urgent customer or program/project requirements; for help in locating a supplier or placing a rated order; to ensure that rated orders are receiving necessary preferential treatment by suppliers; to resolve production or delivery conflicts between or among rated orders; to verify the urgency or determine the validity of rated orders; or to request authority to use a priority rating. Requests for SPA must be sponsored by the cognizant U.S. Government agency responsible for the program or project supported by the Applicant's² contract or purchase order.</p> <p>REQUESTS FOR SPA SHOULD BE TIMELY AND MUST ESTABLISH:</p> <ul style="list-style-type: none"> The urgent defense (including civil emergency) or energy program or project related need for the item(s); and that The Applicant has made a reasonable effort to resolve the problem. <p>APPLICANT MUST COMPLETE BLOCKS 1-8. SPONSORING U.S. GOVERNMENT AGENCY/ACTIVITY MUST COMPLETE BLOCKS 9-10. Sponsoring agency, if not the Department of Defense (DOD), must obtain DOD concurrence if the agency is supporting a DOD program or project. This form may be mechanically or electronically prepared and may be mailed, FAXed, or electronically transmitted.</p> <p>WHERE TO FILE THIS FORM:</p> <ul style="list-style-type: none"> Private sector Applicants should file with their respective customers as follows: lower-tier suppliers file with customer/subcontractor for forwarding to subcontractor/prime contractor; subcontractors/suppliers file with prime contractor for forwarding to one of the below listed cognizant U.S. Government (DPAS Delegate) agencies; prime contractors file directly with one of the below listed cognizant U.S. Government (DPAS Delegate) agencies: <ul style="list-style-type: none"> Department of Defense (DOD) -- File with the local Defense Contract Management Area Office, plant representative or contracting officer, or the appropriate DOD military service, associated agency, program, or project office. Department of Energy (DOE) -- File with the appropriate Field Operations Office. Requests for SPA for domestic energy projects should be filed with DOE headquarters in Washington, D.C. General Services Administration (GSA) and Federal Emergency Management Agency (FEMA) -- File with the contracting officer in the agency's regional office or with its headquarters office in Washington, D.C. Applicants who are lower level contract administration, program, project, or field offices, or when these activities cannot resolve the private sector request for assistance, should forward this form to cognizant sponsoring service/agency/activity headquarters for review, Block 10 endorsement, and forwarding to the U.S. Department of Commerce. Foreign government or private sector entities should file directly with the DOD Office of the Secretary of Defense. Timely review and forwarding is essential to providing timely assistance. If for any reason the Applicant is unable to file this form as specified above, see CONTACTS FOR FURTHER INFORMATION below. <p>CONTACTS FOR FURTHER INFORMATION:</p> <ul style="list-style-type: none"> For any information related to the production or delivery of items against particular rated contracts or purchase orders, contact the cognizant U.S. Government agency, activity, contract administration, program, project, or field office (see WHERE TO FILE above). If for any reason the Applicant is unable to file this form as specified in WHERE TO FILE above, if the cognizant U.S. Government agency for filing this form cannot be determined, or for any other information or problems related to the completion and filing of this form, the operation or administration of the DPAS, or to obtain a copy of the DPAS or any DPAS training materials, contact the Office of Strategic Industries and Economic Security, Room 3876, U.S. Department of Commerce, Washington, D.C. 20230 (Attn.: DPAS); telephone (202) 482-3634, or FAX (202) 482-5650. <p>APPLICANTS REQUIRING PRIORITY RATING AUTHORIZATION TO OBTAIN PRODUCTION OR CONSTRUCTION EQUIPMENT for the performance of rated contracts or orders in support of DOD programs or projects must file DOD Form DD-691, "Application for Priority Rating for Production or Construction Equipment" in accordance with the instructions on that form. For DOE, GSA, or FEMA programs or projects, Applicants may use this form unless the agency requires its own form.</p> <p>SPECIAL INSTRUCTIONS:</p> <ul style="list-style-type: none"> If the space in any block is insufficient to provide a clear and complete statement of the information requested, use the Continuation Block provided on this form or a separate sheet to be attached to this form. Entries in Block 3 should be limited to information from a single contract or purchase order. If SPA is requested for additional contracts or purchase orders placed with a supplier for the same or similar items, information from these contracts or purchase orders may be included in one application. However, each contract or purchase order number must be identified and the quantities, priority rating, delivery requirements, etc., must be shown separately. If disclosure of certain information on this form is prohibited by security regulations or other security considerations, enter "classified" in the appropriate block in lieu of the restricted information. <p>FOOTNOTES:</p> <ol style="list-style-type: none"> "Item" is defined in the DPAS as any raw, in process or manufactured material, article, commodity, supply, equipment, component, accessory, part, assembly, or product of any kind, technical information, process or service. "Applicant" as used in this form, refers to any person requiring Special Priorities Assistance, and eligible for such assistance under the DPAS. "Person" is defined in the DPAS to include any individual, corporation, partnership, association, any other organized group of persons, a U.S. Government agency, or any other government. <p>BURDEN ESTIMATE AND REQUEST FOR COMMENT</p> <p>Public reporting burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, gathering the data needed, and completing the form. Please send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Director of Administration, Bureau of Industry and Security, Room 3889, U.S. Department of Commerce, Washington, D.C. 20230. Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number.</p>

[71 F.R. 39529, July 13, 2006]

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

Sec.

701.1 Purpose.

701.2 Definitions.

701.3 Applicability and scope.

701.4 Procedures.

701.5 Confidentiality.

701.6 Violations, penalties, and remedies.

AUTHORITY: 50 U.S.C. 4568; E.O. 12919, 59 FR 29525, 3 CFR, 1994 Comp., p. 901; E.O. 13286, 68 FR 10619, 3 CFR, 2003 Comp., p. 166.

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

Bur. of Industry and Security, Comm.

§ 701.4

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 de-

fense-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/ipeds/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