

[63 FR 31926, June 11, 1998]

**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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AUTHORITY: Title I, sec. 124, Pub. L. 102-558, 106 Stat. 4207 (50 U.S.C App. 2099).

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 will be submitted annually to the Congress pursuant Section 309 of the Defense Production Act of 1950, as amended.

§ 701.2 Definitions.

(a) *Offsets*—Compensation practices required as a condition of purchase in either government-to-government or commercial sales of defense articles and/or defense services as defined by the Arms Export Control Act and the International Traffic in Arms Regulations.

(b) *Military Export Sales*—Exports that are either Foreign Military Sales (FMS) or commercial (direct) sales of defense articles and/or defense services as defined by the Arms Export Control

Act and International Traffic in Arms Regulations.

(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 may include, but are not limited to, coproduction, licensed production, subcontractor production, overseas investment, technology transfer, countertrade, barter, counterpurchase, and buy back.

(g) *Direct Offset*—Contractual arrangements that involve defense articles and services referenced in the sales agreement for military exports.

(h) *Indirect Offset*—Contractual arrangements that involve defense goods and services unrelated to the exports referenced in the sales agreement.

§ 701.3 Applicability and scope.

(a) This rule applies to U.S. firms entering contracts for the sale of defense articles or defense services (as defined in the Arms Export Control Act and International Traffic in Arms Regulations) to a foreign country or foreign firm for which the contract is subject to an offset agreement exceeding \$5,000,000 in value.

(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.

§ 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 DC 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.

(e) *Reporting on Offset Agreements Entered Into.* (1) In addition to the itemized list of offset transactions completed during the year as specified above, U.S. firms should provide information regarding *new offset agreements entered into* during the year, including the following elements:

(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) Names/Titles of Signatories to the Offset Agreement;

(iv) Value of Export Sale Subject to Offset (approximate);

(v) Total Value of the Offset Agreement;

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(vi) Term of Offset Agreement (months);

(vii) Description of Performance Measures—(e.g., “Best Efforts,” Liquidated Damages, (describe)).

(2) [Reserved]

§ 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.

PARTS 702–704 [RESERVED]

PART 705—EFFECT OF IMPORTED ARTICLES ON THE NATIONAL SECURITY

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AUTHORITY: Sec. 232, Trade Expansion Act of 1962, as amended (19 U.S.C. 1862).

SOURCE: 47 FR 14693, Apr. 6, 1982, unless otherwise noted. Redesignated at 54 FR 601, Jan. 9, 1989.

§ 705.1 Definitions.

As used in this part:

Department means the United States Department of Commerce and includes

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the Secretary of Commerce and the Secretary’s designees.

Secretary means the Secretary of Commerce or the Secretary’s designees.

Applicant means the person or entity submitting a request or application for an investigation pursuant to this part.

§ 705.2 Purpose.

These regulations set forth the procedures by which the Department shall commence and conduct an investigation to determine the effect on the national security of the imports of any article. Based on this investigation, the Secretary shall make a report and recommendation to the President for action or inaction regarding an adjustment of the imports of the article.

§ 705.3 Commencing an investigation.

(a) Upon request of the head of any government department or agency, upon application of an interested party, or upon motion of the Secretary, the Department shall immediately conduct an investigation to determine the effect on the national security of the imports of any article.

(b) The Secretary shall immediately provide notice to the Secretary of Defense of any investigation initiated under this part.

[47 FR 14693, Apr. 6, 1982. Redesignated at 54 FR 601, Jan. 9, 1989, and amended at 63 FR 31623, June 10, 1998]

§ 705.4 Criteria for determining effect of imports on the national security.

(a) To determine the effect on the national security of the imports of the article under investigation, the Department shall consider the quantity of the article in question or other circumstances related to its import. With regard for the requirements of national security, the Department shall also consider the following:

(1) Domestic production needed for projected national defense requirements;

(2) The capacity of domestic industries to meet projected national defense requirements;

(3) The existing and anticipated availabilities of human resources, products, raw materials, production equipment and facilities, and other