

**RECORD OF PUBLIC COMMENTS**

**PROPOSED RULE ON REPORTING OF OFFSET AGREEMENTS  
IN SALES OF WEAPON SYSTEMS OR DEFENSE-RELATED  
ITEMS TO FOREIGN COUNTRIES OR FOREIGN FIRMS**

**Publication in the Federal Register: January 5, 2009 (75 FR 81)**

**Comments due by June 29, 2009**

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(2) Airbus Model A340–200 and A340–300 series airplanes, all serial numbers.

#### Subject

(d) Air Transport Association (ATA) of America Code 28: Fuel.

#### Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

An A340 operator has reported an uncommanded engine N°4 shut down during taxi after landing.

The root cause of this event has been identified as failure of the fuel pump Non-Return Valve (NRV) preventing the collector cell jet pump from working. This led to engine N°4 collector cell fuel level to drop below the pump inlet and consequently causing engine N°4 flame out.

A330 aircraft which have a similar design are also impacted by this issue.

Multiple NRV failures in combination with failure modes trapping fuel could potentially increase the quantity of unusable fuel on aircraft possibly leading to fuel starvation which could result in engine in-flight shut down and would constitute an unsafe condition.

To prevent such an event, this Airworthiness Directive (AD) requires a periodic operational test to check the correct operation of NRV and to apply the associated corrective actions.

The corrective action includes replacing any failed NRV with a new NRV.

#### Actions and Compliance

(f) Unless already done, do the following actions.

(1) For Model A330 series airplanes: At the later of the times in paragraphs (f)(1)(i) and (f)(1)(ii) of this AD, perform an operational test for correct functioning of the NRV and apply all applicable corrective actions, in accordance with instructions defined in Airbus Mandatory Service Bulletin A330–28–3108, including Appendix 1, dated October 13, 2008. Do all applicable corrective actions before further flight.

(i) Within 24 months or 8,000 flight hours after the effective date of this AD, whichever occurs first.

(ii) Before the accumulation of 10,000 flight hours after the first flight of the airplane.

(2) For Model A340–200 and –300 series airplanes: At the later of the times in paragraphs (f)(2)(i) and (f)(2)(ii) of this AD, perform an operational test for correct functioning of the NRV and apply all applicable corrective actions in accordance with instructions defined in Airbus Mandatory Service Bulletin A340–28–4123, including Appendix 1, dated October 13, 2008. Do all applicable corrective actions before further flight.

(i) Within 24 months or 9,000 flight hours after the effective date of this AD, whichever occurs first.

(ii) Before the accumulation of 25,000 flight hours after the first flight of the airplane.

(3) Repeat the operational test specified in paragraph (f)(1) or (f)(2) of this AD at the applicable interval in paragraph (f)(3)(i) or (f)(3)(ii) of this AD.

(i) For Model A330 airplanes: At intervals not to exceed 10,000 flight hours.

(ii) For Model A340–200 and –300 airplanes: At intervals not to exceed 25,000 flight hours.

(4) Submit a report of the findings (both positive and negative) of the inspection required by paragraph (f)(1) or (f)(2) of this AD to Airbus, at the time specified in paragraph (f)(4)(i) or (f)(4)(ii) of this AD, as applicable. The report must include the information specified in Appendix 1 of Airbus Mandatory Service Bulletins A330–28–3108 and A340–28–4123, both dated October 13, 2008, as applicable. Send the report to Airbus Department SEEE6, Airbus Customer Services Directorate, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex France, ATTN: SDC32 Technical Data and Documentation Services; fax: +33 5 61 93 28 06; e-mail: [sb.reporting@airbus.com](mailto:sb.reporting@airbus.com).

(i) If the inspection was done after the effective date of this AD: Submit the report within 30 days after the inspection.

(ii) If the inspection was done on or prior to the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

#### FAA AD Differences

**Note 1:** This AD differs from the MCAI and/or service information as follows: No Differences.

#### Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM–116, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1138; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal maintenance inspector (PMI) or the principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office.

(2) Airworthy Product: For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) Reporting Requirements: For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

#### Related Information

(h) Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2008–0209, dated November 27, 2008; and Airbus

Mandatory Service Bulletins A330–28–3108 and A340–28–4123, both including Appendix 1, both dated October 13, 2008; for related information.

Issued in Renton, Washington, on April 15, 2009.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

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## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

#### 15 CFR Part 701

[Docket No. 080722875–8876–01]

RIN 0694–AE40

#### Reporting of Offsets Agreements in Sales of Weapon Systems or Defense-Related Items to Foreign Countries or Foreign Firms

**AGENCY:** Bureau of Industry and Security, Department of Commerce.

**ACTION:** Proposed rule.

**SUMMARY:** The Bureau of Industry and Security (BIS) is proposing to amend the Reporting of Offsets Agreements in Sales of Weapon Systems or Defense-Related Items to Foreign Countries or Foreign Firms regulation (15 CFR part 701) to update and provide clarification with regard to the information U.S. companies are required to submit each year to BIS to support the preparation of the annual report to Congress on offsets in defense trade.

**DATES:** Comments must be received by June 29, 2009.

**ADDRESSES:** You may submit comments, identified by RIN 0694–AE40, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *E-mail:* [OffsetReport@bis.doc.gov](mailto:OffsetReport@bis.doc.gov). Include “RIN 0694–AE40” in the subject line of the message.
- *Fax:* 202–482–5650.
- *Mail/Hand Delivery:* Offset Program Manager, U.S. Department of Commerce, Bureau of Industry and Security, Office of Strategic Industries and Economic Security, Room 3876, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230, ATTN: RIN 0694–AE40.

• *Fax:* 202–482–5650.

• *Mail/Hand Delivery:* Offset Program Manager, U.S. Department of Commerce, Bureau of Industry and Security, Office of Strategic Industries and Economic Security, Room 3876, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230, ATTN: RIN 0694–AE40.

#### FOR FURTHER INFORMATION CONTACT:

Ronald DeMarines, Office of Strategic Industries and Economic Security, tel. (202) 482–3755, e-mail [rdemarin@bis.doc.gov](mailto:rdemarin@bis.doc.gov).

**SUPPLEMENTARY INFORMATION:****Background**

The Defense Production Act Amendments of 1992 required the Secretary of Commerce to promulgate regulations for U.S. firms to furnish information regarding sales of defense articles or defense services to foreign countries or foreign firms when such sales are made pursuant to a contract subject to an offset agreement exceeding \$5,000,000 in value. The Secretary of Commerce designated BIS as the organization responsible for promulgating such regulations. The Reporting of Offsets Agreements in Sales of Weapon Systems or Defense-Related Items to Foreign Countries or Foreign Firms regulation (15 CFR part 701) (hereinafter, the "Offset Reporting Regulation") was first published in 1994. The information provided by U.S. firms pursuant to the Offset Reporting Regulation is 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 the Congress pursuant to Section 309 of the Defense Production Act of 1950, as amended.

**Reasons for the Changes Proposed by This Rule**

The changes proposed in this rule are a result of an internal BIS review of the data that has been collected in the past pursuant to the Offset Reporting Regulation. The changes in this proposed rule clarify the information BIS is seeking from companies. BIS anticipates that these changes will lead to less ambiguity and more consistency in submissions from industry and thus will allow BIS to improve the assessment of the economic effects of offsets on defense trade.

This proposed rule is also in response to a recommendation made by the Government Accountability Office (GAO) in its June 26, 2008 report entitled *Defense Production Act: Agencies Lack Policies and Guidance for Use of Key Authorities (GAO-08-854)*. In its report, the GAO stated that Commerce provides useful summaries of offsets issues in its annual report to Congress, but that the type of data collected from prime contractors limits the ability of BIS to effectively analyze the impact of offsets on the U.S. economy. Consequently, the GAO recommended that Commerce update its offset reporting regulation to request more precise information on the industry sectors that offset activity was occurring in from prime contractors, in

order to improve the assessment of the economic effects of offsets.

The revisions proposed in this rule are not anticipated to impose significant new burdens on parties subject to the reporting requirements of the Offset Reporting Regulation.

**Specific Changes That Would be Made by This Proposed Rule**

This rule would amend the last sentence of § 701.1 of the Offset Reporting Regulation to reflect that Commerce has already submitted and will continue to submit reports to Congress. The current § 701.1 suggests only that Commerce will be submitting reports in the future.

In addition, this rule would amend certain definitions in § 701.2 of the Offset Reporting Regulation to reflect BIS's 15-year experience in preparing the report to Congress. Specifically, the illustrative list of activities listed in the definition of "offset transaction" in § 701.2(f) would be updated. Activities not commonly reported to BIS would be removed (*i.e.*, countertrade, barter, counterpurchase, and buy back) and replaced with activities that are frequently reported (*i.e.*, credit assistance, training, and purchase). This list remains illustrative.

This rule also would amend the definitions for "direct offset" and "indirect offset" in § 701.2(g) and § 701.2(h) of the Offset Reporting Regulation. The current references to "defense articles" and "defense goods" in the definitions of "direct offset" and "indirect offset" would be deleted to clarify that U.S. firms are required to report on all offset transactions for which offset credit of \$250,000 or more has been claimed from a foreign representative, even if the offset transaction itself does not involve a defense article or service (*i.e.*, items or services controlled pursuant to the International Traffic in Arms Regulations (22 CFR Parts 120-130) (ITAR)). Companies regularly report information to Commerce on offset transactions that do not involve defense articles or defense services. This change would clarify the intent of the reporting requirement and would reflect current reporting practices. Companies are required to keep records of each offset transaction for which offset credit is claimed, so this information is readily available to firms that are required to report under this section. The definitions would further be clarified and examples would be provided to illustrate the differences between direct and indirect offsets.

This rule would modify § 701.4 of the Offset Reporting Regulation by

reordering the section in a logical fashion, beginning with the reporting period and date by which reports shall be submitted to BIS, followed by updated reporting instructions, and finally the contents of the required reports to BIS related to offset agreements and offset transactions concluded during the reporting period. BIS feels that this reordering will make it easier for those affected by this regulation to identify all of the information they need to submit timely and accurate reports. This section would also note that BIS publishes an annual notice in the **Federal Register** to remind companies of their responsibility to report on offset agreements and transactions and the deadline.

This rule would update the reporting instructions described in § 701.4(b) of the Offset Reporting Regulation regarding the address to which reported offsets data should be submitted, including through the addition of a new e-mail address. Reports are now requested to be submitted in both hardcopy format and electronic format when possible. This rule would also delete references to outdated software and hardware formats described in § 701.4(c) of the Offset Reporting Regulation.

The provisions of the Offset Reporting Regulation currently describing the contents of reports on offsets transactions (§ 701.4(d)) and offsets agreements entered into (§ 701.4(e)) would also be reordered so that offset agreement reporting requirements would be described in § 701.4(c)(1) and then offset transaction reporting requirements would be described later in § 701.4(c)(2). BIS believes it makes more sense to first describe reporting requirements for offsets agreements, and then describe reporting requirements for offsets transactions taken pursuant to offsets agreements. In addition, terminology would be updated and revised to ensure consistency throughout Part 701. BIS had used the term "weapon system" in § 701.4(d) and § 701.4(e). The proposed rule would replace the term "weapon system" with "military export sale," a defined term in § 701.2, which BIS believes is a more appropriate term in § 701.4 because not all reported defense sales with offset agreements are of weapon systems. Further, additional clarifying changes would be made to the descriptions of information required to be reported under § 701.4 of the Offset Reporting Regulation.

This proposed rule would eliminate the requirement, currently found in § 701.4(e)(1)(iii) of the Offset Reporting

Regulation, that companies report the names and titles of the signatories to offset agreements. BIS believes that this information is not necessary for the preparation of BIS's annual report to Congress. Under proposed § 701.4(c)(1)(iv), companies would instead be required to report only the identity of the foreign government agency or branch that is a signatory to the offset agreement.

The proposed rule would also separate the reporting requirements on offset agreement performance measures and non-performance penalties currently found in § 701.4(e)(1)(vii) of the Offset Reporting Regulation. The current section contemplates that non-performance penalties would be included in a description of performance measures. However, BIS experience has revealed that such penalties are best treated as a separate category. Accordingly, Sections 701.4(c)(1)(viii) and 701.4(c)(1)(ix) in the proposed rule clarify the reporting requirements concerning offset agreement performance measures and non-performance penalties respectively and include lists of examples for each based on data collected during the past 15 years.

The proposed rule would require companies to assign the appropriate North American Industry Classification System (NAICS) code(s) to each military export sale for which there is an offset agreement triggering a reporting requirement (see proposed § 701.4(c)(1)(iii)), and to each offset transaction reported under the Offset Reporting Regulation (see proposed § 701.4(c)(2)(iv)). NAICS is the standard industrial classification system used in the United States. In the current regulation, BIS asks industry to classify offset transactions by broad industry classification and provide a name and description of the military export sale. Firms are directed to the Standard Industrial Classification (SIC) codes for assistance in identifying an appropriate industry category for offset transactions. The SIC has been replaced by the NAICS. (See 62 FR 17288, Apr. 4, 1997.)

All companies that conduct business with the U.S. Government are required to classify their products and services, including those regularly involved in military export sales reported to Commerce, in accordance with the NAICS (See *Central Contractor Registration Handbook*, <http://www.ccr.gov>). The U.S. Census Bureau posts instructions on its Web site on how to properly classify products and services in accordance with the NAICS. Requiring respondents to classify military export sales and offset

transactions by NAICS codes will ensure that submissions under the Offset Reporting Regulation are prepared in a consistent manner. This change will also allow BIS to gather more accurate information on military export sales and offset transactions because NAICS is more specific and will enhance BIS's ability to assess the economic impact of offsets on the U.S. industrial base by allowing BIS to better utilize other data published by statistical agencies of the U.S. Government. BIS has included illustrative examples in § 701(c)(1)(iii) and § 701(c)(2)(iv) of the proposed rule on classifying military export sales and offset transactions by NAICS codes.

This proposed rule also would require companies to report for each offset transaction the date when the related offset agreement was signed (§ 701.4(c)(2)(ii)). This data will allow BIS to better track the fulfillment of offset agreements and identify trends in offset transaction activity. Companies involved in defense exports and offset agreements are required to keep records of each offset transaction for which offset credit is claimed so they can accurately account for their obligations, so this information is readily available to firms reporting under this section.

The proposed rule also would revise examples of offset transaction categories. Section 701.4(d)(1)(vii) in the current regulation, entitled "Description of Offset Product/Service", would be replaced by § 701.4(c)(2)(iii), entitled "Offset Transaction Category." The categories of offset transactions listed as examples in the new section more accurately reflect the types of offset transactions that have been reported to BIS since 1994. In particular, the category of "cash payment" will be removed, and the categories of "licensed production", "overseas investment", and "credit assistance" will be added, as will a suggestion that other categories could be labeled "other" and accompanied by a description.

Finally, this rule would add a new section, § 701.6, to the Offset Reporting Regulation, to describe the penalties available under the Defense Production Act should companies not comply with this regulation. 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. The government may also 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.

## Rulemaking Requirements

1. This rule has been determined to be significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation contains a collection previously approved by the OMB under control number 0694-0084, which carries a burden hour estimate of nine hours for a reporting firm to prepare and submit once per year. In addition, this proposed rule will amend that collection for reporting on offset agreements and transactions by NAICS code, which carries an estimated burden of three hours for companies submitting annual reports to BIS. The 60-day comment period on this proposed rule will also serve as the public comment period regarding the burden of the collection of information associated with preparation and submission of offset agreements and transactions by NAICS code. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Jasmeet K. Seehra, Office of Management and Budget, by e-mail at [jseehra@omb.eop.gov](mailto:jseehra@omb.eop.gov) or by fax to (202) 395-7285 and to the Offsets Program Manager, Bureau of Industry and Security, Department of Commerce, as indicated in the **ADDRESSES** section of this proposed rule.

3. This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

4. The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to the notice and comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 553) or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Under section 605(b) of the RFA, however, if the head of an agency certifies that a rule will not have a significant impact on a substantial number of small entities, the statute does not require the agency to prepare

a regulatory flexibility analysis. Pursuant to section 605(b), the Chief Counsel of Regulations, Department of Commerce, certified to the Chief Counsel for Advocacy, Small Business Administration, that this proposed rule, if promulgated, will not have a significant impact on a substantial number of small entities for the reasons explained below. Consequently, BIS has not prepared a regulatory flexibility analysis.

Small entities include small businesses, small organizations and small governmental jurisdictions. For purposes of assessing the impacts of this proposed rule on small entities, small entity is defined as: (1) A small business according to RFA default definitions for small business (based on SBA size standards), (2) a small governmental jurisdiction that is a government of a city, town, school district or special district with a population of less than 50,000, and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. BIS has determined that this final rule would not affect any of these categories of small entities.

Since BIS began collecting in 1994, virtually all of the submissions that it received are from a small number of very large companies that do not meet the SBA size standards for a small business. Since 1994, the number of companies that submit data to BIS pursuant to this regulation has been less than 25 per year. On average, the companies that submit data to BIS have annual revenues well in excess of \$1 billion. For instance, in the most recent year in which BIS collected data pursuant to this regulation, only four of the 25 companies that submitted data had reported revenue of less than \$1 billion with the lowest revenue at \$120 million. According to SBA's size standards, the maximum annual revenue for a small business is \$33.5 million and the maximum number of employees is between 500 and 1,000.

Some small businesses likely are involved in fulfilling offset obligations by acting as subcontractors to the large prime contractors that report directly to BIS, meaning that they report indirectly to BIS pursuant to this section.

However, this proposed rule will not significantly increase the burden on such companies. The information collected by BIS pursuant to this section is already collected by such small businesses so that they can accurately account for their obligations under the offset agreement and report them to the prime contractor. The only new reporting requirement in this proposed

rule is the classification of offset agreements and transactions by NAICS code. Even subcontractors involved in the manufacture of defense articles are likely to conduct business with the U.S. government and, therefore, be required to classify their products and services, in accordance with the NAICS (See *Central Contractor Registration Handbook*, <http://www.ccr.gov>). In addition, the U.S. government takes steps to facilitate selection of the correct NAICS code by private parties. The U.S. Census Bureau posts instructions on its Web site on how to properly classify products and services in accordance with the NAICS. BIS has included illustrative examples in § 701(c)(1)(iii) and § 701(c)(2)(iv) on classifying military export sales and offset transactions by NAICS codes.

In addition, small governmental entities and small organizations, not being businesses, are not likely to be involved in international defense trade, and would therefore have no reason to submit data to BIS pursuant to this regulation. Consequently, this proposed rule, if promulgated, will not have a significant impact on a substantial number of small entities.

#### List of Subjects in 15 CFR Part 701

Administrative practice and procedure, Arms and munitions, Business and industry, Exports, Government contracts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the National Security Industrial Base Regulations (15 CFR parts 700–709) are amended as follows:

#### PART 701—AMENDED

1. The authority citation for part 701 is revised to read as follows:

**Authority:** 50 U.S.C. App. 2099 and Executive Order 12919, 59 FR 29525, 3 CFR, 1994 Comp. 901 and Executive Order 13286, 68 FR 10619, 3 CFR, 2003 Comp. 166.

2. In § 701.1, revise the last sentence in the section to read:

##### § 701.1 Purpose.

\* \* \* Summary reports are submitted annually to Congress pursuant to Section 309 of the Defense Production Act of 1950, as amended.

3. In § 701.2, revise paragraphs (f), (g), and (h) to read as follows:

##### § 701.2 Definitions.

\* \* \* \* \*

(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 include co-

production, technology transfer, subcontracting, credit assistance, training, licensed production, overseas investment, and purchases.

(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. For example, a U.S. firm subcontracting with a foreign firm to supply a subassembly for a defense article exported pursuant to that military export sales agreement could be a direct offset.

(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. For example, a U.S. firm co-producing, with a foreign government or foreign firm, an item unrelated to an article or service exported pursuant to that military export sales agreement could be an indirect offset.

4. Section 701.4 is revised to read as follows:

#### § 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 for offset agreement and transaction data for the previous calendar year.

(b) *Reporting instructions.*

(1) To avoid double counting, firms shall report only offset transactions that they are directly responsible for reporting to the foreign customer (*i.e.*, prime contractors shall 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 Pennsylvania Avenue, NW., Washington, DC 20230, and as an e-mail attachment to [OffsetReport@bis.doc.gov](mailto: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) of the related offset agreement.

(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 United States NAICS Manual for a listing of applicable NAICS codes ([www.census.gov/epcd/www/naics.html](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 in the instances described therein.

(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 North American Industry Classification System (NAICS) as NAICS 336411, Aircraft Manufacturing. Guided missiles are classified in the NAICS as NAICS 336414, Guided Missile and Space Vehicle Manufacturing.

(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.

(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.

(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.

(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.

(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 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 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 (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: co-production, technology transfer, subcontracting, training, licensing of production, overseas investment, purchasing, credit assistance or other (please describe).

(iv) *Offset transaction classification.* Identify the six-digit North American Industry Classification System (NAICS) code(s) associated with the offset transaction. Refer to U.S. Census Bureau's United States 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.

(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.

(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.

(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.

(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.

(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 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 values associated with each NAICS code.

(ix) *Offset credit value.* Provide the dollar value credits claimed by the offset performing entity, including any multipliers or intangible factors. Should an offset transaction involve more than one NAICS code, please list the values associated with each NAICS code.

(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.

5. Section 701.6 is added to read as follows:

**§ 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.

Dated: April 21, 2009.

**Matthew S. Borman,**  
*Acting Assistant Secretary for Export Administration.*

[FR Doc. E9-9514 Filed 4-28-09; 8:45 am]  
BILLING CODE 3510-JT-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA-R03-OAR-2008-0898; FRL-8898-5]

**Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Transportation Conformity Requirements**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the

Commonwealth of Pennsylvania for Transportation Conformity Requirements. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

**DATES:** Comments must be received in writing by May 29, 2009.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA-R03-OAR-2008-0898 by one of the following methods:

A. *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *E-mail:* [febbo.carol@epa.gov](mailto:febbo.carol@epa.gov).

C. *Mail:* EPA-R03-OAR-2008-0898, Carol Febbo, Chief, Energy, Radiation and Indoor Environment Branch, Mailcode 3AP23, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA-R03-OAR-2008-0898. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI (or otherwise protected) through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access system", which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [http://](http://www.regulations.gov)

[www.regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the electronic docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, Rachel Carson State Office Building, 400 Market Street, 12th Floor, Harrisburg, PA 17105-8468.

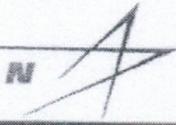
**FOR FURTHER INFORMATION CONTACT:** Martin Kotsch, (215) 814-3335, or by e-mail at [kotsch.martin@epa.gov](mailto:kotsch.martin@epa.gov).

**SUPPLEMENTARY INFORMATION:** For further information, please see the information provided in the direct final action, with the same title, that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Dated: April 15, 2009.

**William C. Early,**  
*Acting Regional Administrator, Region III.*  
[FR Doc. E9-9842 Filed 4-28-09; 8:45 am]

BILLING CODE 6560-50-P



Gregory J. Martin  
 Director, Corporate Industrial Participation

email: [greg.martin@lmco.com](mailto:greg.martin@lmco.com)

6801 Rockledge Drive  
 Bethesda, MD 20817  
 Mail: Point 315  
 O: 301-897-6350  
 F: 301-897-6652

Date: June 12, 2009

To: Offset Program Manager  
 US Department of Commerce  
 Bureau of Industry and Security  
 Office of Strategic Industries and Economic Security  
 Room 3876  
 14<sup>th</sup> Street and Pennsylvania Avenue NW  
 Washington, DC 20230

From: Greg Martin

Re: Response to RIN 0694-AE40

This letter is in response to RIN 0694-AE40, which includes proposed changes to 15 CFR part 701, or the Reporting of Offsets Agreements in Sales of Weapon Systems or Defense Related Items to Foreign Countries or Foreign Firms regulation. Lockheed Martin appreciates the opportunity to comment on the proposed changes.

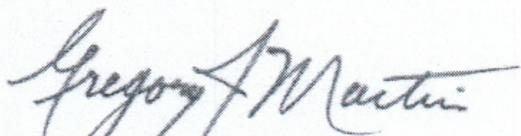
The transition from SIC to NAICS codes with respect to work/product category, while in line with universal reporting methods, will add significant time to the formulation of this report. It is noted in the Rulemaking Requirements section, subpart 2, that the switch to NAICS reporting will add an estimated burden of 3 additional hours for companies submitting this report. However, it was estimated that companies spend a total of 9 hours in the collection and formatting of this data, which does not accurately reflect the total burden of Lockheed Martin. The sheer size in both count and volume of our offset obligations requires that we spend in excess of 100 hours collecting and formatting the data for the Offset Report. Extrapolating the estimates by BIS, we estimate that the NAICS requirement will add a 33% burden, which translates to a minimum of 30 hours for Lockheed Martin. This addition is significant in terms of the manpower necessary during both the data collection and formatting aspects of this reporting requirement.

Section 701.2, sub sections viii & ix, call for both Actual offset value and Offset credit value to be reported by multiple NAICS codes should the transaction include more than one code. Lockheed Martin does not formulate offset projects based on NAICS codes, nor do we negotiate project values with our customers based on a NAICS classification largely because the majority of our customers do not follow this system. Attempting to split the value of our projects by a NAICS classification after credit has been earned will not lend itself to accurate reporting. This is not due to unwillingness on the part of Lockheed Martin, but for the simple reason that most offset projects are so intertwined with regards to NAICS classification that the splitting of values would be more speculation than an accurate reflection of any one offset project.

Finally, we would like to reiterate our desire that this report be restricted so that foreign governments may not have access to the Offset Report data. Lockheed Martin contends that the Offset Report is utilized by foreign government customers to win offset concessions from U.S. contractors during negotiations. It is also utilized to benchmark the success of their offset program in comparison to those of other countries. Our experience is that the unrestricted publication of this report has had a negative impact on US industry.

I would be happy to provide additional information or to elaborate on my comments.

Sincerely,

  
Gregory J. Martin



June 29, 2009

Docket No. 080722875-8876-01  
RIN 0694-AE40  
Reporting of Offsets Agreements in Sales of  
Weapon Systems or Defense-Related Items to  
Foreign Countries or Foreign Firms

RE: Proposed amendment to the Bureau of Industry and Security reporting requirements

The Aerospace Industries Association (AIA) applauds the Bureau of Industry and Security (BIS) in their effort to update and provide clarification regarding the information U.S. companies are required to annually submit. However there are specific parts of the proposed amendment that will be cumbersome to industry, significantly exceeding the BIS burden-hour estimates and may disadvantage U.S. companies in the global marketplace.

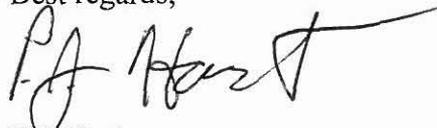
The proposed amendment would require companies to link each offset transaction with a specific offset agreement and provide the date the agreement was signed. Many companies have multiple offset agreements for the same product in the same country. Properly allocating each transaction with an agreement will be time consuming for U.S. companies. Some companies have estimated this requirement could take almost an entire work week to complete. AIA trusts that careful consideration will be given to weighing the potential benefits of this information with the added burden on U.S. companies.

Additionally the proposed changes would require disclosure of the North American Industry Classification System (NAICS) code for each export sale. Industry does not track these codes during sales and many offset transactions could require more than one NAICS code. This requirement would be yet another burden on industry.

AIA also has significant concerns over the unintended consequences of more detailed information being requested. The amendment would create separate reporting requirements for offset agreement performance measures and non-performance penalties. Providing detailed contract information would again not only be cumbersome but more importantly could disadvantage U.S. companies in the global market place. Even if aggregated, making additional detailed information public, like penalty agreements, will further exacerbate U.S. industry's ability to negotiate a fair contract because history has shown that information published in the BIS report has been used by foreign governments to their offset advantage (e.g. requiring larger offset commitments).

Many of the proposed changes are a reordering of a section in a more logical format or clarifying reporting requirements that companies already submit. We support BIS in their efforts and think these changes will help streamline the reporting process. We respectfully suggest, however, that the proposed changes noted above not be incorporated into the final rule. BIS needs to be mindful of the time and resources these specific proposed changes will require from U.S. companies.

Best regards,

A handwritten signature in black ink, appearing to read "P.J. Hart", with a long horizontal flourish extending to the right.

P.J. Hart

Manager, International Affairs

June 30, 2009

Offset Program Manager  
U.S. Department of Commerce  
Bureau of Industry and Security  
Office of Strategic Industries and Economic Security  
Room 3876, 14<sup>th</sup> Street and Pennsylvania Ave, NW  
Washington, DC 20230

ATTN: RIN 0694-AE40



**Subject: Request for Public Comments on the Reporting on Offsets Agreements in the Sales of Weapons Systems or Defense-related Items to Foreign Countries or Foreign Firms**

Dear Sir or Madam:

The Boeing Company, hereinafter referred to as Boeing, welcomes this opportunity to provide comments on your proposed updates and clarifications to the Offsets Agreements reporting requirements contained in the April 29, 2009 Federal Register.

As background, Boeing has developed an internal database to track the information required under Offsets Agreements reporting requirements. Data is input year-round by the various business units impacted. Prior to submitting our report the data is reviewed, validated, and crafted into report form.

The most significant impact we anticipate from the proposed changes regards the use of NAISC codes:

- Requirement to use multiple NAISC codes as appropriate is time consuming and confusing;
- Reprogramming database and training users will be necessary in order to comply with the proposed changes.

Boeing estimates that it will require at least an 18 month lead time to implement the proposed changes to our database. This will entail updating systems, training users, and modifications to avoid changing transactions retroactively. For example, if the proposed BIS changes go into effect on 1 January 2010 then Boeing would be able to include them in the report due by 15 June 2011.

Finally, Boeing notes that all data provided to Commerce in its annual report remains proprietary information, is competition sensitive, and could be

The Boeing Company  
1200 Wilson Blvd.  
Arlington, VA 22209-1989

damaging to the company and to the defense industry if such information were publicly released.

We request that BIS give due consideration to the internal process changes that will be required at when deciding on the timing of the proposed changes.

Sincerely,



Norma Rein  
Senior Manager  
Global Licensing Compliance and Policy  
703-465-3655

