

## **OFFSETS IN DEFENSE TRADE: CHANGES IN OFFSET REPORTING REGULATION**

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U.S. Department Of Commerce,  
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(Also see hard copy PowerPoint presentation)

- Discussed recent regulatory changes re: reporting offsets to BIS pursuant to Defense Production Act
  - Changes based on GAO recommendations:
    - To address lack of data to measure the impact of offsets on the U.S. economy
    - Should use NAICS (North American Industry Classification System)
- Final Rule on Offsets effective January 22, 2010
  - Removes references to activities not usually reported (barter, countertrade, counterpurchase, and buy back)
  - Adds frequently reported terms (credit assistance, licensed production, investment, training, and purchases)
  - Adds “other” category
  - Defines “co-production” to include transactions based on government-to-government agreement authorizing technology transfer (based on FMS Letter of Offer and Acceptance [LOA] and Memorandum of Understanding [MOU])
    - If a foreign company receives technology to produce a component of a U.S. defense article without an LOA or MOU, then transaction is a “licensed production”
  - Clarifies reporting of “credit assistance” and “banked credits”
    - Credit assistance: if offset involves a line of credit for a foreign entity
    - Banked offset credits should be reported as “other”
  - Clarifies who should report
    - U.S. firm: prime contractor currently located in U.S., who is responsible for reporting to a foreign customer. Excludes agreements separately completed by foreign subsidiaries/affiliates unless the U.S. firm’s offset agreements are credited
  - New reporting requirements
    - Must report month and year that offset agreement was signed

- Must assign appropriate NAICS code to each military export sale for which there is an offset agreement (NAICS: <http://www.census.gov/eos/www/naics/>)
    - Must assign appropriate NAICS code to each offset transaction
    - If more than one NAICS code applies, list all codes and assign proportional values to each code (Actual value of the goods/services)
    - [For reporting examples, see hard copy handout]
  - Eliminates requirement to report names and titles of foreign signatories to offset agreements
    - Now, just report foreign government agency or branch that is signatory
- Questions:
  - Q: (Lockheed Martin) Issue with assigning proportional values to transactions fulfilling offset requirements. Won't it be very subjective? For example, how to assign value to technology transfer?
  - R: Make best attempt to assign proportional value
  - Comment: keep in mind emergence of “strategic offsets” where companies gain in future from transfers/transactions that satisfy offset requirements.
    - For example: if a company gets future royalties on technology transferred in fulfillment of offset requirements.
  - Q: How should unused banking credits be reported?
  - R: Don't report them unless they are used.