

fense articles or commodities solely to take advantage of high density or pyrophoric characteristics unrelated to its radioactivity, such exports shall be exempt from the provisions of the Atomic Energy Act of 1954 [42 U.S.C. 2011 et seq.] and of the Nuclear Non-Proliferation Act of 1978 [22 U.S.C. 3201 et seq.] when such exports are subject to the controls established under the Arms Export Control Act [22 U.S.C. 2751 et seq.] or the Export Administration Act of 1979.

(Pub. L. 96-533, title I, § 110, Dec. 16, 1980, 94 Stat. 3138.)

#### REFERENCES IN TEXT

The Atomic Energy Act of 1954, referred to in text, is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 919, which is classified principally to chapter 23 (§2011 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 42 and Tables.

The Nuclear Non-Proliferation Act of 1978, referred to in text, is Pub. L. 95-242, Mar. 10, 1978, 92 Stat. 120, as amended, which is classified principally to chapter 47 (§3201 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3201 of this title and Tables.

The Arms Export Control Act, referred to in text, is Pub. L. 90-629, Oct. 22, 1968, 82 Stat. 1320, as amended, which is classified principally to this chapter (§2751 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 2751 of this title and Tables.

The Export Administration Act of 1979, referred to in text, is Pub. L. 96-72, Sept. 29, 1979, 93 Stat. 503, which was classified principally to chapter 56 (§4601 et seq.) of Title 50, War and National Defense, prior to repeal by Pub. L. 115-232, div. A, title XVII, §1766(a), Aug. 13, 2018, 132 Stat. 2232, except for sections 11A, 11B, and 11C thereof (50 U.S.C. 4611, 4612, 4613).

#### CODIFICATION

Section was enacted as part of the International Security and Development Cooperation Act of 1980, and not as part of the Arms Export Control Act which comprises this chapter.

### § 2779. Fees of military sales agents

#### (a) Adequate and timely reports to Secretary of State; maintenance of records

In accordance with such regulations as he may prescribe, the Secretary of State shall require adequate and timely reporting on political contributions, gifts, commissions and fees paid, or offered or agreed to be paid, by any person in connection with—

- (1) sales of defense articles or defense services under section 2762 of this title, or of design and construction services under section 2769 of this title;
- (2) commercial sales of defense articles or defense services licensed or approved under section 2778 of this title; or
- (3) exports of defense articles or defense services pursuant to a treaty referenced in section 2778(j)(1)(C)(i) of this title;

to or for the armed forces of a foreign country or international organization in order to solicit, promote, or otherwise to secure the conclusion of such sales. Such regulations shall specify the amounts and the kinds of payments, offers, and agreements to be reported, and the form and timing of reports, and shall require reports on

the names of sales agents and other persons receiving such payments. The Secretary of State shall by regulation require such recordkeeping as he determines is necessary.

#### (b) Presidential regulation

The President may, by regulation, prohibit, limit, or prescribe conditions with respect to such contributions, gifts, commissions, and fees as he determines will be in furtherance of the purposes of this chapter.

#### (c) Allocation to contract; improper influence

No such contribution, gift, commission, or fee may be included, in whole or in part, in the amount paid under any procurement contract entered into under section 2762 or section 2769 of this title, unless the amount thereof is reasonable, allocable to such contract, and not made to a person who has solicited, promoted, or otherwise secured such sale, or has held himself out as being able to do so, through improper influence. For the purposes of this section, “improper influence” means influence, direct or indirect, which induces or attempts to induce consideration or action by any employee or officer of a purchasing foreign government or international organization with respect to such purchase on any basis other than such consideration of merit as are involved in comparable United States procurements.

#### (d) Availability of records to Congress and Federal agencies

(1) All information reported to the Secretary of State and all records maintained by any person pursuant to regulations prescribed under this section shall be available, upon request, to any standing committee of the Congress or any subcommittee thereof and to any agency of the United States Government authorized by law to have access to the books and records of the person required to submit reports or to maintain records under this section.

(2) Access by an agency of the United States Government to records maintained under this section shall be on the same terms and conditions which govern the access by such agency to the books and records of the person concerned.

(Pub. L. 90-629, ch. 3, § 39, as added Pub. L. 94-329, title VI, § 604(b), June 30, 1976, 90 Stat. 767; amended Pub. L. 96-533, title I, § 105(e)(2), Dec. 16, 1980, 94 Stat. 3135; Pub. L. 111-266, title I, § 104(e), Oct. 8, 2010, 124 Stat. 2800.)

#### REFERENCES IN TEXT

This chapter, referred to in subsec. (b), was in the original “this Act”, meaning Pub. L. 90-629, Oct. 22, 1968, 82 Stat. 1321, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2751 of this title and Tables.

#### AMENDMENTS

2010—Subsec. (a)(3). Pub. L. 111-266, which directed amendment of subsec. (a) by adding par. (3) at the end, was executed by adding par. (3) after par. (2) to reflect the probable intent of Congress.

1980—Subsec. (a)(1). Pub. L. 96-533, § 105(e)(2)(A), inserted reference to sales of design and construction services under section 2769 of this title.

Subsec. (c). Pub. L. 96-533, § 105(e)(2)(B), inserted reference to section 2769 of this title.

## EFFECTIVE DATE

Section effective 60 days after June 30, 1976, see section 604(c) of Pub. L. 94-329, set out as note under section 2776 of this title.

## DELEGATION OF FUNCTIONS

For delegation of functions of the President under subsec. (b) of this section, with certain conditions, see section 1(o) of Ex. Ord. No. 13637, Mar. 8, 2013, 78 F.R. 16130, set out as a note under section 2751 of this title. Functions were previously delegated by Ex. Ord. No. 11958, which was formerly set out as a note under section 2751 of this title and was revoked, subject to a savings provision, by section 4 of Ex. Ord. No. 13637.

**§ 2779a. Prohibition on incentive payments****(a) In general**

No United States supplier of defense articles or services sold or licensed under this chapter or exported pursuant to a treaty referred to in section 2778(j)(1)(C)(i) of this title, nor any employee, agent, or subcontractor thereof, shall, with respect to the sale or export of any such defense article or defense service to a foreign country, make any incentive payments for the purpose of satisfying, in whole or in part, any offset agreement with that country.

**(b) Civil penalties**

Any person who violates the provisions of this section shall be subject to the imposition of civil penalties as provided for in this section.

**(c) Presidential authority**

In the enforcement of this section, the President is authorized to exercise the same powers concerning violations and enforcement and imposition of civil penalties which are conferred upon departments, agencies and officials by subsections (c), (d), (e), and (f) of section 11<sup>1</sup> of the Export Administration Act of 1979, and section 12(a)<sup>1</sup> of such Act, subject to the same terms and conditions as are applicable to such powers under that Act, except that section 11(c)(2)(B) of such Act shall not apply, and instead, as prescribed in regulations issued under this section, the Secretary of State may assess civil penalties for violations of this chapter and regulations prescribed thereunder and further may commence a civil action to recover such civil penalties, and except further that notwithstanding section 11(c) of that Act, the civil penalty for each violation of this section may not exceed \$500,000 or five times the amount of the prohibited incentive payment, whichever is greater.

**(d) Definitions**

For purposes of this section—

(1) the term “offset agreement” means an agreement, arrangement, or understanding between a United States supplier of defense articles or defense services and a foreign country under which the supplier agrees to purchase or acquire, or to promote the purchase or acquisition by other United States persons of, goods or services produced, manufactured, grown, or extracted, in whole or in part, in that foreign country in consideration for the purchase by the foreign country of defense articles or defense services from the supplier;

(2) the term “incentive payments” means direct monetary compensation made by a United States supplier of defense articles or defense services or by any employee, agent or subcontractor thereof to any other United States person to induce or persuade that United States person to purchase or acquire goods or services produced, manufactured, grown, or extracted, in whole or in part, in the foreign country which is purchasing those defense articles or services from the United States supplier; and

(3) the term “United States person” means—

(A) an individual who is a national or permanent resident alien of the United States; and

(B) any corporation, business association, partnership, trust, or other juridical entity—

(i) organized under the laws of the United States or any State, the District of Columbia, or any territory or possession of the United States; or

(ii) owned or controlled in fact by individuals described in subparagraph (A) or by an entity described in clause (i).

(Pub. L. 90-629, ch. 3, §39A, as added Pub. L. 103-236, title VII, §733, Apr. 30, 1994, 108 Stat. 504; amended Pub. L. 106-113, div. B, §1000(a)(7) [div. B, title XII, §1246, title XIII, §1303], Nov. 29, 1999, 113 Stat. 1536, 1501A-502, 1501A-511; Pub. L. 111-266, title I, §103(d), Oct. 8, 2010, 124 Stat. 2799.)

## REFERENCES IN TEXT

This chapter, referred to in subsections (a) and (c), was in the original “this Act”, meaning Pub. L. 90-629, Oct. 22, 1968, 82 Stat. 1321, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2751 of this title and Tables.

The Export Administration Act of 1979, referred to in subsec. (c), is Pub. L. 96-72, Sept. 29, 1979, 93 Stat. 503, which was classified principally to chapter 56 (§4601 et seq.) of Title 50, War and National Defense, prior to repeal by Pub. L. 115-232, div. A, title XVII, §1766(a), Aug. 13, 2018, 132 Stat. 2232, except for sections 11A, 11B, and 11C thereof (50 U.S.C. 4611, 4612, 4613). Sections 11 and 12 of the Act were classified to sections 4610 and 4614, respectively, of Title 50 prior to repeal.

## AMENDMENTS

2010—Subsec. (a). Pub. L. 111-266 inserted “or exported pursuant to a treaty referred to in section 2778(j)(1)(C)(i) of this title” after “under this chapter”.  
1999—Subsec. (a). Pub. L. 106-113, §1000(a)(7) [title XII, §1246(a)], inserted “or licensed” after “sold” and “or export” after “sale”.

Subsec. (c). Pub. L. 106-113, §1000(a)(7) [title XIII, §1303], inserted “section 11(c)(2)(B) of such Act shall not apply, and instead, as prescribed in regulations issued under this section, the Secretary of State may assess civil penalties for violations of this chapter and regulations prescribed thereunder and further may commence a civil action to recover such civil penalties, and except further that” after “except that”.

Subsec. (d)(3)(B)(i). Pub. L. 106-113, §1000(a)(7) [title XII, §1246(b)], inserted “or by an entity described in clause (i)” after “subparagraph (A)”.

## DELEGATION OF FUNCTIONS

Functions of President under this section delegated to Secretary of State by Memorandum of President of the United States, July 26, 1994, 59 F.R. 40205, set out as a note under section 2370a of this title.

<sup>1</sup> See References in Text note below.