

The Export Administration Act of 1979, referred to in text, is Pub. L. 96-72, Sept. 29, 1979, 93 Stat. 503, as amended, which is classified principally to sections 2401 et seq. of Title 50, Appendix, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 2401 of Title 50, Appendix, and Tables.

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

Functions of President under subsec. (b) of this section delegated to Secretary of State, with Secretary of State required to consult with Secretary of Defense to avoid interference in application of Department of Defense regulations to sales made under section 2762 of this title, by section 1(m) of Ex. Ord. No. 11958, Jan. 18, 1977, 42 F.R. 4311, as amended, set out as a note under section 2751 of this title.

§ 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.