

Subsec. (b). Pub. L. 116-283, §1833(h)(1), (3), transferred subsec. (b) of section 2321 of this title to this section and substituted “this subchapter” for “this section” and “(as defined in section 3786 of this title) asserted” for “(as defined in subsection (i)) asserted”.

Subsec. (c). Pub. L. 116-283, §1833(h)(1), (4)(A), (C), transferred subsec. (c) of section 2321 of this title to this section and realigned margins of pars. (1) and (2).

Subsec. (c)(1). Pub. L. 116-283, §1833(h)(4)(B), substituted “this subchapter” for “this section”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section and amendment by Pub. L. 116-283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116-283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 3782. Technical data: challenges to contractor restrictions

(a) CHALLENGES BY SECRETARY OF DEFENSE.—The Secretary of Defense may challenge a use or release restriction asserted with respect to technical data by a contractor or subcontractor at any tier under a contract subject to this subchapter if the Secretary finds that—

(1) reasonable grounds exist to question the current validity of the asserted restriction; and

(2) the continued adherence by the United States to the asserted restriction would make it impracticable to procure the item to which the technical data pertain competitively at a later time.

(b) TIME LIMIT FOR CHALLENGES; EXCEPTIONS.—

(1) A challenge to a use or release restriction asserted by the contractor in accordance with applicable regulations may not be made under subsection (a) after the end of the six-year period described in paragraph (2) unless the technical data involved—

(A) are publicly available;

(B) have been furnished to the United States without restriction;

(C) have been otherwise made available without restriction; or

(D) are the subject of a fraudulently asserted use or release restriction.

(2) The six-year period referred to in paragraph (1) is the six-year period beginning on the later of—

(A) the date on which final payment is made on the contract under which the technical data are required to be delivered; or

(B) the date on which the technical data are delivered under the contract.

(c) WRITTEN NOTICE TO CONTRACTOR OR SUBCONTRACTOR.—If the Secretary challenges an asserted use or release restriction under subsection (a), the Secretary shall provide written notice of the challenge to the contractor or subcontractor asserting the restriction. Any such notice shall—

(1) state the specific grounds for challenging the asserted restriction;

(2) require a response within 60 days justifying the current validity of the asserted restriction; and

(3) state that evidence of a justification described in subsection (d) may be submitted.

(d) JUSTIFICATION.—It is a justification of an asserted use or release restriction challenged under subsection (a) that, within the three-year period preceding the challenge to the restriction, the Department of Defense validated a restriction identical to the asserted restriction if—

(1) such validation occurred after a challenge to the validated restriction under this section; and

(2) the validated restriction was asserted by the same contractor or subcontractor (or a licensee of such contractor or subcontractor).

(Added and amended Pub. L. 116-283, div. A, title XVIII, §1833(g), (i), Jan. 1, 2021, 134 Stat. 4231.)

Editorial Notes

CODIFICATION

The text of subsec. (d) of section 2321 of this title, which was transferred to this section and amended by Pub. L. 116-283, §1833(i), was based on Pub. L. 100-26, §7(a)(5)(A)(ii), Apr. 21, 1987, 101 Stat. 276; Pub. L. 100-180, div. A, title XII, §1231(6)(A), Dec. 4, 1987, 101 Stat. 1160; Pub. L. 103-35, title II, §201(g)(4), May 31, 1993, 107 Stat. 100; Pub. L. 111-383, div. A, title VIII, §824(c), Jan. 7, 2011, 124 Stat. 4269; Pub. L. 112-81, div. A, title VIII, §815(b), Dec. 31, 2011, 125 Stat. 1492.

PRIOR PROVISIONS

A prior section 3782, act Aug. 10, 1956, ch. 1041, 70A Stat. 218; Pub. L. 86-616, §2(a), July 12, 1960, 74 Stat. 387, provided for boards of inquiry, composed of three or more officers, to be convened at such places as Secretary of the Army prescribes, to receive evidence and make findings and recommendations whether an officer, required to show cause under section 3781 of this title, should be retained on active list of Regular Army, prior to repeal by Pub. L. 96-513, title II, §213, title VII, §701, Dec. 12, 1980, 94 Stat. 2885, 2955, effective Sept. 15, 1981. See section 1182 of this title.

AMENDMENTS

2021—Pub. L. 116-283, §1833(i)(1)(A), transferred subsec. (d) of section 2321 of this title to this section and struck out subsec. (d) designation and heading “Challenges to Restrictions” at beginning.

Subsec. (a). Pub. L. 116-283, §1833(i)(1)(B), (2), redesignated par. (1) of section 2321(d) of this title as subsec. (a) of this section, inserted heading, substituted “this subchapter” for “this section” in introductory provisions, and redesignated subpars. (A) and (B) as pars. (1) and (2), respectively.

Subsec. (b). Pub. L. 116-283, §1833(i)(1)(B), (3)(A), (B), redesignated par. (2) of section 2321(d) of this title as subsec. (b) of this section, inserted heading, and redesignated subpars. (A) and (B) as pars. (1) and (2), respectively, and realigned margins.

Subsec. (b)(1). Pub. L. 116-283, §1833(i)(3)(C), substituted “subsection (a)” for “paragraph (1)” and “paragraph (2)” for “subparagraph (B)” in introductory provisions and redesignated cls. (i) to (iv) as subpars. (A) to (D), respectively.

Subsec. (b)(2). Pub. L. 116-283, §1833(i)(3)(D), substituted “paragraph (1)” for “subparagraph (A)” in introductory provisions and redesignated cls. (i) and (ii) as subpars. (A) and (B), respectively.

Subsec. (c). Pub. L. 116-283, §1833(i)(1)(B), (4)(A)–(C), redesignated par. (3) of section 2321(d) of this title as subsec. (c) of this section, inserted heading, substituted “subsection (a)” for “paragraph (1)” in introductory provisions, and redesignated subpars. (A) to (C) as pars. (1) to (3), respectively.

Subsec. (c)(3). Pub. L. 116-283, §1833(i)(4)(D), substituted “subsection (d)” for “paragraph (4)”.

Subsec. (d). Pub. L. 116-283, §1833(i)(1)(B), (5)(A)–(C), redesignated par. (4) of section 2321(d) of this title as subsec. (d) of this section, inserted heading, substituted “subsection (a)” for “paragraph (1)” in introductory provisions, and redesignated subparagraphs (A) and (B) as pars. (1) and (2), respectively.

Subsec. (d)(1). Pub. L. 116-283, §1833(i)(5)(D), substituted “this section” for “this subsection”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section and amendment by Pub. L. 116-283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116-283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 3783. Technical data: time for contractors to submit justifications

(a) ADDITIONAL TIME TO SUBMIT JUSTIFICATIONS.—If a contractor or subcontractor asserting a use or release restriction submits to the contracting officer a written request, showing the need for additional time to comply with the requirement to justify the current validity of the asserted restriction, additional time to adequately permit the submission of such justification shall be provided by the contracting officer as appropriate.

(b) MULTIPLE CHALLENGES; SCHEDULE OF RESPONSES.—If a party asserting a restriction receives notices of challenges to restrictions on technical data from more than one contracting officer, and notifies each contracting officer of the existence of more than one challenge, the contracting officer initiating the first in time challenge, after consultation with the party asserting the restriction and the other contracting officers, shall formulate a schedule of responses to each of the challenges that will afford the party asserting the restriction with an equitable opportunity to respond to each such challenge.

(Added and amended Pub. L. 116-283, div. A, title XVIII, §1833(g), (j), Jan. 1, 2021, 134 Stat. 4231, 4232.)

Editorial Notes

CODIFICATION

The text of subsec. (e) of section 2321 of this title, which was transferred to this section and amended by Pub. L. 116-283, §1833(j), was based on Pub. L. 98-525, title XII, §1216(a), Oct. 19, 1984, 98 Stat. 2597; Pub. L. 100-26, §7(a)(5)(A)(i), (B), Apr. 21, 1987, 101 Stat. 276, 277.

PRIOR PROVISIONS

A prior section 3783, act Aug. 10, 1956, ch. 1041, 70A Stat. 218; Pub. L. 86-616, §2(a), July 12, 1960, 74 Stat. 387, provided for boards of review, composed of three or more officers, to be convened by Secretary of the Army, at such places as he prescribes, to review records of cases of officers recommended by boards of inquiry for removal from active list of Regular Army, prior to repeal by Pub. L. 96-513, title II, §213, title VII, §701, Dec. 12, 1980, 94 Stat. 2885, 2955, effective Sept. 15, 1981.

AMENDMENTS

2021—Pub. L. 116-283, §1833(j), transferred subsec. (e) of section 2321 of this title to this section, struck out subsec. (e) designation and heading “Time for Contractors to Submit Justifications” at beginning, and designated first and second sentences of existing provi-

sions as subsecs. (a) and (b), respectively, and inserted headings.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section and amendment by Pub. L. 116-283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116-283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 3784. Technical data under contracts for commercial items: presumption of development exclusively at private expense

In the case of a challenge to a use or release restriction that is asserted with respect to technical data of a contractor or subcontractor under a contract for commercial products, the contracting officer shall presume that the contractor or subcontractor has justified the restriction on the basis that the commercial product was developed exclusively at private expense, whether or not the contractor or subcontractor submits a justification in response to the notice provided pursuant to section 3782(c) of this title. In such a case, the challenge to the use or release restriction may be sustained only if information provided by the Department of Defense demonstrates that the commercial product was not developed exclusively at private expense.

(Added and amended Pub. L. 116-283, div. A, title XVIII, §1833(g), (k), Jan. 1, 2021, 134 Stat. 4231, 4233.)

Editorial Notes

CODIFICATION

The text of subsec. (f) of section 2321 of this title, which was transferred to this section and amended by Pub. L. 116-283, §1833(k), was based on Pub. L. 103-355, title VIII, §8106(b)(2), Oct. 13, 1994, 108 Stat. 3394; Pub. L. 109-364, div. A, title VIII, §802(b), Oct. 17, 2006, 120 Stat. 2313; Pub. L. 110-181, div. A, title VIII, §815(a)(2), Jan. 28, 2008, 122 Stat. 223; Pub. L. 113-291, div. A, title X, §1071(a)(5), Dec. 19, 2014, 128 Stat. 3504; Pub. L. 114-92, div. A, title VIII, §813(a), Nov. 25, 2015, 129 Stat. 891; Pub. L. 115-232, div. A, title VIII, §§836(c)(8), 865, Aug. 13, 2018, 132 Stat. 1866, 1901, as amended by Pub. L. 116-283, div. A, title X, §1081(d)(4)(B)(ii), Jan. 1, 2021, 134 Stat. 3874; Pub. L. 117-81, div. A, title X, §1081(a)(28), Dec. 27, 2021, 135 Stat. 1921.

PRIOR PROVISIONS

A prior section 3784, act Aug. 10, 1956, ch. 1041, 70A Stat. 219; Pub. L. 86-616, §2(a), July 12, 1960, 74 Stat. 387, authorized Secretary of the Army to remove an officer from active list of Regular Army if his removal is recommended by a board of review and provided that decision of Secretary in such a case is final and conclusive, prior to repeal by Pub. L. 96-513, title II, §213, title VII, §701, Dec. 12, 1980, 94 Stat. 2885, 2955, effective Sept. 15, 1981. See section 1184 of this title.

AMENDMENTS

2021—Pub. L. 116-283, §1833(k), transferred subsec. (f) of section 2321 of this title to this section, struck out subsec. (f) designation and heading “Presumption of Development Exclusively at Private Expense” at beginning, and substituted “section 3782(c) of this title” for “subsection (d)(3)”.