

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)”.

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.

§ 3785. Technical data: decision by contracting officer; claims; rights and liability upon final disposition

(a) DECISION BY CONTRACTING OFFICER.—

(1) Upon failure by the contractor or subcontractor to submit any response under section 3782(c) of this title, the contracting officer shall issue a decision pertaining to the validity of the asserted restriction.

(2) After review of any justification submitted in response to the notice provided pursuant to section 3782(c) of this title, the contracting officer shall, within 60 days of receipt of any justification submitted, issue a decision or notify the party asserting the restriction of the time within which a decision will be issued.

(b) CLAIMS.—If a claim pertaining to the validity of the asserted restriction is submitted in writing to a contracting officer by a contractor or subcontractor at any tier, such claim shall be considered a claim within the meaning of chapter 71 of title 41.

(c) RIGHTS AND LIABILITY UPON FINAL DISPOSITION.—

(1) If, upon final disposition, the contracting officer's challenge to the use or release restriction is sustained—

(A) the restriction shall be cancelled; and

(B) if the asserted restriction is found not to be substantially justified, the contractor or subcontractor asserting the restriction shall be liable to the United States for payment of the cost to the United States of reviewing the asserted restriction and the fees and other expenses (as defined in section 2412(d)(2)(A) of title 28) incurred by the United States in challenging the asserted restriction, unless special circumstances would make such payment unjust.

(2) If, upon final disposition, the contracting officer's challenge to the use or release restriction is not sustained—

(A) the United States shall continue to be bound by the restriction; and

(B) the United States shall be liable for payment to the party asserting the restriction for fees and other expenses (as defined in section 2412(d)(2)(A) of title 28) incurred by the party asserting the restriction in defending the asserted restriction if the challenge by the United States is found not to be made in good faith.

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

Editorial Notes

CODIFICATION

The text of subsec. (g) of section 2321 of this title, which was transferred to this section, redesignated as

subsec. (a), and amended by Pub. L. 116-283, §1833(l)(1), (2), 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), (C), Apr. 21, 1987, 101 Stat. 276, 277; Pub. L. 103-355, title VIII, §8106(b)(1), Oct. 13, 1994, 108 Stat. 3393.

The text of subsec. (h) of section 2321 of this title, which was transferred to this section, redesignated as subsec. (b), and amended by Pub. L. 116-283, §1833(l)(1), was based on Pub. L. 98-525, title XII, §1216(a), Oct. 19, 1984, 98 Stat. 2598; Pub. L. 100-26, §7(a)(5)(A)(i), (D), Apr. 21, 1987, 101 Stat. 276, 277; Pub. L. 103-355, title VIII, §8106(b)(1), Oct. 13, 1994, 108 Stat. 3393; Pub. L. 111-350, §5(b)(18), Jan. 4, 2011, 124 Stat. 3844.

The text of subsec. (i) of section 2321 of this title, which was transferred to this section, redesignated as subsec. (c), and amended by Pub. L. 116-283, §1833(l)(1), (3), was based on Pub. L. 98-525, title XII, §1216(a), Oct. 19, 1984, 98 Stat. 2598; Pub. L. 100-26, §7(a)(5)(A)(i), (E), Apr. 21, 1987, 101 Stat. 276, 277; Pub. L. 103-355, title VIII, §8106(b)(1), Oct. 13, 1994, 108 Stat. 3393; Pub. L. 115-232, div. A, title VIII, 866(a), Aug. 13, 2018, 132 Stat. 1901; Pub. L. 116-92, div. A, title VIII, §808(b), Dec. 20, 2019, 133 Stat. 1486.

PRIOR PROVISIONS

A prior section 3785, act Aug. 10, 1956, ch. 1041, 70A Stat. 219; Pub. L. 86-616, §2(a), July 12, 1960, 74 Stat. 387, provided that each officer under consideration for removal from active list of Regular Army under this chapter be given written notification, at least 30 days prior to a board of inquiry hearing, that he is being required to show cause for retention on active list, be allowed reasonable time to prepare a defense, be allowed to appear in person and by counsel at proceedings before a board of inquiry, and be allowed full access to, and furnished copies of, records relevant to his case at all stages of proceeding, 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 1185 of this title.

AMENDMENTS

2021—Subsec. (a). Pub. L. 116-283, §1833(l)(1), (2), redesignated subsec. (g) of section 2321 of this title as subsec. (a) of this section, substituted “section 3782(c) of this title” for “subsection (d)(3)” in two places, and realigned margins of pars. (1) and (2). Amendment directing substitution of “(1) Upon failure” for “(1) Upon failure” as part of margin realignment was executed by substituting “(1) Upon failure” for “(1) Upon a failure” to reflect the probable intent of Congress.

Subsec. (b). Pub. L. 116-283, §1833(l)(1), redesignated subsec. (h) of section 2321 of this title as subsec. (b) of this section.

Subsec. (c). Pub. L. 116-283, §1833(l)(3), which directed amendment of subsec. (c) of section 3786 of this title by realigning the margins of pars. (1) and (2), was executed to subsec. (c) of this section to reflect the probable intent of Congress.

Pub. L. 116-283, §1833(l)(1), redesignated subsec. (i) of section 2321 of this title as subsec. (c) of 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.

§ 3786. Use or release restriction: definition

In this subchapter, the term “use or release restriction”, with respect to technical data delivered to the United States under a contract subject to this section, means a restriction by the contractor or subcontractor on the right of the United States—