

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.

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§ 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—