

**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—

- (1) to use such technical data; or  
 (2) to release or disclose such technical data to persons outside the Government or permit the use of such technical data by persons outside the Government.

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

### Editorial Notes

#### CODIFICATION

The text of subsec. (j) of section 2321 of this title, which was transferred to this section and amended by Pub. L. 116-283, §1833(m), was based on Pub. L. 100-26, §7(a)(5), Apr. 21, 1987, 101 Stat. 277; Pub. L. 100-180, div. A, title XII, §1231(6), Dec. 4, 1987, 101 Stat. 1160; Pub. L. 103-355, title VIII, §8106(b)(1), Oct. 13, 1994, 108 Stat. 3393.

#### PRIOR PROVISIONS

Prior sections 3786 and 3787 were repealed by Pub. L. 96-513, title II, §213, title VII, §701, Dec. 12, 1980, 94 Stat. 2885, 2955, effective Sept. 15, 1981.

Section 3786, acts Aug. 10, 1956, ch. 1041, 70A Stat. 219; July 12, 1960, Pub. L. 86-616, §2(a), 74 Stat. 387, authorized Secretary of the Army, at any time during proceedings under this chapter and before removal of an officer from active list of Regular Army, to grant that officer's request for voluntary retirement, if he is otherwise qualified therefor, or for honorable discharge with severance benefits. See section 1186 of this title.

Section 3787, added Pub. L. 86-616, §2(a), July 12, 1960, 74 Stat. 388, provided that no officer serve on a board under this chapter unless he holds a regular or temporary grade above lieutenant colonel, and is senior in regular grade to, and outranks, any officer considered by board and that no person be a member of more than one board convened under this chapter for same officer. See section 1187 of this title.

#### AMENDMENTS

2021—Pub. L. 116-283, §1833(m), transferred subsec. (j) of section 2321 of this title to this section, struck out subsec. (j) designation and heading “Use or Release Restriction Defined” at beginning, and substituted “In this subchapter” for “In this section” in introductory provisions.

### 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.

### SUBCHAPTER III—OTHER PROVISIONS RELATING TO PROPRIETARY CONTRACTOR DATA AND RIGHTS IN TECHNICAL DATA

Sec.	
3791.	Management of intellectual property matters within the Department of Defense.
3792.	[Reserved].
3793.	Copyrights, patents, designs, etc.; acquisition.
3794.	Release of technical data under Freedom of Information Act; recovery of costs.

### Editorial Notes

#### AMENDMENTS

2021—Pub. L. 117-81, div. A, title XVII, §1701(b)(12)(A), (f)(6), Dec. 27, 2021, 135 Stat. 2134, 2139, made technical

amendment to Pub. L. 116-283, div. A, title XVIII, §1833(n), Jan. 1, 2021, 134 Stat. 4233, which added this analysis, added “[Reserved]” for item 3792, and struck out former item 3792 “Technical data rights: non-FAR agreements”.

### Statutory Notes and Related Subsidiaries

#### TECHNICAL DATA RIGHTS UNDER NON-FAR AGREEMENTS

Pub. L. 110-417, [div. A], title VIII, §822, Oct. 14, 2008, 122 Stat. 4532, as amended by Pub. L. 111-383, div. A, title X, §1075(e)(13), Jan. 7, 2011, 124 Stat. 4375, provided that:

“(a) POLICY GUIDANCE.—Not later than 270 days after the date of the enactment of this Act [Oct. 14, 2008], the Secretary of Defense shall issue policy guidance with respect to rights in technical data under a non-FAR agreement. The guidance shall—

“(1) establish criteria for defining the legitimate interests of the United States and the party concerned in technical data pertaining to an item or process to be developed under the agreement;

“(2) require that specific rights in technical data be established during agreement negotiations and be based upon negotiations between the United States and the potential party to the agreement, except in any case in which the Secretary of Defense determines, on the basis of criteria established in such policy guidance, that the establishment of rights during or through agreement negotiations would not be practicable; and

“(3) require the program manager for a major weapon system or an item of personnel protective equipment that is to be developed using a non-FAR agreement to assess the long-term technical data needs of such system or item.

“(b) REQUIREMENT TO INCLUDE PROVISIONS IN NON-FAR AGREEMENTS.—A non-FAR agreement shall contain appropriate provisions relating to rights in technical data consistent with the policy guidance issued pursuant to subsection (a).

“(c) DEFINITIONS.—In this section:

“(1) The term ‘non-FAR agreement’ means an agreement that is not subject to laws pursuant to which the Federal Acquisition Regulation is prescribed, including—

“(A) a transaction authorized under section 2371 of title 10, United States Code [now 10 U.S.C. 4021]; and

“(B) a cooperative research and development agreement.

“(2) The term ‘party’, with respect to a non-FAR agreement, means a non-Federal entity and includes any of the following:

“(A) A contractor and its subcontractors (at any tier).

“(B) A joint venture.

“(C) A consortium.

“(d) REPORT ON LIFE CYCLE PLANNING FOR TECHNICAL DATA NEEDS.—Not later than 270 days after the date of enactment of this Act [Oct. 14, 2008], the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the implementation of the requirements in section 2320(e) of title 10, United States Code [see 10 U.S.C. 3774(a), (b)], for the assessment of long-term technical data needs to sustain major weapon systems. Such report shall include—

“(1) a description of all relevant guidance or policies issued;

“(2) a description of the extent to which program managers have received training to better assess the long-term technical data needs of major weapon systems and subsystems; and

“(3) a description of one or more examples, if any, where a priced contract option has been used on major weapon systems for the future delivery of technical data and one or more examples, if any, where