

all relevant technical data were acquired upon contract award.”

**§ 3791. Management of intellectual property matters within the Department of Defense**

(a) **POLICY REQUIRED.**—The Secretary of Defense, acting through the Under Secretary of Defense for Acquisition and Sustainment, shall develop policy on the acquisition or licensing of intellectual property—

(1) to enable coordination and consistency across the military departments and the Department of Defense in strategies for acquiring or licensing intellectual property and communicating with industry;

(2) to ensure that program managers are aware of the rights afforded the Federal Government and contractors in intellectual property and that program managers fully consider and use all available techniques and best practices for acquiring or licensing intellectual property early in the acquisition process; and

(3) to encourage customized intellectual property strategies for each system based on, at a minimum, the unique characteristics of the system and its components, the product support strategy for the system, the organic industrial base strategy of the military department concerned, and the commercial market.

(b) **CADRE OF INTELLECTUAL PROPERTY EXPERTS.**—For a provision requiring establishment of a cadre of personnel who are experts in intellectual property matters, see section 1707 of this title.

(c) **GUIDELINES AND RESOURCES.**—

(1) **IN GENERAL.**—The Secretary of Defense, acting through the Under Secretary of Defense for Acquisition and Sustainment, shall develop guidelines and resources on the acquisition or licensing of intellectual property, including—

(A) intellectual property strategies and other mechanisms supporting the use of modular open system approaches (as defined in section 4401(b) of this title);

(B) evaluation and negotiation of intellectual property licenses in competitive and non-competitive awards;

(C) models and best practices for specially negotiated licenses, including specially negotiated licenses described in section 3774(c) of this title; and

(D) definitions, key terms, examples, and case studies that clarify differences between—

(i) detailed manufacturing and process data;

(ii) form, fit, and function data;

(iii) data required for operations, maintenance, installation, and training;

(iv) modular system interfaces (as defined in section 4401(b) of this title); and

(v) technical data pertaining to an interface between an item or process and other items or processes necessary for the segregation of an item or process from, or the reintegration of that item or process (or a functionally equivalent item or process) with, other items or processes.

(2) **GUIDELINES AND RESOURCES LIMIT.**—The guidelines and resources developed under paragraph (1) may not alter or affect any authority or duty under this section or section 1707 of this title.

(3) **REVIEW AND CONSULTATION.**—In developing the guidelines and resources described in paragraph (1), the Secretary shall—

(A) review the applicable statutory and regulatory history, including among the definitions and key terms in section 3771 of this title, to ensure consistency; and

(B) regularly consult with appropriate government and industry persons and organizations.

(4) **TRAINING.**—The Secretary of Defense shall ensure that the acquisition workforce receives training on the guidelines and resources developed under paragraph (1).

(Added and amended Pub. L. 116-283, div. A, title XVIII, § 1833(n), (o)(1), Jan. 1, 2021, 134 Stat. 4234; Pub. L. 117-81, div. A, title XVII, § 1701(b)(12)(A), Dec. 27, 2021, 135 Stat. 2134; Pub. L. 117-263, div. A, title VIII, § 841, Dec. 23, 2022, 136 Stat. 2716.)

**Editorial Notes**

**CODIFICATION**

The text of subsec. (a) of section 2322 of this title, which was transferred to this section by Pub. L. 116-283, § 1833(o)(1), was based on Pub. L. 115-91, div. A, title VIII, § 802(a)(1), Dec. 12, 2017, 131 Stat. 1450.

**PRIOR PROVISIONS**

Prior sections 3791 and 3792 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 3791, added Pub. L. 86-616, § 3(a), July 12, 1960, 74 Stat. 388, authorized Secretary of the Army to convene at any time a board of general officers to review record of any commissioned officer on active list of Regular Army to determine whether he should be required, because of moral dereliction, professional dereliction, or because his retention is not clearly consistent with interests of national security, to show cause for his retention on active list. See section 1181(b) of this title.

Section 3792, added Pub. L. 86-616, § 3(a), July 12, 1960, 74 Stat. 388, provided for boards of inquiry, composed of three or more general 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 3791 of this title, should be retained on active list of Regular Army. See section 1182 of this title.

**AMENDMENTS**

2022—Pub. L. 117-263, § 841(1), substituted “Department of Defense” for “department of defense” in section catchline.

Subsec. (c). Pub. L. 117-263, § 841(2), added subsec. (c).

2021—Pub. L. 117-81, § 1701(b)(12)(A), which directed amendment of section 1833(n) of Pub. L. 116-283, which enacted this section, by substituting “DEPARTMENT OF DEFENSE” for “DEPARTMENT OF DEFENSE” in text of section catchline, could not be executed.

Subsec. (a). Pub. L. 116-283, § 1833(o)(1), transferred subsec. (a) of section 2322 of this title to this section.

**Statutory Notes and Related Subsidiaries**

**EFFECTIVE DATE OF 2021 AMENDMENT**

Amendment by Pub. L. 117-81 applicable as if included in the enactment of title XVIII of Pub. L. 116-283

as enacted, see section 1701(a)(2) of Pub. L. 117–81, set out in a note preceding section 3001 of this title and Effective Date note below.

#### 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.

#### PILOT PROGRAM FOR THE USE OF INNOVATIVE INTELLECTUAL PROPERTY STRATEGIES

Pub. L. 118–31, div. A, title VIII, § 808, Dec. 22, 2023, 137 Stat. 319, provided that:

“(a) ESTABLISHMENT.—The Secretary of Defense shall establish a pilot program for the use of innovative intellectual property strategies that meet the criteria described in subsection (b) to acquire the necessary technical data rights required for the operation, maintenance, and installation of, and training for, covered programs designated under subsection (c).

“(b) CRITERIA FOR STRATEGIES.—The innovative intellectual property strategies used in a pilot program established under this section may include the following:

“(1) The use of an escrow account to verify and hold intellectual property data.

“(2) The use of royalties or licenses.

“(3) Other strategies, as determined by the Secretary.

“(c) DESIGNATION OF COVERED PROGRAMS.—Not later than May 1, 2024, and with respect to the pilot program established under this section—

“(1) the Secretary of each military department shall designate one covered program within the military department under the jurisdiction of such Secretary; and

“(2) the Under Secretary of Defense for Acquisition and Sustainment shall designate one covered program within the Defense Agencies or Department of Defense Field Activities (as defined, respectively, in section 101 of title 10, United States Code).

“(d) BRIEFING REQUIREMENT.—Not later than 180 days after the date of the enactment of this Act [Dec. 22, 2023], the Under Secretary of Defense for Acquisition and Sustainment, in coordination with the Secretaries of the military departments, shall provide a briefing to the Committees on Armed Services of the Senate and the House of Representatives with a detailed plan to implement the pilot program required under this section.

“(e) ANNUAL REPORT.—Beginning on the date on which the first program is designated under subsection (c) and until the termination date in subsection (f), the Under Secretary of Defense for Acquisition and Sustainment, in coordination with the Secretaries of the military departments, shall provide an annual report to the Committees on Armed Services of the Senate and the House of Representatives on—

“(1) the effectiveness of the pilot program in acquiring the necessary technical data rights necessary to support timely, cost-effective maintenance and sustainment of the acquisition programs designated under subsection (c); and

“(2) any recommendations for the applicability of lessons learned from the pilot program.

“(f) TERMINATION.—The authority to carry out the pilot program established under this section shall terminate on December 31, 2028.

“(g) DEFINITIONS.—In this section:

“(1) The term ‘covered program’ means an acquisition program under which procurements are conducted using a pathway of the adaptive acquisition framework (as described in Department of Defense Instruction 5000.02, ‘Operation of the Adaptive Acquisition Framework’).

“(2) The term ‘technical data rights’ has the meaning given in section 3771 of title 10, United States Code.”

#### § 3793. Copyrights, patents, designs, etc.; acquisition

Funds appropriated for a military department available for making or procuring supplies may be used to acquire any of the following if the acquisition relates to supplies or processes produced or used by or for, or useful to, that department:

(1) Copyrights, patents, and applications for patents.

(2) Licenses under copyrights, patents, and applications for patents.

(3) Design and process data, technical data, and computer software.

(4) Releases for past infringement of patents or copyrights or for unauthorized use of technical data or computer software.

(Aug. 10, 1956, ch. 1041, 70A Stat. 137, § 2386; Pub. L. 86–726, § 3, Sept. 8, 1960, 74 Stat. 855; Pub. L. 103–355, title III, § 3063, Oct. 13, 1994, 108 Stat. 3337; Pub. L. 104–106, div. A, title VIII, § 813, Feb. 10, 1996, 110 Stat. 395; renumbered § 3793, Pub. L. 116–283, div. A, title XVIII, § 1833(o)(2), Jan. 1, 2021, 134 Stat. 4234; Pub. L. 117–81, div. A, title XVII, § 1701(b)(12)(B), Dec. 27, 2021, 135 Stat. 2134.)

#### HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
2386 .....	31:649b.	Aug. 1, 1953, ch. 305, § 609, 67 Stat. 350.

The words “equipment, and materials” are omitted as covered by the word “supplies”. The word “hereafter” is omitted as executed. The words “may be used” are substituted for the words “shall \* \* \* be available”. The words “if the acquisition relates to” are substituted for 31:649b (1st 8 words of last sentence). In clauses (1), (2), and (4), the word “patents” is substituted for the words “letters patent”.

#### Editorial Notes

##### PRIOR PROVISIONS

A prior section 3793, added Pub. L. 86–616, § 3(a), July 12, 1960, 74 Stat. 389, provided for boards of review, composed of three or more general 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(o)(2), as amended by Pub. L. 117–81, § 1701(b)(12)(B), renumbered section 2386 of this title as this section.

1996—Par. (3). Pub. L. 104–106 amended par. (3) generally, substituting “Design and process data, technical data, and computer software” for “Technical data and computer software”.

1994—Pars. (3), (4). Pub. L. 103–355 added pars. (3) and (4) and struck out former pars. (3) and (4) which read as follows:

“(3) Designs, processes, and manufacturing data.

“(4) Releases, before suit is brought, for past infringement of patents or copyrights.”

1960—Pub. L. 86–726 inserted “or copyrights” after “patents” in cl. (4).

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 117–81 applicable as if included in the enactment of title XVIII of Pub. L. 116–283