

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

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

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 a note preceding section 3001 of this title.

**§ 3794. Release of technical data under Freedom of Information Act: recovery of costs**

(a) IN GENERAL.—(1) The Secretary of Defense shall, if required to release technical data under section 552 of title 5 (relating to the Freedom of Information Act), release such technical data to the person requesting the release if the person pays all reasonable costs attributable to search, duplication, and review.

(2) The Secretary of Defense shall prescribe regulations, pursuant to notice and receipt of public comment, specifying a uniform schedule of fees under this section.

(b) CREDITING OF RECEIPTS.—An amount received under this section—

(1) shall be retained by the Department of Defense or the element of the Department of Defense receiving the amount; and

(2) shall be merged with and available for the same purpose and the same time period as the appropriation from which the costs incurred in complying with requests for technical data were paid.

(c) WAIVER.—The Secretary of Defense shall waive the payment of costs required by subsection (a) which are in an amount greater than the costs that would be required for such a release of information under section 552 of title 5 if—

(1) the request is made by a citizen of the United States or a United States corporation, and such citizen or corporation certifies that the technical data requested is required to enable such citizen or corporation to submit an offer or determine whether it is capable of submitting an offer to provide the product to which the technical data relates to the United States or a contractor with the United States (except that the Secretary may require the citizen or corporation to pay a deposit in an amount equal to not more than the cost of complying with the request, to be refunded upon submission of an offer by the citizen or corporation);

(2) the release of technical data is requested in order to comply with the terms of an international agreement; or

(3) the Secretary determines, in accordance with section 552(a)(4)(A)(iii) of title 5, that such a waiver is in the interests of the United States.

(Added Pub. L. 99-500, §101(c) [title X, §954(a)(1)], Oct. 18, 1986, 100 Stat. 1783-82, 1783-172, and Pub. L. 99-591, §101(c) [title X, §954(a)(1)], Oct. 30, 1986, 100 Stat. 3341-82, 3341-172, §2328; Pub. L. 99-661, div. A, title IX, formerly title IV, §954(a)(1), Nov. 14, 1986, 100 Stat. 3952, renumbered title IX, Pub. L. 100-26, §3(5), Apr. 21, 1987, 101 Stat. 273; amended Pub. L. 100-26, §7(a)(7)(A), (B)(i), Apr. 21, 1987, 101 Stat. 278; renumbered §3794, 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.)

**Editorial Notes**

**CODIFICATION**

Pub. L. 99-591 is a corrected version of Pub. L. 99-500. Pub. L. 99-500, Pub. L. 99-591, and Pub. L. 99-661 added identical sections.

**PRIOR PROVISIONS**

Prior sections 3794 to 3797 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 3794, added Pub. L. 86-616, §3(a), July 12, 1960, 74 Stat. 389, 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. See section 1184 of this title.

Section 3795, added Pub. L. 86-616, §3(a), July 12, 1960, 74 Stat. 389, 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 board of inquiry, and be allowed full access to, and furnished copies of, records relevant to his case at all stages of proceedings, except records that Secretary determines be withheld in interests of national security, in which case, a summary, to extent national security permits, be furnished. See section 1185 of this title.

Section 3796, added Pub. L. 86-616, §3(a), July 12, 1960, 74 Stat. 389, 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 3797, added Pub. L. 86-616, §3(a), July 12, 1960, 74 Stat. 390, 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 that 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(o)(2), as amended by Pub. L. 117-81, §1701(b)(12)(B), renumbered section 2328 of this title as this section.

1987—Pub. L. 100-26, §7(a)(7)(B)(i), substituted "Release of technical data under Freedom of Information Act: recovery of costs" for "Release of technical data" in section catchline.

Subsec. (a)(1). Pub. L. 100-26, §7(a)(7)(A)(i)(I), substituted "such technical data to the person requesting the" for "technical data to a person requesting such a".

Pub. L. 100-26, §7(a)(7)(A)(i)(II), substituted "search, duplication, and review" for "search and duplication".

Subsec. (b). Pub. L. 100-26, §7(a)(7)(A)(ii), substituted "Crediting of receipts" for "Disposition of costs" in heading.

Subsec. (c)(3). Pub. L. 100-26, §7(a)(7)(A)(iii), substituted "section 552(a)(4)(A)(iii)" for "section 552(a)(4)(A)".

**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.

Amendment by Pub. L. 116-283 effective Jan. 1, 2022, with additional provisions for delayed implementation