

with regard to a third party's ownership or rights in such technical data may subject the covered Government support contractor—

(i) to criminal, civil, administrative, and contractual actions in law and equity for penalties, damages, and other appropriate remedies by the United States; and

(ii) to civil actions for damages and other appropriate remedies by the contractor or subcontractor whose technical data is affected by the breach; and

(E) that such technical data provided to the covered Government support contractor under the authority of this section shall not be used by the covered Government support contractor to compete against the third party for Government or non-Government contracts.

(b) **ADDITIONAL DEFINITIONS.**—In this subchapter, the terms “major system component”, “modular system interface”, and “modular open system approach” have the meanings provided in section 4401 of this title.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1833(a)(1), (f), Jan. 1, 2021, 134 Stat. 4226, 4230.)

Editorial Notes

CODIFICATION

The text of subsec. (g) of section 2320 of this title, which was transferred to this section, redesignated as subsec. (a), and amended by Pub. L. 116–283, § 1833(f)(1), (2)(A), was based on Pub. L. 111–84, div. A, title VIII, § 821(b), Oct. 28, 2009, 123 Stat. 2411; Pub. L. 114–328, div. A, title VIII, § 809(d)(1), Dec. 23, 2016, 130 Stat. 2267; Pub. L. 115–91, div. A, title VIII, § 835(c)(1), Dec. 12, 2017, 131 Stat. 1471.

The text of subsec. (h) of section 2320 of this title, which was transferred to this section, redesignated as subsec. (b), and amended by Pub. L. 116–283, § 1833(f), was based on Pub. L. 114–328, div. A, title VIII, § 809(d)(2), Dec. 23, 2016, 130 Stat. 2267; Pub. L. 115–91, div. A, title VIII, § 835(c)(1), Dec. 12, 2017, 131 Stat. 1471; Pub. L. 116–283, div. A, title VIII, § 804(b)(2)(A)(ii), Jan. 1, 2021, 134 Stat. 3739.

AMENDMENTS

2021—Subsec. (a). Pub. L. 116–283, § 1833(f)(1), (2)(A), redesignated subsec. (g) of section 2320 of this title as subsec. (a) of this section and substituted “In this subchapter,” for “In this section,” in introductory provisions.

Subsec. (b). Pub. L. 116–283, § 1833(f), redesignated subsec. (h) of section 2320 of this title as subsec. (b) of this section and substituted “In this subchapter,” for “In this section,” and “section 4401” for “section 2446a”.

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 II—VALIDATION OF PROPRIETARY DATA RESTRICTIONS

Sec.
3781. Technical data: contractor justification for restrictions; review of restrictions.

Sec.
3782. Technical data: challenges to contractor restrictions.
3783. Technical data: time for contractors to submit justifications.
3784. Technical data under contracts for commercial items: presumption of development exclusively at private expense.
3785. Technical data: decision by contracting officer; claims; rights and liability upon final disposition.
3786. Use or release restriction: definition.

§ 3781. Technical data: contractor justification for restrictions; review of restrictions

(a) **CONTRACTS COVERED BY SUBCHAPTER.**—This subchapter applies to any contract for supplies or services entered into by the Department of Defense that includes provisions for the delivery of technical data.

(b) **CONTRACTOR JUSTIFICATION FOR RESTRICTIONS.**—A contract subject to this subchapter shall provide that a contractor under the contract and any subcontractor under the contract at any tier shall be prepared to furnish to the contracting officer a written justification for any use or release restriction (as defined in section 3786 of this title) asserted by the contractor or subcontractor.

(c) **REVIEW OF RESTRICTIONS.**—

(1) The Secretary of Defense shall ensure that there is a thorough review of the appropriateness of any use or release restriction asserted with respect to technical data by a contractor or subcontractor at any tier under a contract subject to this subchapter.

(2) The review of an asserted use or release restriction under paragraph (1) shall be conducted before the end of the three-year period beginning on the later of—

(A) the date on which final payment is made on the contract under which the technical data is required to be delivered; or

(B) the date on which the technical data is delivered under the contract.

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

Editorial Notes

CODIFICATION

The text of subssecs. (a), (b), and (c) of section 2321 of this title, which were transferred to this section and amended by Pub. L. 116–283, § 1833(h), was based on Pub. L. 100–26, § 7(a)(5)(A)(ii), Apr. 21, 1987, 101 Stat. 276.

PRIOR PROVISIONS

A prior section 3781, act Aug. 10, 1956, ch. 1041, 70A Stat. 218; Pub. L. 86–616, § 2(a), July 12, 1960, 74 Stat. 386, authorized Secretary of the Army to convene at any time a board of officers to review record of any commissioned officer on active list of Regular Army to determine whether he should be required, because of substandard performance of duty, to show cause for his retention on active list, 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 1181(a) of this title.

AMENDMENTS

2021—Subsec. (a). Pub. L. 116–283, § 1833(h)(1), (2), transferred subsec. (a) of section 2321 of this title to this section and substituted “by Subchapter” for “by Section” in heading and “This subchapter” for “This section” in text.

Subsec. (b). Pub. L. 116-283, §1833(h)(1), (3), transferred subsec. (b) of section 2321 of this title to this section and substituted “this subchapter” for “this section” and “(as defined in section 3786 of this title) asserted” for “(as defined in subsection (i)) asserted”.

Subsec. (c). Pub. L. 116-283, §1833(h)(1), (4)(A), (C), transferred subsec. (c) of section 2321 of this title to this section and realigned margins of pars. (1) and (2).

Subsec. (c)(1). Pub. L. 116-283, §1833(h)(4)(B), substituted “this subchapter” for “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.

§ 3782. Technical data: challenges to contractor restrictions

(a) CHALLENGES BY SECRETARY OF DEFENSE.—The Secretary of Defense may challenge a use or release restriction asserted with respect to technical data by a contractor or subcontractor at any tier under a contract subject to this subchapter if the Secretary finds that—

(1) reasonable grounds exist to question the current validity of the asserted restriction; and

(2) the continued adherence by the United States to the asserted restriction would make it impracticable to procure the item to which the technical data pertain competitively at a later time.

(b) TIME LIMIT FOR CHALLENGES; EXCEPTIONS.—

(1) A challenge to a use or release restriction asserted by the contractor in accordance with applicable regulations may not be made under subsection (a) after the end of the six-year period described in paragraph (2) unless the technical data involved—

- (A) are publicly available;
- (B) have been furnished to the United States without restriction;
- (C) have been otherwise made available without restriction; or
- (D) are the subject of a fraudulently asserted use or release restriction.

(2) The six-year period referred to in paragraph (1) is the six-year period beginning on the later of—

- (A) the date on which final payment is made on the contract under which the technical data are required to be delivered; or
- (B) the date on which the technical data are delivered under the contract.

(c) WRITTEN NOTICE TO CONTRACTOR OR SUBCONTRACTOR.—If the Secretary challenges an asserted use or release restriction under subsection (a), the Secretary shall provide written notice of the challenge to the contractor or subcontractor asserting the restriction. Any such notice shall—

- (1) state the specific grounds for challenging the asserted restriction;
- (2) require a response within 60 days justifying the current validity of the asserted restriction; and

(3) state that evidence of a justification described in subsection (d) may be submitted.

(d) JUSTIFICATION.—It is a justification of an asserted use or release restriction challenged under subsection (a) that, within the three-year period preceding the challenge to the restriction, the Department of Defense validated a restriction identical to the asserted restriction if—

(1) such validation occurred after a challenge to the validated restriction under this section; and

(2) the validated restriction was asserted by the same contractor or subcontractor (or a licensee of such contractor or subcontractor).

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

Editorial Notes

CODIFICATION

The text of subsec. (d) of section 2321 of this title, which was transferred to this section and amended by Pub. L. 116-283, §1833(i), was based on Pub. L. 100-26, §7(a)(5)(A)(ii), Apr. 21, 1987, 101 Stat. 276; Pub. L. 100-180, div. A, title XII, §1231(6)(A), Dec. 4, 1987, 101 Stat. 1160; Pub. L. 103-35, title II, §201(g)(4), May 31, 1993, 107 Stat. 100; Pub. L. 111-383, div. A, title VIII, §824(c), Jan. 7, 2011, 124 Stat. 4269; Pub. L. 112-81, div. A, title VIII, §815(b), Dec. 31, 2011, 125 Stat. 1492.

PRIOR PROVISIONS

A prior section 3782, 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 inquiry, composed of three or more 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 3781 of this title, should be retained on 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. See section 1182 of this title.

AMENDMENTS

2021—Pub. L. 116-283, §1833(i)(1)(A), transferred subsec. (d) of section 2321 of this title to this section and struck out subsec. (d) designation and heading “Challenges to Restrictions” at beginning.

Subsec. (a). Pub. L. 116-283, §1833(i)(1)(B), (2), redesignated par. (1) of section 2321(d) of this title as subsec. (a) of this section, inserted heading, substituted “this subchapter” for “this section” in introductory provisions, and redesignated subpars. (A) and (B) as pars. (1) and (2), respectively.

Subsec. (b). Pub. L. 116-283, §1833(i)(1)(B), (3)(A), (B), redesignated par. (2) of section 2321(d) of this title as subsec. (b) of this section, inserted heading, and redesignated subpars. (A) and (B) as pars. (1) and (2), respectively, and realigned margins.

Subsec. (b)(1). Pub. L. 116-283, §1833(i)(3)(C), substituted “subsection (a)” for “paragraph (1)” and “paragraph (2)” for “subparagraph (B)” in introductory provisions and redesignated cls. (i) to (iv) as subpars. (A) to (D), respectively.

Subsec. (b)(2). Pub. L. 116-283, §1833(i)(3)(D), substituted “paragraph (1)” for “subparagraph (A)” in introductory provisions and redesignated cls. (i) and (ii) as subpars. (A) and (B), respectively.

Subsec. (c). Pub. L. 116-283, §1833(i)(1)(B), (4)(A)–(C), redesignated par. (3) of section 2321(d) of this title as subsec. (c) of this section, inserted heading, substituted “subsection (a)” for “paragraph (1)” in introductory provisions, and redesignated subpars. (A) to (C) as pars. (1) to (3), respectively.

Subsec. (c)(3). Pub. L. 116-283, §1833(i)(4)(D), substituted “subsection (d)” for “paragraph (4)”.