

Analysis of Section 309: Modifications to Other Transactions of the Forged Act

Key Points

Section 309 of the Fostering Reform and Government Efficiency in Defense Act (FoRGED Act), also known as Senate Bill 5618, introduces several modifications to Title 10 of the United States Code, specifically Section 4022, which governs the Department of Defense's (DoD) authority to utilize Other Transactions (OTs) for prototype projects and subsequent follow-on production ¹. These changes reflect a continuing congressional interest in refining and optimizing the use of OTs as a tool for defense acquisition, particularly in the context of promoting innovation and streamlining the process of acquiring new technologies. The FoRGED Act, with its focus on rapid acquisition and commercial contracting within Title III, positions these OT modifications as a key component of a broader effort to enhance the efficiency and responsiveness of the defense acquisition system ¹. This emphasis suggests a recognition that traditional acquisition methods may not always be best suited for rapidly evolving technologies and the need to engage with non-traditional defense contractors ⁴.

The specific modifications introduced by Section 309 encompass several key areas of 10 U.S.C. § 4022 ¹⁵. These include adjustments to the cost thresholds that trigger the requirement for written determinations by senior contracting officials, stipulations regarding the non-delegation of authority for certain critical approvals related to OT usage, a revised definition of the term "head of the contracting activity," and a newly established definition for "follow-on production." Furthermore, Section 309 introduces a significant new subsection, designated as (h), which grants specific authority for awarding production transactions to rapidly field existing capabilities that have already been proven effective ¹⁵. These targeted changes indicate an intent to provide more stringent oversight for higher-value OT projects, enhance clarity regarding the transition from prototyping to production, and create a more direct pathway for quickly delivering mature technologies to meet urgent warfighter needs ¹⁵.

History of the Recommendation

Senate Bill 5618, the FoRGED Act, was formally introduced in the Senate by Senator Wicker on December 19, 2024, and subsequently referred to the Senate Committee on Armed Services for further consideration ¹. Section 309, which contains the proposed modifications to the Other Transactions authority, is strategically positioned within Title III of the bill. This title specifically addresses the critical areas of Rapid

Acquisition and Commercial Contracting, underscoring the importance of these changes within the broader context of defense acquisition reform efforts¹. The introduction of this bill in the 118th Congress signifies a continued legislative focus on adapting defense acquisition processes to the evolving technological landscape and the dynamic security environment¹.

The provided research materials do not offer specific details regarding the direct legislative history and development of Section 309 itself¹. Information such as specific committee hearings, the precise motivations behind each proposed modification, or earlier versions of this section within the legislative process are not evident in the snippets. To gain a more comprehensive understanding of the specific origins and drivers of Section 309, further research beyond these provided materials would be necessary. This could potentially involve examining committee reports, reviewing entries in the Congressional Record that specifically address this bill and its provisions, or analyzing related legislative actions in the preceding Congress¹⁹.

However, the snippets do provide valuable context by detailing the broader history and evolution of Other Transactions authority within the Department of Defense⁴. The concept of utilizing agreements other than traditional procurement contracts originated with the National Aeronautics and Space Administration (NASA) in 1958, driven by a need for greater flexibility in engaging with innovative entities⁴. The DoD subsequently adopted and expanded this authority over the years, recognizing its potential to foster innovation and streamline the acquisition of cutting-edge technologies, particularly from non-traditional defense contractors⁴. Amendments to the OT authority in the National Defense Authorization Acts (NDAAs) of FY 1994 and FY 2016, for instance, broadened its scope and made it a more permanent fixture in the DoD's acquisition toolkit⁶. The increasing utilization of OTs, especially for prototyping efforts, as highlighted in reports from the Government Accountability Office (GAO)²⁰, underscores their growing significance in the defense acquisition landscape. Section 309 of the FORGED Act should be viewed as the latest step in this ongoing evolution, likely reflecting lessons learned from the practical application of OT authority and addressing contemporary priorities such as the need for even more rapid fielding of critical technologies¹⁵.

Desired Effect of the Recommendation

The proposed modifications in Section 309 are intended to achieve several positive effects within the Department of Defense's acquisition processes.

Firstly, the amendment to subsection (a)(2) aims to enhance oversight for OT

transactions that are expected to cost the DoD in excess of \$100 million¹⁵. By reinforcing the requirement for a written determination from a head of contracting activity, or the director of DARPA, DIU, or MDA, this change seeks to ensure that these higher-value transactions meet the criteria for appropriate use of the authority, as outlined in subsection (d)¹⁵. Furthermore, the stipulation in subsection (a)(3) that the authority for these determinations cannot be delegated by these senior officials emphasizes the importance of their direct involvement and accountability in significant OT expenditures¹⁵. This increased scrutiny is likely intended to mitigate potential risks associated with the inherent flexibility of OT agreements, particularly for large-scale projects, and to ensure that their utilization aligns with the intended purposes of fostering innovation and efficiency¹⁵.

Secondly, the addition of subsection (e)(6) introduces a clearer and more comprehensive definition of "follow-on production"¹⁵. This definition explicitly includes not only the act of production but also activities such as further development, testing, deployment, operation, and sustainment of a capability that was successfully prototyped under OT authority¹⁵. This clarification is expected to reduce ambiguity and provide stakeholders with a better understanding of the full spectrum of activities that can be pursued as a natural progression from successful prototype projects executed through OTs¹⁵. By clearly delineating the scope of follow-on production, this modification aims to encourage more effective planning and execution of acquisition strategies that leverage OTs for both initial prototyping and subsequent scaling of capabilities¹⁵. This could lead to a more seamless and integrated pathway from innovative concepts to operational deployment within the DoD¹⁵.

Thirdly, the introduction of subsection (h) is intended to expedite the fielding of proven technologies to address urgent warfighter needs¹⁵. This new authority allows for the award of production transactions, with or without the use of competitive procedures, to acquire emergent and proven technologies that do not require additional development and have been successfully demonstrated in a relevant environment¹⁵. The use of this authority is contingent upon a written determination by the appropriate service or component acquisition executive, who must certify that exceptional circumstances justify its use to meet a high-priority warfighter need¹⁵. This provision directly addresses the recognized need for faster deployment of mature technologies to respond to immediate operational demands and evolving threats¹⁵. By offering a potentially quicker route to acquiring and fielding capabilities that have already demonstrated their effectiveness, this modification could significantly enhance the DoD's agility and responsiveness¹⁵. The emphasis on

"emergent and proven technologies" and demonstration in a "relevant environment" suggests a focus on rapidly transitioning mature solutions into operational use ¹⁵.

Fourthly, the amendments in subsection (a)(1)(A) explicitly include the directors of the Defense Advanced Research Projects Agency (DARPA), the Defense Innovation Unit (DIU), and the Missile Defense Agency (MDA) alongside heads of contracting activities in the list of officials authorized to make written determinations for OT transactions expected to cost the DoD in excess of \$100 million ¹⁵. Furthermore, subsection (a)(3) specifically names these agency directors among those whose authority under paragraph (2) cannot be delegated ¹⁵. This explicit inclusion underscores the critical role of these innovation-focused DoD agencies in utilizing OT authority, particularly for higher-value projects ¹⁵. By specifically empowering the leaders of these organizations and ensuring their direct involvement in key decisions, Section 309 aims to foster a more agile and responsive approach to innovation and the adoption of cutting-edge technologies within these specialized entities ¹⁵. The non-delegation clause further reinforces the importance of these leaders' personal accountability in these significant transactions ¹⁵.

Finally, by establishing a dedicated pathway for rapid fielding and providing a clearer definition of follow-on production, Section 309 aims to streamline overall acquisition processes for certain types of technologies ⁸. The broader objective of the FoRGED Act is to promote efficiency in defense acquisition ¹, and these modifications to OT authority contribute to this goal by offering alternative, potentially faster routes for acquiring and deploying needed capabilities ⁸. The inherent flexibility of OT authority, as highlighted in various sources ⁶, is further leveraged by these modifications to potentially reduce administrative burdens, accelerate timelines, and ultimately lead to a more adaptive and technologically advanced military force ¹⁵.

Potential Negative Impacts of the Recommendations

Despite the intended positive effects, the modifications proposed in Section 309 could also lead to several unintended negative consequences.

One potential negative impact is a reduction in competition and transparency, particularly due to the new subsection (h) that allows for awarding production transactions "with or without the use of competitive procedures" ¹⁵. While this provision is intended to expedite the fielding of critical capabilities, the option to bypass competitive procedures could lead to fewer opportunities for a wider range of vendors, potentially resulting in higher costs and less innovative solutions compared to a competitive environment ¹². The absence of a clear mandate for competition in

this specific scenario might also decrease transparency in the award process, making it more difficult for stakeholders to understand how and why certain vendors are selected ¹⁵. Given that OTs already operate outside the traditional Federal Acquisition Regulation (FAR), which emphasizes competition, this further reduction in competitive pressures could exacerbate existing concerns about transparency and accountability in the use of OT authority, as previously highlighted by the GAO ²⁰.

Another potential negative outcome is an increased risk of favoritism and undue influence in the award of contracts ¹⁵. The expanded authority for non-competitive production awards under subsection (h), combined with the non-delegation of authority for certain high-value approvals in subsection (a)(3), could concentrate significant decision-making power in the hands of a limited number of individuals ¹⁵. This concentration of authority, while potentially accelerating decision-making, could also create vulnerabilities to bias, where personal relationships or lobbying efforts might play a disproportionate role in vendor selection, especially if the criteria for "exceptional circumstances" and "high priority warfighter need" are not clearly defined and consistently applied ¹⁵. Without robust checks and balances, this could undermine the principles of fairness and impartiality in government contracting and potentially lead to suboptimal outcomes for the warfighter ¹⁵.

Furthermore, the reliance on terms such as "emergent and proven technologies" and "demonstrated in a relevant environment" in subsection (h) could create challenges due to their inherent subjectivity ¹⁵. The lack of precise, universally accepted definitions for these terms might lead to inconsistencies in their interpretation and application across different DoD components ¹⁵. Determining whether a technology is truly "proven" and whether a demonstration environment is sufficiently "relevant" could be contentious and might result in disputes or the fielding of technologies that are not as mature or suitable for operational use as intended ¹⁵. This ambiguity could undermine the very purpose of rapid fielding if the selected technologies do not meet the actual needs of the warfighter or require further, unforeseen development ¹⁵.

The non-delegation clause in subsection (a)(3), while intended to ensure senior-level oversight, could also lead to an increased workload and responsibility for heads of contracting activities and agency directors ¹⁵. Personally making written determinations for all OT transactions exceeding \$100 million could significantly add to their existing responsibilities, potentially diverting their attention from other critical strategic and management tasks ¹⁵. Similarly, service or component acquisition executives will bear the responsibility for making the written determinations required to utilize the rapid fielding authority under subsection (h) ¹⁵. This increased burden on senior leaders could potentially create bottlenecks in the approval process and

inadvertently slow down the very rapid acquisition efforts that Section 309 aims to facilitate¹⁵. It is essential to ensure that these senior officials have the necessary capacity and support to effectively manage these added responsibilities without compromising efficiency or thoroughness¹⁵.

Finally, there is a potential risk of overuse of the non-competitive production authority granted by subsection (h)¹⁵. While intended for exceptional circumstances and high-priority needs, acquisition executives might be tempted to utilize this faster, less bureaucratic route even when competitive options are feasible and could potentially offer better value to the government¹⁵. Over-reliance on non-competitive awards could, in the long run, stifle innovation by limiting opportunities for a broader range of vendors and potentially lead to less favorable pricing and terms for the DoD¹⁵. Robust guidance and effective oversight mechanisms will be critical to ensure that this authority is used judiciously and only in situations that truly warrant bypassing competitive procedures¹⁵.

Mitigations the Organization Will Take to Diminish the Negative Impacts

To mitigate the potential negative impacts identified, the Department of Defense can implement several proactive strategies.

To address the risk of reduced competition and transparency associated with the non-competitive production authority in subsection (h), the DoD should develop clear and specific policy guidance outlining the precise circumstances under which this authority is deemed appropriate¹². This guidance should emphasize that competitive procedures remain the preferred method whenever feasible, even in situations requiring rapid fielding. Furthermore, the DoD should mandate robust justification and documentation requirements for all non-competitive awards made under this provision, ensuring a clear and auditable record of the rationale behind the decision. Exploring options for limited competition, such as among a pre-qualified pool of vendors or through down-selection from prior prototype efforts, could also introduce some level of competitive pressure even when full open competition is not practical¹².

To mitigate the potential for increased favoritism and undue influence, the DoD needs to establish clear and objective criteria for determining what constitutes "exceptional circumstances" and a "high priority warfighter need" under subsection (h)¹⁵. Implementing multi-layered review processes for all non-competitive awards made under this authority, involving personnel from different offices and specialties, can help ensure impartial decision-making and reduce the risk of bias. Additionally, reinforcing ethics training and strictly enforcing conflict-of-interest policies for all

DoD personnel involved in OT transactions will be crucial in maintaining the integrity of the award process ¹⁵.

To address the challenges associated with defining the key terms in subsection (h), the DoD should develop comprehensive definitions and provide illustrative examples for "emergent and proven technologies" and "demonstrated in a relevant environment" ¹⁵. This could be achieved through policy memorandums, updated training materials for acquisition personnel, and the establishment of communities of practice to foster shared understanding and consistent application of these terms across the various services and components. Encouraging inter-service collaboration in developing and refining these definitions will be essential. The DoD should also commit to regularly reviewing and updating these definitions based on lessons learned during implementation and as the technological landscape continues to evolve ¹⁵.

To mitigate the potential for increased workload on senior acquisition officials due to the non-delegation clause, the DoD should ensure these leaders have adequate support staff and resources to assist them in the review and approval processes for high-value OT transactions and rapid fielding determinations ¹⁵. Developing standardized templates and streamlined processes for the required written determinations can also improve efficiency and reduce the time burden on senior officials. While the bill prohibits the delegation of the final determination authority, administrative and preparatory tasks can be delegated to ensure senior leaders can focus on the most critical aspects of the decision-making process ¹⁵.

Finally, to prevent the overuse of the non-competitive production authority in subsection (h), the DoD should implement a robust oversight framework to closely monitor its utilization ¹⁵. This framework should include tracking key metrics such as the number and total value of awards made under this authority, as well as a thorough analysis of the justifications provided for each non-competitive award. Conducting periodic audits specifically focused on the application of this authority can also help ensure it is being used appropriately and in accordance with the legislative intent. Establishing thresholds for higher-level review of non-competitive awards, based on factors such as cost or program criticality, can provide an additional layer of scrutiny and accountability ¹⁵.

DoD Personnel Most Affected

Several key roles within the Department of Defense will be significantly affected by

the modifications introduced in Section 309.

Agreements Officers (AOs), also known as Contracting Officers in traditional acquisition, will need to thoroughly understand the revised cost thresholds for written determinations under subsection (a)(2) and the newly established definition of "follow-on production" in subsection (e)(6)⁸. Critically, they will be responsible for executing the new rapid fielding production transactions authorized by subsection (h), which may involve navigating non-competitive procedures and ensuring meticulous documentation of the "exceptional circumstances" and "high priority warfighter need" that justify their use⁸. AOs will need to be particularly diligent in preparing and maintaining comprehensive justifications for any non-competitive awards made under this new authority⁸.

Program Managers (PMs) will also be significantly impacted, as they will need to be aware of the new rapid fielding pathway in subsection (h) as a potential mechanism for swiftly delivering mature technologies to meet urgent operational requirements¹⁵. They will need to collaborate closely with AOs to assess whether a particular technology meets the stringent criteria of being "emergent and proven" and having been "demonstrated in a relevant environment"¹⁵. Furthermore, PMs will be responsible for clearly articulating the "high priority warfighter need" and providing compelling justification for utilizing this expedited process to their respective service or component acquisition executive¹⁵. The clearer definition of "follow-on production" will also influence how PMs plan the transition of successful prototype projects into full-scale operational capabilities¹⁵.

Heads of Contracting Activities, along with the Directors of DARPA, DIU, and MDA, will experience increased responsibility due to the non-delegation clause in subsection (a)(3)¹⁵. These senior leaders will be personally required to make the written determinations for all OT transactions that are expected to cost the DoD in excess of \$100 million, as stipulated in subsection (a)(2)¹⁵. This direct involvement necessitates a thorough understanding of the requirements of subsection (d) regarding the appropriate use of OT authority and adds to their existing oversight responsibilities for significant acquisition activities¹⁵.

Service or Component Acquisition Executives will also be directly affected by the new subsection (h)¹⁵. They will hold the authority to make the critical written determination of "exceptional circumstances" and "high priority warfighter need" that is a prerequisite for utilizing the rapid fielding production transaction authority¹⁵. This new responsibility will require them to carefully evaluate the urgency of the requirement and the maturity of the proposed technology before authorizing the use of this

expedited acquisition pathway¹⁵.

Finally, Senior Procurement Executives, while already playing a significant role in overseeing high-value OT transactions (above \$500 million), are also explicitly listed in subsection (a)(3) as having authority under paragraph (2) that cannot be delegated¹⁵. This reinforces their critical role in providing oversight and ensuring accountability for significant OT spending across the Department of Defense¹⁵.

Stakeholders Opposed and Rationale for Opposition

Several stakeholders, both within and outside the Department of Defense, might express opposition to Section 309 for various reasons.

Traditional defense contractors, who have established business models based on competing for DoD contracts under the established Federal Acquisition Regulation (FAR), might oppose the expanded use of non-competitive OT production awards as authorized by subsection (h)⁶. These contractors may perceive this as a circumvention of standard procurement processes that could disadvantage them in favor of non-traditional contractors or companies with pre-existing relationships with the DoD⁶. They might argue that reducing competition diminishes transparency and fairness in the acquisition process, potentially leading to less optimal outcomes for the government⁶.

Government accountability advocates and oversight bodies, such as the Government Accountability Office (GAO), might raise concerns about the potential for reduced competition and transparency associated with the new rapid fielding authority in subsection (h)²⁰. These organizations often prioritize ensuring that taxpayer funds are used effectively and efficiently, and they might argue that a decrease in competitive bidding increases the risk of waste, fraud, and abuse²⁰. They might also express concerns that the lack of precise definitions for key terms like "emergent and proven technologies" could hinder effective oversight and accountability²⁰.

Small businesses that may not have participated in the initial prototype project phase might oppose the provision allowing follow-on production awards to the original participants without further competition²⁴. These businesses might argue that this approach unfairly limits their opportunities to compete for potentially lucrative production contracts, even if they could offer comparable or superior solutions at a better value²⁴. They might view this as hindering the goal of broadening the defense industrial base and fostering greater competition²⁴.

Some members of Congress who prioritize strict adherence to established acquisition

principles, such as full and open competition, might also oppose the expansion of non-competitive OT authority³. While acknowledging the importance of speed in certain circumstances, they might believe that waiving competitive procedures should be approached with caution and that sound acquisition practices and the responsible use of taxpayer funds should not be compromised in the pursuit of rapid fielding³.

Finally, some internal DoD stakeholders who are more familiar and comfortable with traditional FAR-based contracting might express resistance to the increased emphasis on OT authority, particularly the new rapid fielding provision⁴. They might perceive OTs as less familiar, potentially riskier, and lacking the well-established legal and regulatory framework of traditional procurement methods⁴. This resistance could stem from a preference for established processes and a concern about the potential for increased complexity or ambiguity associated with OT agreements⁴.

Additional Resources

Successful implementation of Section 309 will likely require the Department of Defense to invest in several additional resources.

Enhanced training programs will be essential for Agreements Officers (AOs) and Program Managers (PMs) to ensure they thoroughly understand the specific changes introduced by Section 309⁸. This training should cover the revised cost thresholds for written determinations, the new definition of follow-on production, and the detailed procedures for utilizing the rapid fielding authority under subsection (h). Particular emphasis should be placed on the criteria for determining "emergent and proven technologies," assessing the "relevance" of a demonstration environment, defining "exceptional circumstances," and justifying a "high priority warfighter need"⁸.

The DoD will also need to update its existing policy guidance and develop new Standard Operating Procedures (SOPs) to reflect the modifications outlined in Section 309⁸. This updated guidance should provide clear and concise definitions for all key terms, detail the specific procedures for awarding non-competitive production transactions under the new authority, and provide standardized templates for the required written determinations by senior acquisition officials⁸.

Given the potential increase in workload for senior acquisition officials due to the non-delegation clause in subsection (a)(3), the DoD might need to consider increasing staffing levels or re-allocating personnel to provide adequate support for the review and approval processes¹⁵. Similarly, if the rapid fielding authority leads to a significant increase in the number of OT transactions, the DoD might require more

AOs with the specialized expertise needed to effectively manage these agreements ¹⁵.

To effectively monitor the use of the rapid fielding authority and ensure accountability, the DoD will need to develop or enhance its existing tracking and oversight mechanisms for OT transactions, particularly those awarded without competition ²⁰. This could involve making modifications to current data systems and reporting requirements to specifically capture information related to the utilization of this new authority and the justifications provided for its use ²⁰.

Finally, the implementation of these new provisions, especially the rapid fielding authority in subsection (h), will require readily available legal and contracting expertise ¹⁵. These experts will be needed to interpret the legislative language, develop legally sound and compliant procedures for its implementation, and address any legal challenges or questions that may arise during the initial phases of adoption ¹⁵.

Measures of Success

The Department of Defense can measure the success and effectiveness of implementing Section 309 through several key metrics.

A primary indicator of success for subsection (h) will be a demonstrable reduction in the acquisition timelines for fielding critical capabilities ¹. The DoD should track the time taken to field new or upgraded systems utilizing the rapid fielding authority and compare these timelines to those associated with traditional acquisition methods for similar types of capabilities ¹. A significant reduction in the time required to get these technologies into the hands of warfighters would indicate that the provision is achieving its intended purpose.

Another measure of success will be an increase in the adoption of proven commercial technologies through the rapid fielding authority ¹⁵. The DoD should track the number and total value of OT transactions awarded under subsection (h) specifically for the acquisition of emergent and proven commercial technologies. A noticeable increase in such transactions would suggest that the DoD is effectively leveraging this new pathway to access and integrate commercial innovation into its operational capabilities ¹⁵.

Gathering feedback directly from warfighters who receive systems fielded through the rapid acquisition authority will be crucial for assessing its effectiveness ¹⁵. The DoD should establish mechanisms for collecting and analyzing warfighter feedback regarding the utility, performance, and overall impact of these rapidly fielded

capabilities on their mission effectiveness. Positive feedback would be a strong indicator that Section 309 is contributing to improved warfighting capabilities¹⁵.

The number and value of follow-on production awards that result from successful prototype projects conducted under OT authority will also serve as a measure of success¹⁵. The DoD should track the transition rate of successful prototypes to production under subsection (f), as well as the total value of these follow-on awards. An increase in successful transitions would suggest that the clarified definition of follow-on production and the streamlined processes are working effectively to move innovative solutions from the prototype stage to full-scale implementation¹⁵.

Finally, monitoring audit findings and compliance rates related to OT transactions awarded under Section 309, particularly those utilizing the rapid fielding authority, will be essential²⁰. High rates of compliance with established policies and procedures, along with a low number of adverse audit findings, would indicate that the DoD is implementing Section 309 in a responsible and accountable manner, mitigating the potential risks associated with the expanded use of OT authority²⁰.

Alternative Approaches

There are several alternative approaches that could potentially achieve similar outcomes to Section 309 in terms of streamlining defense acquisition and rapidly fielding new technologies.

One alternative would be to focus on refining and improving the effectiveness of existing rapid acquisition pathways within the Federal Acquisition Regulation (FAR)¹. The DoD already has mechanisms like the Middle Tier of Acquisition for Rapid Prototyping and Rapid Fielding¹. Instead of further expanding OT authority, efforts could concentrate on reducing bureaucratic hurdles associated with these existing pathways, increasing funding allocated to them, and providing enhanced training to acquisition personnel on their proper utilization¹.

Another approach could involve enhancing collaboration with commercial industry through mechanisms other than OTs¹. This could include expanding the use of Commercial Solutions Openings (CSOs) with even more streamlined processes, increasing the frequency and value of prize challenges to incentivize innovation, or significantly increasing investment in Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) programs to tap into the innovative potential of small businesses and research institutions¹.

The DoD could also focus on implementing more agile and iterative acquisition

processes within traditional contract frameworks²⁴. This would involve breaking down large acquisition programs into smaller, more manageable increments with frequent feedback loops between the government and industry partners. This approach could allow for faster adaptation to changing requirements and more rapid delivery of initial operational capabilities without necessarily relying on the less regulated environment of OTs²⁴.

Improving the front-end of the acquisition process, specifically the requirements definition and validation processes, could also lead to faster acquisition timelines regardless of the contracting mechanism used⁴. Delays often stem from lengthy and complex requirements processes. Focusing on clearer communication between requirements developers and the acquisition community, as well as emphasizing modularity and open systems architectures, could significantly accelerate the overall acquisition timeline⁴.

Finally, the DoD already possesses authorities to conduct prototyping activities through mechanisms other than OTs²⁴. Ensuring that these existing prototyping authorities are fully leveraged and executed efficiently could achieve similar outcomes in terms of technology development and demonstration without the need for further expansion of OT authority²⁴.

Section Specific Question 1: How does Section 309 modify the authority, usage criteria (e.g., for prototypes, production), or administration requirements for Other Transactions (OTs)? What should Agreements Officers and Program Managers know about these changes?

Section 309 introduces several key modifications to the authority, usage criteria, and administration requirements for Other Transactions (OTs) as governed by 10 U.S.C. § 4022.

Regarding **authority**, Section 309 adds a new subsection (h) that specifically grants the DoD the authority to award production transactions, with or without competitive procedures, to rapidly field emergent and proven technologies that meet specific criteria¹⁵. Additionally, it reinforces the non-delegable nature of the authority for heads of contracting activities and the directors of DARPA, DIU, and MDA to make written determinations for OT transactions exceeding \$100 million under subsection (a)(2)¹⁵.

In terms of **usage criteria**, Section 309 clarifies the definition of "follow-on production" in subsection (e)(6) to encompass a broader range of activities beyond

just production ¹⁵. The new subsection (h) also establishes specific criteria for utilizing the rapid fielding authority, including the requirement that the technology be "emergent and proven," demonstrated in a "relevant environment," and address a "high priority warfighter need" under "exceptional circumstances," all of which necessitate a written determination by a service or component acquisition executive ¹⁵. The cost thresholds for requiring written determinations for prototype or follow-on production OT transactions remain at \$100 million ¹⁵.

Concerning **administration requirements**, Section 309 reinforces the existing requirement for written determinations for OT transactions exceeding \$100 million and introduces a new written determination requirement for the utilization of the rapid fielding authority in subsection (h) ¹⁵. The non-delegation clause for certain approval authorities under subsection (a)(3) also adds a specific administrative requirement that Agreements Officers and Program Managers must be aware of when planning and executing OT transactions above the specified threshold ¹⁵.

What Agreements Officers Should Know: Agreements Officers (AOs) must be keenly aware that the authority to approve high-value OT transactions (over \$100 million) cannot be delegated and requires the personal written determination of the head of the contracting activity or the director of DARPA, DIU, or MDA ¹⁵. They also need to thoroughly understand the new, more comprehensive definition of follow-on production when structuring OT agreements ¹⁵. Furthermore, AOs must familiarize themselves with the specific criteria and required procedures for utilizing the new rapid fielding authority under subsection (h), including the necessity for a written determination by the relevant service or component acquisition executive and the potential for awarding these transactions without competitive procedures ¹⁵. They will be responsible for ensuring proper documentation of the justifications for using this expedited authority ⁸.

What Program Managers Should Know: Program Managers (PMs) should recognize the rapid fielding authority introduced in subsection (h) as a potentially valuable tool for quickly addressing urgent warfighter needs with mature, proven technologies ¹⁵. They need to understand the specific criteria for utilizing this authority and be prepared to work closely with AOs to gather the necessary information and justification required for the service or component acquisition executive's written determination ¹⁵. The clearer definition of follow-on production will also impact how PMs plan for the transition of successful prototype projects to operational use, allowing for a broader consideration of activities beyond just the initial production phase ¹⁵.

Section Specific Question 2:

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Summary

Section 309 of the FoRGED Act introduces targeted modifications to the Department of Defense's Other Transactions authority with the overarching goals of enhancing oversight for significant OT spending, providing greater clarity regarding the transition from prototyping to production, and enabling the rapid fielding of proven technologies to meet urgent warfighter needs. While these changes offer the potential for increased efficiency and responsiveness in defense acquisition, they also introduce potential risks related to reduced competition, transparency, and an increased workload for senior acquisition officials. Successful implementation of Section 309 will necessitate the development of clear and comprehensive policy guidance, the provision of targeted training to acquisition personnel, and the establishment of robust oversight mechanisms to ensure accountability and mitigate potential negative consequences. By carefully managing these aspects, the DoD can strive to maximize the intended benefits of Section 309 in fostering innovation and accelerating the delivery of critical capabilities to the warfighter.

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