

Steps Taken To Minimize the Significant Economic Impact on Small Entities and Significant Alternatives Considered

119. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rules for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.

120. In the *NPRM*, the Commission seeks to fulfill Congress's intent via the implementation of the Martha Wright-Reed Act, including its directive that the Commission ensure just and reasonable rates and charges for incarcerated people's audio and video communications services. While doing so, the Commission is mindful of the potential impact on small businesses and, in particular, any disproportionate impact or unique burdens that small businesses may face in complying with any rules the Commission may adopt. Below the Commission discusses several steps it has taken that could reduce the economic impact for small entities.

121. Allowing additional time for small and medium-sized businesses to comply with the proposed rules, including the timeframe for compliance, could reduce the economic impact for small entities. The Commission considered and seeks comment on whether such an approach would serve the public interest. In doing so, the Commission has provided small entities the opportunity to offer alternatives not already considered, giving small entities ample time to minimize whatever potential burdens they may face.

122. The Commission also seeks comment on the Martha Wright-Reed Act's directive to consider the size of incarceration facilities in setting just and reasonable rates and charges for services. The Commission seeks comment on whether the "industry-wide" average cost language in the Martha Wright-Reed Act refers only to some subset of providers of incarcerated people's communications services or all such providers. In doing so, the Commission seeks information that will help to determine the appropriate

approach to ensuring just and reasonable rates as required by the Act. The Commission would also benefit by using the information obtained from comments to inform its evaluation of its regulatory options, including those that may potentially be less burdensome for smaller providers.

123. The Martha Wright-Reed Act states that the Commission "shall consider . . . differences in the costs . . . by small, medium or large facilities or other characteristics," as part of its rate-setting process. The Commission seeks comment on how to interpret "small, medium, or large facilities." The Commission considered and seeks comment on whether it is obligated to consider potential cost differences associated with serving different-sized facilities if it sets rates based on something other than industry-wide average costs. This information will assist the Commission in considering alternatives such as whether it should implement more or fewer rate tiers based on the type or size of facility, and whether the Commission should set the same rates for small, medium, and large facilities after considering cost differences, if any.

124. Considering the economic impact on small entities through comments filed in response to the *NPRM* and this *IRFA*, as part of its efforts to implement the Martha Wright-Reed Act and promulgate rules in these proceedings, could allow the Commission to potentially obtain cost-benefit analyses and other input that would enable it to identify reasonable alternatives that may not be readily apparent, and offer alternatives not already considered that could minimize the economic impact on small entities.

Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

125. None.

Ordering Clauses

126. *It is ordered*, pursuant to sections 1, 2, 4(i)-(j), 5(c), 201(b), 218, 220, 225, 255, 276, 403, and 716 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i)-(j), 155(c), 201(b), 218, 220, 225, 255, 276, 403, and 617, and the Martha Wright-Reed Just and Reasonable Communications Act of 2022, Public Law 117-338, 136 Stat 6156 (2022), the Notice of Proposed Rulemaking is hereby adopted.

127. *It is further ordered*, pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on the Notice

of Proposed Rulemaking on or before 30 days after publication of a summary of the Notice of Proposed Rulemaking in the **Federal Register** and reply comments on or before 60 days after publication of a summary of the Notice of Proposed Rulemaking in the **Federal Register**.

Federal Communications Commission.

Marlene Dortch,

Secretary.

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 4, 6, 27, and 52

[FAR Case 2020-010, Docket No. FAR-2020-0010, Sequence No. 1]

RIN 9000-AO12

Federal Acquisition Regulation: Small Business Innovation Research and Technology Transfer Programs

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: DoD, GSA and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to implement changes related to data rights in the Small Business Administration's Policy Directive for the Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) Programs, published in the **Federal Register** on April 2, 2019. In addition, this proposed rule would implement competition requirements unique to Phase II and III awards under the SBIR/STTR Programs.

DATES: Interested parties should submit written comments to the Regulatory Secretariat Division at the address shown below on or before June 6, 2023 to be considered in the formation of the final rule.

ADDRESSES: Submit comments in response to FAR Case 2020-010 to the Federal eRulemaking portal at <https://www.regulations.gov> by searching for "FAR Case 2020-010". Select the link "Comment Now" that corresponds with "FAR Case 2020-010". Follow the instructions provided on the "Comment Now" screen. Please include your name,

company name (if any), and “FAR Case 2020–010” on your attached document. If your comment cannot be submitted using <https://www.regulations.gov>, call or email the points of contact in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

Instructions: Please submit comments only and cite “FAR Case 2020–010” in all correspondence related to this case. Comments received generally will be posted without change to <https://www.regulations.gov>, including any personal and/or business confidential information provided. Public comments may be submitted as an individual, as an organization, or anonymously (see frequently asked questions at <https://www.regulations.gov/faq>). To confirm receipt of your comment(s), please check <https://www.regulations.gov>, approximately two to three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Mahrubia Uddowla, Procurement Analyst, at 703–605–2868, or by email at mahruba.uddowla@gsa.gov. For information pertaining to status, publication schedules, or alternative instructions for submitting comments if <https://www.regulations.gov> cannot be used, contact the Regulatory Secretariat Division at 202–501–4755 or GSARegSec@gsa.gov. Please cite FAR Case 2020–010.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA are proposing to amend the FAR to implement changes related to data rights that are necessary to comply with the Small Business Administration’s SBIR and STTR Policy Directive (PD) published in the **Federal Register** on April 2, 2019 (84 FR 12794). In addition, this rule implements competition requirements unique to Phase II and III awards under the SBIR/STTR Programs.

Prior to the April 2019 revision, the PD, FAR, and Defense Federal Acquisition Regulation Supplement (DFARS) each had different terminology and data rights allocations for SBIR/STTR data. The inconsistencies may have led to confusion and placed an unnecessary burden on small businesses because they had to operate under three different interpretations of the same programs. The revisions to the PD were intended to create uniformity and clarity regarding the Government’s rights in SBIR/STTR data. To achieve this objective, the FAR must be updated to adopt the terminology, definitions, and data rights allocations described in

the most recent update of the SBIR/STTR PD.

II. Discussion and Analysis

The proposed rule reflects SBA’s updated SBIR/STTR PD terminology, revisions to the data rights afforded to the Government and the extension of the SBIR/STTR data rights protection period from a minimum of 4 years to 20 years. The rule also clarifies direction for contracting officers pertaining to document retention and competition requirements. A summary of the proposed changes follows:

A. FAR Part 2

The definitions for “computer database” and “computer software” are revised in FAR part 2 to harmonize terminology that applies to the SBIR/STTR programs with terminology used in the rest of the FAR and DFARS. These definitions reflect those used in SBA’s SBIR/STTR PD to the greatest extent possible. In some instances, similar language has been used to convey the intent of the PD for contracting officers. As a conforming change to the revised definition for “computer software,” a separate definition for “computer program” is added to FAR part 2.

B. FAR Part 4

Due to the expansion of the SBIR/STTR data rights protection period from a minimum of 4 years after acceptance of all items under the contract to 20 years after the date of award, a new records retention category is proposed at FAR 4.805(c)(9) for contracts involving SBIR/STTR data rights. The proposed addition would require SBIR/STTR contracts that contain the revised FAR clause 52.227–20, Rights in Data-SBIR/STTR Programs, to be retained for 20 years after award rather than 6 years after final payment, to coincide with the new protection period.

C. FAR Part 6

The proposed rule adds text at FAR 6.302–5, Authorized or required by statute, to clarify that contracting officers may award sole-source actions under Phase III of the SBIR/STTR programs without further justification based upon the statutory authority in the Small Business Act (15 U.S.C. 638(r)(4)). Guidance is also provided for instances when Phase II sole-source actions may be awarded without justification (15 U.S.C. 638(ff) and the SBA PD).

D. FAR Part 27

Changes were made to the definitions of “data” and “unlimited rights” at FAR

27.401 to reflect the SBIR/STTR PD definitions. The definition of “unlimited rights” was revised to no longer specify data that can be performed or displayed publicly. The revision does not remove the Government’s ability to perform publicly or display publicly; the revision is made to cover the Government’s right to perform and display both in public settings and non-public settings.

A new section is created in subpart 27.4 to cover the SBIR and STTR programs. It would give basic information on the program. It would also provide instructions to contracting officers that are specific to contracts awarded under the SBIR/STTR programs. The instructions relate to the procedures of negotiating a different protection period than the new minimum period of 20 years after award as well as the requirements associated with further release or disclosure of SBIR/STTR data outside the Government. As a result of the creation of this new section, the current section of 27.409 is proposed to be renumbered as 27.410.

The SBIR/STTR PD made several revisions to the SBIR/STTR program which are reflected in the prescription at newly-designated FAR 27.410(h).

E. FAR Part 52

The definitions at FAR clauses 52.227–14, Rights in Data-General; 52.227–17, Rights in Data-Special Works; and 52.227–20, Rights in Data-SBIR/STTR Programs, are revised to reflect the updated 2.101 and 27.401 definitions—see Section II. A and D of this preamble.

FAR clause 52.227–20, Rights in Data-SBIR/STTR Programs, is revised in the title to become “Rights in Data—Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) Programs”, and to add definitions for “Government purpose,” “Government purpose rights,” “Operations, maintenance, installation, or training purposes (OMIT) data,” “SBIR/STTR computer software rights,” “SBIR/STTR protection period,” “SBIR/STTR technical data,” and “SBIR/STTR technical data rights.” These definitions reflect those used in SBA’s SBIR/STTR PD to the greatest extent possible. In some instances, different language has been used to harmonize terminology that applies to the SBIR/STTR programs with terminology used in the rest of the FAR and DFARS. Also, in some instances additional or different language is used in the definition to provide further clarity to contracting officers and contractors. Regardless of

whether the definitions proposed for the FAR are the same or different from the definitions in the PD, the intent is for the FAR definitions to be consistent with the SBIR/STTR PD.

The terms “SBIR data” and “SBIR rights” in FAR clause 52.227–20 have been updated as “SBIR/STTR data” and “SBIR/STTR data rights”, and to reflect both SBIR/STTR programs. The definitions of the two terms have been updated to be consistent with the SBIR and STTR PD. The definition of “technical data” is not being revised in the FAR since the FAR definition is statutory (41 U.S.C. 116). SBA has confirmed that the “technical data” definition in the SBIR and STTR PD was not intended to differ from the statutory definition. Language is also added at 52.227–20(b) to clarify that the SBIR/STTR data rights provided in the clause are to be interpreted consistent with the SBIR and STTR PD. However, if there is inconsistency between the FAR clause and the SBIR and STTR PD, the clause governs; this is standard protocol in the FAR. If there are substantive changes to the PD in the future, DoD, GSA, and NASA will pursue rulemaking to update the FAR accordingly.

The Rights Notice in FAR clause 52.227–20(d) is revised to reflect the fact that the clause now covers both SBIR/STTR programs and to reflect the increase in the protection period from 4 years after acceptance of all items under the contract to 20 years after the date of award. As a logistical matter that will promote compliance with the protection period, the Notice is revised to require inclusion of the contract award date. The Notice is also revised to reflect the new terminology and definitions added to the clause.

Consistent with the SBIR/STTR PD, FAR clause 52.227–20 is also revised to authorize contractors and contracting officers to negotiate a different protection period, after award of the contract. The clause at paragraph (d)(2) will require contractors, in such a scenario, to update their Rights Notice to reflect the negotiated protection period.

Conforming changes are proposed for all the clauses and provisions prescribed in FAR subpart 27.4, due to the renumbering of the section containing the prescriptions from 27.409 to 27.410.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and for Commercial Products (Including Commercially Available Off-the-Shelf (COTS) Items) or for Commercial Services

This rule amends the clauses at FAR 52.227–14, Rights in Data—General, 52.227–17, Rights in Data—Special Works, and 52.227–20, Rights in Data—SBIR/STTR Programs, but this rule does not change the applicability of these existing clauses included in contracts valued at or below the SAT, or for commercial products (including COTS items) and commercial services.

IV. Expected Impact of the Rule

This rule is expected to impact the contractors awarded contracts under the SBIR/STTR programs and subject to FAR clause 52.227–20, which addresses data rights.

Contractors awarded contracts under the SBIR/STTR programs will benefit from having a single FAR clause that will uniformly govern awards under both programs, provide for a longer protection period, and use consistent terminology across the programs and other contract awards outside the programs that are subject to the FAR or DFARS.

The FAR does not currently contain a clause applicable to contracts awarded under the STTR program. SBA has combined the SBIR and STTR policy directives into a single document, which makes it easier for this proposed rule to update the FAR SBIR clause to cover both programs. Currently in the FAR, the period of time during which the Government is obligated to protect a contractor's SBIR/STTR data against unauthorized use and disclosure, *i.e.*, protection period, is four years. Consistent with the SBIR/STTR PD, this proposed rule seeks to increase the protection period to 20 years. The longer protection period incentivizes the Government to make subsequent awards, under phases II and III, to the small business that developed the technology under a phase I award. Therefore, small businesses are incentivized to participate in the SBIR/STTR programs in the first place. An added benefit of the 20-year protection period is that it covers the timeframe necessary for many technologies to be commercialized and mirrors the length of the patent protection period. In addition, this rule is expected to reduce confusion and burden on small businesses by adopting the updates to the SBIR/STTR PD, which in turn created uniformity and clarity regarding

contractors' and the Government's rights in SBIR/STTR data.

This rule is also expected to benefit contractors that participate under the SBIR/STTR programs by clarifying for contracting officers the authority to make sole-source awards under phases II and III under the programs. Clarifying the authority should drive greater use of the programs by the Government and perhaps greater participation by small businesses.

On the Government side, the rule is expected to reduce burden on contracting officers by clarifying that further justification is not necessary when using the sole-source authority provided under the SBIR/STTR programs. This is also expected to reduce the burden and confusion on contracting officers because the protection period will have a clear start and end date. Previously, the start date was four years from the date of acceptance of all deliverables. The triggers for the protection period were not always clear. This proposed rule changes the start date of the protection period to the date of award, which is something that is clearly noted on the contract itself. Therefore there is no reason for confusion. The proposed rule also provides explicit direction on the records retention period for contracts subject to the FAR clause. This will benefit the Government by ensuring contract files are retained long enough for the Government to comply with the data rights requirements, enforce its data rights, and defend itself in the event of litigation.

V. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

VI. Regulatory Flexibility Act

DoD, GSA, and NASA do not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601–612, because small business contractors

under the SBIR/STTR Programs represent less than one percent of all small businesses that are looking for Federal contract opportunities. However, an Initial Regulatory Flexibility Analysis (IRFA) has been performed and is summarized as follows:

DoD, GSA, and NASA are proposing to revise the FAR to implement changes related to data rights in the Small Business Administration's Policy Directive for the Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) Programs, published in the **Federal Register** on April 2, 2019 (84 FR 12794).

The objective of this rule is to update the FAR coverage related to the SBIR and STTR Programs to be consistent with the 2019 changes SBA made to the Policy Directive governing those Programs. In addition, this rule is intended to implement competition requirements unique to Phase II and III awards under the SBIR/STTR Programs.

Section 9 of the Small Business Act (15 U.S.C. 638) requires SBA to issue a policy directive setting forth guidance to the Federal agencies participating in the SBIR/STTR Programs. In addition, 15 U.S.C. 638(r)(4) authorizes sole-source awards under phase III of the SBIR and STTR Programs.

Prior to SBA's 2019 revision of the Policy Directive, there were different terminology and data rights allocations for SBIR/STTR data contained in SBA's Policy Directive, the FAR, and DoD's supplement to the FAR, the Defense Federal Acquisition Regulation Supplement. This inconsistency may have led to confusion and created a burden on small businesses to understand three different data rights regimes for the same programs. SBA's intent when revising the data rights provisions of the Policy Directive was to create uniformity and clarity regarding the Government's rights in SBIR/STTR data. To achieve this goal the FAR must be updated to adopt the terminology, definitions, and data rights allocations described in the most recent update of the Policy Directive.

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601–612. As of January 2022, there were over 415,000 small business registrants in the System for Award Management. This rule will impact entities awarded contracts under the SBIR/STTR Programs. Based on data from the Federal Procurement Data System (FPDS) for fiscal years 2020 through 2022, there were approximately 12,736 contract awards made to 4,961 unique entities under the SBIR and STTR Programs. Of those 4,961 unique entities, 4,882 were small businesses. While past awards under the SBIR and STTR Programs are not a perfect indicator of all small entities that may be impacted by this rule (*i.e.*, there may be more, fewer, or different small entities that receive future awards under the Programs than the entities that received the awards in the past), considering the combined data from three fiscal years is a reasonable estimator of the scope/scale of the rule's

likely impact. The 4,882 small business contractors under the SBIR and STTR Programs represent approximately 1 percent of all small businesses that are looking for Federal contract opportunities.

Of the limited number of small businesses to which this rule will apply, there is expected to be positive economic impact. Beyond standardizing and clarifying terminology, this rule also implements the change in the Policy Directive, which extends the data rights protection period from 4 years to 20 years. This longer protection period benefits small businesses by providing the timeframe necessary for many technologies to be commercialized and by mirroring the length of the patent protection period.

This proposed rule does not include any new substantive reporting, recordkeeping, or other compliance requirements for small businesses. The rule does not impose additional information collection requirements to the paperwork burden previously approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. 3501–3521), Control Number 9000–0090, Rights in Data and Copyrights. The existing information collection already accounts for the reporting associated with the requirement to affix a notice to SBIR/STTR data delivered under the contract. The notice already requires the contractor to fill in the contract and subcontract number; this rule proposes the notice to also include a fill-in for the contract award date. The burden associated with the additional fill-in is considered de minimis.

The rule does not duplicate, overlap, or conflict with any other Federal rules.

DoD, GSA, and NASA were unable to identify any alternatives to the rule that would reduce the impact on small entities and still implement requirements consistent with the 2019 SBA Policy Directive.

The Regulatory Secretariat Division has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat Division. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by the rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAR Case 2020–010), in correspondence.

VII. Paperwork Reduction Act

This rule affects the information collection requirements in the clause at FAR 52.227–20, currently approved under OMB Control Number 9000–0090, Rights in Data and Copyrights, in accordance with the Paperwork

Reduction Act (44 U.S.C. 3501–3521). The impact, however, is negligible. The existing information collection already accounts for the reporting associated with the requirement to affix a notice to SBIR/STTR data delivered under the contract. The notice already requires the contractor to fill in the contract and subcontract number; this rule proposes the notice to also include a fill-in for the contract award date. The burden associated with the additional fill-in is considered de minimis.

List of Subjects in 48 CFR Parts 2, 4, 6, 27, and 52

Government procurement.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 2, 4, 6, 27, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 2, 4, 6, 27, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

PART 2—DEFINITIONS OF WORDS AND TERMS

■ 2. Amend section 2.101, in paragraph (b)(2), by:

■ a. Revising the definition “Computer database or database”;

■ b. Adding in alphabetic order the definition “Computer program”; and

■ c. Revising the definition “Computer software”.

The addition and revisions read as follows:

2.101 Definitions.

*	*	*	*	*
(b)	*	*	*	
(2)	*	*	*	
*	*	*	*	*

Computer database or database means a collection of data recorded in a form capable of being processed by a computer. The term does not include computer software.

Computer program means a set of instructions, rules, or routines recorded in a form that is capable of causing a computer to perform a specific operation or series of operations.

Computer software means computer programs, source code, source code listings, object code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the software to be reproduced, recreated, or recompiled.

Computer software does not include computer databases or computer software documentation.

PART 4—ADMINISTRATIVE AND INFORMATION MATTERS

■ 3. Amend section 4.805 by revising paragraphs (c) introductory text and

(c)(1) and adding paragraph (c)(9) to read as follows:

4.805 Storage, handling, and contract files.

(c) An agency that requires a shorter retention period than those identified in Table 4–1, except for contracts involving data rights under the Small

Business Innovation Research (SBIR) Program or Small Business Technology Transfer (STTR) Program (see paragraph (c)(1) of this section for minimum contract retention period), shall request approval from NARA through the agency’s records officer.

TABLE 4–1—RETENTION PERIODS

Table with 2 columns: Record, Retention period. Row 1: (1) Contracts (and related records or documents, including successful and unsuccessful proposals, except see paragraph (c)(2) of this section regarding contractor payrolls submitted under construction contracts and see paragraph (c)(9) of this section regarding contracts under the SBIR Program or STTR Program.) 6 years after final payment. Row 2: (9) Contracts involving SBIR/STTR data rights which include FAR clause 52.227–20. 20 years after contract award, or at the end of the protection period as specified in FAR 52.227–20 as it appears in the contract, whichever is later.

PART 6—COMPETITION REQUIREMENTS

■ 4. Amend section 6.203 by revising the second sentence of paragraph (a) to read as follows:

6.203 Set-asides for small business concerns.

(a) * * * This includes contract actions conducted under the Small Business Innovation Research (SBIR) or Small Business Technology Transfer (STTR) Program established under 15 U.S.C. 638.

■ 5. Amend section 6.302–5 by adding paragraph (b)(8), and revising paragraph (c)(2)(i) to read as follows:

6.302–5 Authorized or required by statute.

(b) * * * (8)(i) Sole-source awards under phase III of the Small Business Innovation Research (SBIR) or Small Business Technology Transfer (STTR) programs (15 U.S.C. 638(r)(4)).

(ii) One sequential sole-source award under phase II if the award follows a competitive phase II award (15 U.S.C. 638(ff) and section (4)(b)(5) of the SBA “Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) Program Policy Directive” (published April 2, 2019; see https://www.sbir.gov), as amended).

(c) * * * (2) * * * (i) Contracts awarded under paragraph (a)(2)(ii), (b)(2), or (b)(8) of this section;

PART 27—PATENTS, DATA, AND COPYRIGHTS

■ 6. Amend section 27.401 by revising the first sentence in the definition “Data”, and revising the definition “Unlimited rights” to read as follows:

27.401 Definitions.

Data means all recorded information, regardless of the form, method of recording, or the media on which it may be recorded. * * *

Unlimited rights means the rights of the Government to use, modify, prepare derivative works, reproduce, release, perform, display, disclose, or distribute data in whole or in part, in any manner and for any purpose whatsoever, and to have or permit others to do so.

27.409 [Redesignated as section 27.410]

■ 7. Redesignate section 27.409 as section 27.410. ■ 8. Add a new section 27.409 to read as follows:

27.409 Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) programs.

(a) The purpose of the SBIR and STTR programs is to strengthen the role of innovative small business concerns in Federally-funded research or research and development. Certain agencies are required to participate in the SBIR/STTR programs.

(b) The SBIR and STTR programs are authorized by 15 U.S.C. 638. The statute directs the Small Business Administration (SBA) to issue a Policy Directive. SBA published its Policy

Directive in the Federal Register; SBA keeps the Policy Directive updated by publishing revisions in the Federal Register. The current Policy Directive is available online at https://www.sbir.gov.

(c) The programs have three phases of awards. The purpose of Phase I awards is to establish technical merit, feasibility, and commercial potential. Phase II awards continue the research and development efforts initiated in Phase I. The purpose of Phase III awards is to pursue commercialization objectives for future sale or use by the Federal Government or commercial markets.

(d) Solicitations and contracts awarded under the SBIR/STTR programs must include clause 52.227–20, Rights in Data—Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) Programs (see 27.410(h)).

(1) The period of time during which the Government is obligated to protect SBIR/STTR data against unauthorized use and disclosure, i.e., the SBIR/STTR protection period, begins at award of a SBIR/STTR contract and ends not less than 20 years from that date. After award of the contract, the contractor and the contracting officer may negotiate a different SBIR/STTR protection period. If a different SBIR/STTR protection period is negotiated, paragraph (d) of clause 52.227–20 requires the contractor to revise the SBIR/STTR Rights Notice to reflect the negotiated protection period.

(2) With regard to the release or disclosure of SBIR/STTR data outside the Government, as referenced in the definitions of “SBIR/STTR computer

software rights” and “SBIR/STTR technical data rights” in paragraph (a) of clause 52.227–20, contracting officers shall require prohibition against further use and disclosure by support service contractors or their subcontractors (e.g., by using a nondisclosure agreement). For terms required to be included in the prohibition, consult section 8(c) of the Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) Program Policy Directive (84 FR 12794, April 2, 2019; see <https://www.sbir.gov>), as amended. ■ 9. Amend the newly redesignated section 27.410 by revising paragraph (h) to read as follows:

27.410 Solicitation provisions and contract clauses

* * * * *

(h) If the contract is a SBIR or STTR contract, insert the clause at 52.227–20, Rights in Data—Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) Programs, in all Phase I, Phase II, and Phase III contracts awarded under the SBIR or STTR Program established pursuant to 15 U.S.C. 638. This clause implements 15 U.S.C. 638 and the Small Business Administration’s “Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) Program Policy Directive” (84 FR 12794, April 2, 2019; see <https://www.sbir.gov>).

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

- 10. Amend section 52.227–14 by—
- a. Removing from the introductory text the phrase “27.409” and adding “27.410” in its place;
- b. Revising the date of the clause;
- c. In paragraph (a):
- i. Revising the definition “Computer database or database”;
- ii. Adding in alphabetical order the definition “Computer program”;
- iii. Revising the definition “Computer software”;
- iv. Revising the first sentence in the definition of “Data”;
- v. Revising the definition “Unlimited rights”;
- d. Removing from the introductory text of Alternate I through V the phrase “27.409” and adding “27.410” in its place.

The revisions and addition read as follows:

52.227–14 Rights in Data—General

* * * * *

Rights in Data—General (Date)

(a) * * *

Computer database or database means a collection of data recorded in a form capable of being processed by a computer. The term does not include computer software.

Computer program means a set of instructions, rules, or routines recorded in a form that is capable of causing a computer to perform a specific operation or series of operations.

Computer software means computer programs, source code, source code listings, object code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the software to be reproduced, recreated, or recompiled. Computer software does not include computer databases or computer software documentation.

Data means all recorded information, regardless of the form, method of recording, or the media on which it may be recorded. * * *

* * * * *

Unlimited rights means the rights of the Government to use, modify, prepare derivative works, reproduce, release, perform, display, disclose, or distribute data in whole or in part, in any manner and for any purpose whatsoever, and to have or permit others to do so.

* * * * *

52.227–15 [Amended]

- 11. Amend section 52.227–15 by removing from the introductory text “27.409” and adding “27.410” in its place.

52.227–16 [Amended]

- 12. Amend section 52.227–16 by removing from the introductory text the phrase “27.409” and adding “27.410” in its place.
- 13. Amend section 52.227–17 by—
- a. Removing from the introductory text the phrase “27.409” and adding “27.410” in its place;
- b. Revising the date of the clause;
- c. In paragraph (a):
- i. Revising the first sentence in the definition of “Data”;
- ii. Revising the definition “Unlimited rights”.

The revisions read as follows:

52.227–17 Rights in Data—Special Works.

* * * * *

Rights in Data—Special Works (Date)

(a) * * *

Data means all recorded information, regardless of the form, method of recording, or the media on which it may be recorded. * * *

* * * * *

Unlimited rights means the rights of the Government to use, modify, prepare

derivative works, reproduce, release, perform, display, disclose, or distribute data in whole or in part, in any manner and for any purpose whatsoever, and to have or permit others to do so.

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52.227–18 [Amended]

- 14. Amend section 52.227–18 by removing from the introductory text the phrase “27.409” and adding “27.410” in its place.

52.227–19 [Amended]

- 15. Amend section 52.227–19 by removing from the introductory text the phrase “27.409” and adding “27.410” in its place.
- 16. Amend section 52.227–20 by—
- a. Revising the section heading;
- b. Removing from the introductory text the phrase “27.409” and adding “27.410” in its place;
- c. Revising the date and title of the clause;
- d. In paragraph (a):
- i. Revising the definition “Computer database or database”;
- ii. Adding in alphabetic order the definition “Computer program”;
- iii. Revising the definition “Computer software”;
- iv. Revising the first sentence in the definition of “Data”;
- v. Adding in alphabetic order the definitions “Government purpose”, “Government purpose rights”, “Operations, maintenance, installation, or training purposes (OMIT) data”, and “SBIR/STTR computer software rights”;
- vi. Revising the paragraph headings and text of the definitions of “SBIR data” and “SBIR rights”;
- vii. Adding in alphabetic order the definitions “SBIR/STTR protection period”, “SBIR/STTR technical data”, and “SBIR/STTR technical data rights”;
- viii. Revising the definition of “Unlimited rights”;
- e. In paragraph (b):
- i. Redesignating paragraphs (b)(1) and (2) as paragraphs (b)(2) and (3), and adding a new paragraph (b)(1);
- ii. In the newly redesignated paragraph (b)(2) revising the introductory text, and paragraphs (b)(2)(iii) and (b)(2)(iv);
- iii. In the newly redesignated paragraph (b)(3)(ii) removing the phrase “SBIR rights in SBIR data” and adding “SBIR/STTR data rights in SBIR/STTR data” in its place; and
- iv. In the newly redesignated paragraph (b)(3)(iii) removing the phrase “SBIR rights” and adding “SBIR/STTR data rights” in its place;
- f. Revising paragraph (d);

- g. Removing from paragraph (f) the phrase “(b)(1)(i)” and adding “(b)(2)(i)” in its place; and
 - h. Revising the paragraph (g) heading.
- The revisions and additions read as follows:

52.227–20 Rights in Data—Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) Programs.

* * * * *

Rights in Data—Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) Programs (DATE)

(a) * * *

Computer database or database means a collection of data recorded in a form capable of being processed by a computer. The term does not include computer software.

Computer program means a set of instructions, rules, or routines recorded in a form that is capable of causing a computer to perform a specific operation or series of operations.

Computer software means computer programs, source code, source code listings, object code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the software to be reproduced, recreated, or recompiled. Computer software does not include computer databases or computer software documentation.

* * * * *

Data means all recorded information, regardless of the form, method of recording, or the media on which it may be recorded. * * *

* * * * *

Government purpose means any activity in which the U.S. Government or a Federally Funded Research and Development Center is a party, including cooperative agreements with international or multi-national defense organizations or sales or transfers by the U.S. Government to foreign governments or international organizations. Government purposes include competitive procurement, but do not include the rights to use, modify, reproduce, release, perform, display, or disclose technical data or computer software for commercial purposes or authorize others to do so.

Government purpose rights means the Government’s royalty-free license, after the SBIR/STTR protection period, to use, modify, reproduce, release, perform, display, or disclose SBIR/STTR data within the Government without restriction; and release or disclose SBIR/STTR data outside the Government and authorize persons to whom release or

disclosure has been made to use, modify, reproduce, release, perform, display, or disclose that data for Government purposes.

* * * * *

Operations, maintenance, installation, or training purposes (OMIT) data means data that is necessary for operation, maintenance, installation, or training purposes (but not including detailed manufacturing or process data).

* * * * *

SBIR/STTR computer software rights means the Government’s rights during the SBIR/STTR protection period (for the Government’s rights after the protection period see the definition of “government purpose rights” in this clause) to—

(1) Use, modify, reproduce, release, perform, display, or disclose SBIR/STTR data that are computer software within the Government for the following purposes:

- (i) Use in Government computer(s);
- (ii) Archival or backup;
- (iii) Modify, adapt, or combine with other computer software, provided that the modified, adapted or combined portion of the software incorporating any of the delivered, restricted computer software shall be subject to the same SBIR/STTR computer software rights; or

(iv) Distribute to another agency if, prior to the distribution, the Contractor is notified of the distribution and the identity of the recipient, and a copy of the SBIR/STTR computer software rights is provided to the recipient.

(2) Release or disclose SBIR/STTR data that are computer software outside the Government to support service contractors or their subcontractors for purposes described in paragraphs (1)(i) through (1)(iii) of this definition, including evaluation, repair, overhaul, and adaptation, combination, or integration with other computer software, and subject to prohibition against further use and disclosure.

SBIR/STTR data means all data first produced by a Contractor in the performance of an SBIR or STTR award, including technical data and computer software developed or generated in the performance of an SBIR or STTR award. The term does not include publicly available information, information otherwise available to the Government, or information incidental to contract administration, such as financial, administrative, cost or pricing or management information.

SBIR/STTR data rights means the Government’s royalty-free license rights in properly marked SBIR/STTR data

during the SBIR/STTR protection period as follows: SBIR/STTR technical data rights and SBIR/STTR computer software rights. Upon expiration of the protection period for SBIR/STTR data, the Government has government purpose rights in perpetuity in the SBIR/STTR data, and is relieved of disclosure prohibitions related to such government purposes and assumes no liability for unauthorized use of these data by third parties.

SBIR/STTR protection period means the period of time during which the Government is obligated to protect SBIR/STTR data against unauthorized use and disclosure in accordance with SBIR/STTR data rights. The SBIR/STTR protection period begins at award of an SBIR or STTR contract and ends not less than 20 years from that date, unless negotiated otherwise after award. (See section 8(b)(4) of the SBIR and STTR Policy Directive, <https://www.sbir.gov>).

SBIR/STTR technical data means SBIR/STTR data that is technical data.

SBIR/STTR technical data rights means the Government’s rights to use SBIR/STTR technical data during the SBIR/STTR protection period (for the Government’s rights after the protection period see the definition of “government purpose rights” in this clause) to—

(1) Use, modify, reproduce, release, perform, display, or disclose SBIR/STTR technical data within the Government, except for procurement, manufacturing, or commercial purposes without written permission of the Contractor; and

(2) Release or disclose outside the Government, subject to prohibition against further use and disclosure (e.g., nondisclosure agreement), for the following purposes:

- (i) Use (except for manufacturing, procurement or commercial use) by Government support service contractors in performance of a Government support services contract for internal Government use, i.e., furnishing independent and impartial advice or technical assistance directly to the Government in support of the Government’s management and oversight of the program or effort to which such technical data or computer software relates, such as providing evaluation, diagnosis, or modification;
- (ii) Evaluation; or
- (iii) Release to a foreign government, if required to serve the interests of the U.S. Government, for informational and evaluation purposes.

* * * * *

Unlimited rights means the rights of the Government to use, modify, prepare derivative works, reproduce, release,

perform, display, disclose, or distribute data in whole or in part, in any manner and for any purpose whatsoever, and to have or permit others to do so.

(b) *Allocation of rights.*(1) The SBIR/STTR data rights are to be interpreted consistent with SBA's SBIR and STTR policy directive. However, if there is an inconsistency between this clause and the SBIR and STTR policy directive, this clause governs.

(2) Except as provided in paragraph (c) of this clause regarding copyright, the Government shall have unlimited rights both during and after the protection period in—

* * * * *

(iii) Data delivered under this contract (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this contract, *i.e.*, OMIT data; and

(iv) All other data delivered under this contract unless provided otherwise for SBIR/STTR data in accordance with paragraph (d) of this clause or for limited rights data or restricted computer software in accordance with paragraph (f) of this clause.

* * * * *

(d) *Rights to and marking of SBIR/STTR data.* (1) The Contractor is authorized to affix the following "SBIR/STTR Data Rights Notice" to SBIR/STTR data delivered under this contract and the Government will treat the data, subject to the provisions of paragraphs (e) and (f) of this clause, in accordance with the notice:

SBIR/STTR Data Rights Notice (DATE)

These SBIR/STTR data are furnished with SBIR/STTR data rights under Contract number __, date of award __ (and subcontract number __, if appropriate). For a period of 20 years, starting from the date of award, the Government will have SBIR/STTR technical data rights or SBIR/STTR computer software rights in these data as defined in paragraph (a) of the clause 52.227–20 Rights in Data—Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) Programs, included in the above identified contract, and they shall not be disclosed outside the Government (including disclosure for procurement purposes) during such period without permission of the Contractor (unless specifically permitted elsewhere in the contract pursuant to post-award negotiations), except that, subject to the foregoing use and disclosure prohibitions, these data

may be disclosed for use by support Contractors. After the SBIR/STTR protection period ends, the Government has Government purpose rights in this data as defined in paragraph (a) of 52.227–20. This notice shall be affixed to any reproductions of these data, in whole or in part.

(End of Notice)

(2) If the Contractor and the contracting officer negotiate a different SBIR/STTR protection period after award of the contract, the Contractor shall revise the SBIR/STTR Data Rights Notice to reflect the negotiated protection period.

(3) The Government's sole obligation with respect to any SBIR/STTR data shall be as set forth in this paragraph (d).

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(g) *Subcontracts.* * * *

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52.227–21 [Amended]

■ 17. Amend section 52.227–21 by removing from the introductory text "27.409" and adding "27.410" in its place.

52.227–22 [Amended]

■ 18. Amend section 52.227–22 by removing from the introductory text "27.409" and adding "27.410" in its place.

52.227–23 [Amended]

■ 19. Amend section 52.227–23 by removing from the introductory text "27.409" and adding "27.410" in its place.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 224

[Docket No. 230403–0090; RTID 0648–XR118]

Endangered and Threatened Wildlife and Plants; Listing the Atlantic Humpback Dolphin as an Endangered Species Under the Endangered Species Act

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: We, NMFS, have completed a comprehensive status review under the Endangered Species Act (ESA) for the Atlantic humpback dolphin (*Sousa teuszii*) in response to a petition from the Animal Welfare Institute, the Center for Biological Diversity, and VIVA Vaquita to list the species. Based on the best scientific and commercial information available, including the draft status review report, and taking into account efforts being made to protect the species, we have determined that the Atlantic humpback dolphin has a high risk of extinction throughout its range and warrants listing as an endangered species. This species occurs only in coastal Atlantic waters of western Africa. We are authorized to designate critical habitat within U.S. jurisdiction only, and we are not aware of any areas within U.S. jurisdiction that may meet the definition of critical habitat under the ESA. Therefore, we are not proposing to designate critical habitat. We are soliciting public comments on our draft status review report and proposal to list this species.

DATES: Comments on this proposed rule must be received by June 6, 2023. Public hearing requests must be made by May 22, 2023.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2021–0110, by the following method:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and enter NOAA–NMFS–2021–0110 in the Search box. Click on the "Comment" icon, complete the required fields, and enter or attach your comments.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (*e.g.*, name, address, *etc.*), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

The petition, status review report, **Federal Register** notices, and the list of references can be accessed electronically online at: <https://www.fisheries.noaa.gov/species/atlantic-humpback-dolphin#conservation-management>.