

Subpart 101-47.2—Utilization of Excess Real Property

Section 101-47.203-7 is amended by revising paragraph (b) and removing and reserving paragraph (c) as follows:

§ 101-47.203-7 Transfers.

(a) * * *

(b) Upon determination by GSA that a transfer of the property requested is in the best interest of the Government and that the requesting agency is the appropriate agency to hold the property, the transfer may be made among Federal agencies, to mixed-ownership Government corporations, and to the municipal government of the District of Columbia.

(c) [Reserved]

* * * * *

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c))

Dated: November 22, 1983.

Ray Kline,

Acting Administrator of General Services.

[FR Doc. 84-19067 Filed 7-19-84; 8:45 am]

BILLING CODE 6820-99-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 81

[FCC 84-257]

Coordination of Shore Based Radionavigation Stations With the U.S. Coast Guard

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document requires applicants for shore based radionavigation stations in the Maritime Services to coordinate with the U.S. Coast Guard prior to submitting their applications to the Commission. This action is taken in response to a request by the U.S. Coast Guard. It is intended to protect the safety of life and property at sea by avoiding the possibility of confusion between any charted and uncharted navigation aids.

EFFECTIVE DATE: September 28, 1984.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Maureen Cesaitis, Private Radio Bureau, (202) 632-7175.

List of Subjects in 47 CFR Part 81

Marine safety.

Order

In the matter of amendment of Part 81 of the rules concerning coordination of shore based radionavigation stations with the U.S. Coast Guard.

Adopted: June 4, 1984.

Released: June 29, 1984.

By the Commission.

1. Shore based radionavigation stations operated to provide information to aid in the movement of ships are classified as private aids to navigation. The U.S. Coast Guard, in a letter dated February 29, 1984, requested the Commission to amend the rules to require that applicants coordinate with the Coast Guard prior to submitting an application for a shore based radionavigation station. This coordination process would permit the Coast Guard to fulfill its statutory responsibility to ensure such private marine radionavigation aids do not pose a hazard to navigation.¹ Prior coordination by the applicant with the Coast Guard would allow prompt and efficient processing of the subject applications.

2. For the reasons summarized above, we are amending the rules to add a new § 81.403 to require coordination with the U.S. Coast Guard prior to the filing of an application for a shore based radionavigation station. Additionally, we specifically noted in the rules that stations used only for surveillance and not operated as an aid to navigation are considered to be radiolocation stations which do not require prior coordination with the Coast Guard. For example, stations utilizing radar equipment only to locate vessels near oil platforms or in harbor areas would be licensed as radiolocation stations rather than radionavigation stations. No prior coordination with the Coast Guard is required for such radiolocation stations which make up the bulk of private shore based radar facilities.²

3. Authority for this action is contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r). Since this amendment make a minor change which is likely to be noncontroversial, we find good cause to dispense with the public notice and comment procedures of the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(B).

4. Accordingly, It is ordered, that Part 81 of the Commission's rules is amended

¹ See 14 U.S.C. 18.

² In an Order adopted April 27, 1983 (FCC 83-203, 47 FR 23432) a requirement for applicants for radionavigation stations to coordinate with the Coast Guard was removed. This action was taken based on a letter from the Coast Guard indicating that it no longer considered it necessary to approve such facilities. However, in the letter of February 29, 1984, the Coast Guard stated that it only meant to eliminate coordination of a certain type of application, i.e., applications for radiolocation stations, not all applications for private radionavigation aids.

as set forth in the attached Appendix effective September 28, 1984.

5. For further information regarding matters covered in this document, contact Maureen Cesaitis at (202) 632-7175.

Federal Communications Commission.
William J. Tricarico,
Secretary.

Appendix

Part 81 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 81—STATIONS ON LAND IN THE MARITIME SERVICES AND ALASKA-PUBLIC FIXED STATIONS

New § 81.403 is added to read as follows:

§ 81.403 Special conditions.

(a) Shore based radionavigation stations operated to provide information to aid in the movement of any ship are considered to be private aids to navigation. Prior to submitting an application for such a radionavigation station, an applicant must obtain written permission from the Commandant, U.S. Coast Guard, Washington, D.C. 20593 (attention Marine Radio Policy Branch, G-TPP-3). Documentation of the Coast Guard approval must be submitted with the application.

(b) Shore based radiolocation stations used for surveillance, such as locating vessels near oil platforms or in harbor areas, do not require prior Coast Guard approval.

[FR Doc. 84-19068 Filed 7-19-84; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

48 CFR Parts 1527 and 1552

[EPAAR Temp. Reg. 1; OA-FRL-2632-8]

Rights in Data and Copyrights Under EPA Contracts

AGENCY: Environmental Protection Agency.

ACTION: Temporary regulation.

SUMMARY: This EPA Acquisition Regulation (EPAAR) Temporary Regulation establishes policies and procedures under EPA contracts for rights in data and copyrights, and requirements for data. This action is necessary since the Federal Acquisition Regulation, which was effective on April 1, 1984, did not include regulatory coverage of rights in data and

copyrights. Regulatory coverage of these subjects in the FAR is not expected until after July 15, 1984. The intended effect of this action is to establish contractual rights and obligations between EPA and its contractors with respect to data and copyrights.

DATES: Effective date: July 15, 1984.
Expiration date: July 14, 1986. Comments due: September 15, 1984.

ADDRESSES: Comments may be mailed to Edward Murphy, Procurement and Contracts Management Division (PM-214), Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Edward Murphy, Policy Section, Tel: (202) 382-5034.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

In accordance with the memorandum from David Stockman, Director, Office of Management and Budget, to Donald Sowie, Administrator, Office of Federal Procurement Policy, and Christopher DeMuth, Administrator, Information and Regulatory Affairs, dated October 4, 1982, this rule is exempt from the provisions of Executive Order 12291.

Regulatory Flexibility Act

This rule was reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96-354, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have a significant economic impact on a substantial number of small entities. The EPA certifies that this rule will not have a significant impact on a substantial number of small entities. Therefore, no regulatory flexibility analysis has been prepared.

Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and have been assigned OMB control number 2030-0012.

List of Subjects in 48 CFR Parts 1527 and 1552

Government procurement, Patents, data and copyrights.

(Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c))

Dated: July 11, 1984.

Kenneth Dawsey,
Acting Director, Office of Administration.

1. 48 CFR Part 1527 is revised to read as follows:

PART 1527—PATENTS, DATA, AND COPYRIGHTS

Subpart 1527.70—Rights in Data and Copyrights

Sec.	
1527.7000	Scope of subpart.
1527.7001	Definitions.
1527.7002	Policy.
1527.7003	Procedures.
1527.7004	Acquisition of data.
1527.7005	Solicitation provisions and contract clauses.

Authority: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

Subpart 1527.70—Rights in Data and Copyrights

1527.7000 Scope of subpart.

This subpart sets forth policies, procedures, and instructions with respect to—

- (a) Rights in data and copyrights, and
- (b) requirements for data.

1527.7001 Definitions.

"Computer software," as used in this subpart, means computer programs, computer data bases, and documentation thereof.

"Data," as used in this subpart, means recorded information, regardless of form or the media on which it may be recorded. The term includes computer software. The term does not include information incidental to contract administration, such as contract cost analysis or any financial, business and management information required for contract administration purposes.

"Form, fit, and function data," as used in this subpart, means data relating to, and sufficient to enable, physical and functional interchangeability; as well as data identifying source, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements.

"Limited rights," as used in this subpart, means the rights of the Government in limited-rights data, as set forth in a Limited Rights Notice if included in the data rights clause of the contract.

"Limited-rights data," as used in this subpart, means data that embodies trade secrets or is commercial or financial and confidential or privileged, to the extent that such data pertains to items, components or processes developed at private expense, including minor modifications thereof.

(Contracting Officers may, with the concurrence of the Project Officer, use the following alternate definition: "Limited-rights data," as used in this subpart, means data developed at private expense that embodies trade

secrets or is commercial or financial and confidential or privileged.)

"Restricted computer software," as used in this subpart, means computer software developed at private expense and that is a trade secret, or is commercial or financial and confidential or privileged, or is published copyrighted computer software.

"Restricted rights," as used in this subpart, means the rights of the Government in restricted computer software as set forth in a Restricted Rights Notice if included in a data rights clause of the contract or as otherwise may be included or incorporated in the contract.

"Unlimited rights," as used in this subpart, means the right of the Government, without additional cost to the Government, to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

1527.7002 Policy.

It is necessary for EPA, in order to carry out its missions and programs, to acquire or obtain access to many kinds of data produced during or used in the performance of its contracts. Such data may be required to: obtain competition among suppliers; fulfill certain responsibilities for disseminating and publishing the results of its activities; ensure appropriate utilization of the results of research, development, and demonstration activities; and meet other programmatic and statutory requirements, including regulatory activities. At the same time, EPA recognizes that its Contractors may have a property right or other valid economic interest in certain data resulting from private investment, and that protection from unauthorized use and disclosure of this data is necessary in order to prevent the compromise of such property right or economic interest, avoid jeopardizing the Contractor's commercial position, and maintain EPA's ability to obtain access to or use of such data. The protection of this data by EPA is necessary to encourage qualified Contractors to participate in EPA programs and apply innovative concepts to such programs. The specific procedures and prescriptions for use of solicitation provisions and contract clauses set forth below are framed in light of the above considerations to strike a balance between EPA's needs and the Contractor's property rights and economic interests.

1527.7003 Procedures.

(a) *General.* All contracts that require data be produced, furnished, or acquired must contain terms that delineate the respective rights and obligations of the Government and the Contractor regarding the use, duplication, and disclosure of such data, except certain contracts resulting from formal advertising that require only existing data (other than limited-rights data and restricted computer software) to be delivered and reproduction rights are not needed for such data. As a general rule, the data rights clause at 1552.227-71, Rights in Data—General, is to be used for this purpose. However, certain types of contracts, the particular subject matter of a contract, or the intended use of the data, may require the use of other clauses or no clause at all, as discussed in paragraphs (c) and (d) of this section.

(b) *Basic Rights in Data Clause.* (1) *Summary.* The clause at 1552.227-71, Rights in Data—General, is structured to strike a balance between EPA's needs in carrying out its mission and programs and the Contractor's needs to protect property rights and valid economic interests in certain data arising out of private investment. This clause enables the Contractor to protect from unauthorized use and disclosure data that qualifies as limited-rights data or restricted computer software (see paragraph (b)(2) of this section for an alternate definition of limited-rights data). This clause also specifically delineates the categories or types of data that the Government is to acquire with limited rights (see paragraph (b)(3) of this section). The Contractor may protect qualifying limited-rights data and restricted computer software under this clause by either withholding such data from delivery to the Government; or when EPA has a need to obtain delivery of limited-rights data or restricted computer software, by delivering such data with limited rights or restricted rights with authorized notices on the data. (See paragraphs (b)(4) and (b)(5) of this section.) In addition, this clause enables Contractors to establish and/or maintain copyright protection for data first produced and/or delivered under the contract, subject to certain license rights in the Government. (See paragraph (b)(6) of this section.) This clause also includes procedures that apply when EPA questions whether notices on data are authorized (see paragraph (b)(7) of this section) or when a Contractor wishes to add or correct omitted or incorrect notices on data (see paragraph (b)(8) of this section); addresses the Contractor's right to

release, publish or use certain data involved in contract performance (see paragraph (b)(9) of this section); and provides for the possibility for the Government to inspect certain data at the Contractor's facility (see paragraph (b)(10) of this section).

(2) *Alternate definition of limited-rights data.* In the clause at 1552.227-71, Rights in Data—General, in order for data to qualify as limited-rights data, in addition to being data that either embodies a trade secret or is data that is commercial or financial and confidential or privileged, such data must also pertain to items, components, or processes developed at private expense, including minor modifications thereof. However, where appropriate and with the concurrence of the Project Officer, a Contracting Officer may determine to use in the clause the alternate definition for limited-rights data that does not require that such data pertain to items, components, or processes developed at private expense; but rather that the data that either embodies a trade secret or is commercial or financial and confidential or privileged be produced at private expense in order to qualify as limited-rights data. As an example, this alternate definition may be used where the principal purpose of a contract does not involve the development, use, or delivery of items, components, or processes that are intended to be acquired for use by or for the Government (either under the contract in question or any anticipated follow-on contracts relating to the same subject matter). Other examples include contracts for market research and surveys, economic forecasts, socio-economic reports, educational material, health and safety information, management analysis, and related matters. This alternate definition of limited-rights data may be used, where appropriate, by using the clause with its Alternate I.

(3) *Unlimited-rights data.* Under the clause at 1552.227-71, Rights in Data—General, the Government acquires unlimited rights in the following data except as provided in paragraph (b)(6) of this section for copyrighted data.

- (i) Data first produced in the performance of a contract;
- (ii) Form, fit, and function data delivered under a contract;
- (iii) Data (except as may be included with restricted computer software) that constitutes manuals or instructional and/or training material delivered under a contract; and
- (iv) All other data delivered under the contract unless such data qualifies as

limited-rights data or restricted computer software.

If any of the foregoing data is published copyrighted data, the Government acquires it under a copyright license as set forth in paragraph (b)(6) of this section rather than with limited rights or restricted rights.

(4) *Protection of limited-rights data.* (i) The Contractor may protect data (other than unlimited rights data or published copyrighted data) that qualifies as limited-rights data under the clause at 1552.227-71, Rights in Data—General, by withholding such data from delivery and providing form, fit, and function data in lieu thereof; or, if the Government specifies the delivery of the data, by delivering such data with limitations on its use and disclosure. These two modes of protection afforded the Contractor (i.e., withhold or deliver with limited rights) are provided for in paragraph (g) of the clause at 1552.227-71, Rights in Data—General. Paragraph (g)(1) of this clause allows the Contractor to withhold limited-rights data and provide form, fit, and function data in lieu thereof. Paragraph (g)(2) to this clause enables the Government selectively to obtain the delivery of withheld or withholdable data with limited rights. The limitations on the Government's right to use and disclose limited-rights data are set forth in a "Limited Rights Notice" that the Contractor is required to affix to such data. The specific limitations in the Notice are described in this section.

(ii) Limited-rights data delivered to the Government with the Limited Rights Notice contained in paragraph (g)(2) of the clause will not, without permission of the Contractor, be used by the Government for purposes of manufacture, and will not be disclosed outside the Government except for certain limited purposes as set forth in the Notice, and then only if the Government makes the disclosure subject to prohibition against further use and disclosure by the recipient. The specific purposes for which the Government may disclose limited-rights data are specified below and appear in the Limited Rights Notice of paragraph (g)(2) of the clause. The Contracting Officer may revise the purposes for disclosing limited-rights data appearing in the clause and as set forth in this section when such revisions are consistent with the Government's needs.

- (A) Use by support service Contractors.
- (B) Evaluation by nongovernment evaluators.
- (C) Use by other contractors participating in the Government's

program of which this contract is a part, for information and use in connection with the work performed under their contracts.

(D) Emergency repair or overhaul work.

(E) Release to a foreign government, as the interests of the United States may require, for information or evaluation, or for emergency repair or overhaul work by such Government.

(iii) As an aid in identifying which, if any, of the data under the contract will qualify as limited-rights data, the provision at 1552.227-70, Notification of Limited-Rights Data and Restricted Computer Software, shall be included in any solicitation containing the clause at 1552.227-71, Rights in Data—General.

(5) *Protection of restricted computer software.* (i) If computer software qualifies as restricted computer software, the clause at 1552.227-71, Rights in Data—General, permits the Contractor to protect such software by either withholding it from delivery and providing form, fit, and function data in lieu thereof; or if the Government specifies delivery of the software, by delivering the software with restricted rights regarding its use, disclosure, and reproduction. The two modes of protection afforded the Contractor (i.e., withhold or deliver with restricted rights) are provided for in paragraph (g) of the clause at 1552.227-71, Rights in Data—General. If restricted computer software is needed for use in or with more than one computer, the Contracting Officer shall specify in the contract schedule the number of computers on which the software will be used. The restrictions on the Government's right to use, disclose, and reproduce restricted computer software are set forth in a "Restricted Rights Notice" that the Contractor is required to affix to such computer software. When restricted computer software delivered with such Notice is published copyrighted computer software, it is acquired with a restricted copyright license, and without disclosure prohibitions, as also set forth in the Notice. The specific restrictions in the Notice are set forth in paragraph (b)(5)(ii) of this section.

(ii) Restricted computer software delivered with the Restricted Rights Notice of paragraph (g)(3) of the clause at 1552.227-71, Rights in Data—General, will not be used or reproduced by the Government, or disclosed outside the Government, except that the computer software may be:

(A) Used, or copied for use in or with the computer or computers for which it was acquired, including use at any Government installation to which such

computer or computers may be transferred;

(B) Used, or copied for use in or with a backup computer if the computer or computers for which it is acquired is inoperative;

(C) Reproduced for safekeeping (archives) or backup purposes;

(D) Modified, adapted, or combined with other computer software, provided that the modified, combined, or adapted portions of any derivative software incorporating restricted computer software are made subject to the same restricted rights; and

(E) Disclosed and reproduced by support Contractors or their subcontractors, subject to the same restrictions under which the Government acquired the software.

(iii) The restricted rights set forth in paragraph (b)(5)(ii) of this section are the minimum rights the Government normally obtains with restricted computer software and will automatically apply when such software is acquired under the Restricted Rights Notice of paragraph (g)(3) of the clause. However, the Contracting Officer may revise the Restricted Rights Notice of paragraph (g)(3) of the clause to specify either greater or lesser rights, consistent with the purposes and needs for which the software is to be acquired. Any additions to, or limitations on, the restricted rights set forth in the Restricted Rights Notice of paragraph (g)(3) of the clause are to be expressly stated in the contract; or, with approval of the Contracting Officer, in a collateral agreement incorporated in and made part of the contract. (See paragraph (d)(2) of this section.)

(iv) As an aid in identifying which, if any, of the computer software under the contract will qualify as restricted computer software, the provision at 1552.227-70, Notification of Limited-Rights Data and Restricted Computer Software, shall be included in any solicitation containing the clause at 1552.227-71, Rights in Data—General.

(6) *Copyright data.* (i) *Data first produced in the performance of a contract.* (A) In order to enhance the transfer or dissemination of information produced at Government expense, Contractors are permitted, by paragraph (c)(1) of the clause at 1552.227-71, Rights in Data—General, to establish claim of copyright to scientific and technical articles based on or derived from work performed under the contract and published in academic, professional, or technical journals. However, permission may be granted to establish claim to copyright in all other data in accordance with the procedures set forth below.

(B) Usually permission for a Contractor to establish claim to copyright for data first produced under the contract will be granted when copyright protection will enhance the appropriate transfer or dissemination of such data. The request for permission must be in writing, and may be made either at the time of contracting or subsequently during contract performance. It should identify the data involved or furnish a copy of the data for which permission is requested, as well as a statement as to the intended publication or dissemination media or other purpose for which copyright is desired. Examples of cases when it may not be in the Government's best interests to grant the request are:

(1) The data consists of a report that represents the official views of the Agency or that the Agency is required by statute to prepare;

(2) The data is intended primarily for internal use by the Government;

(3) The data is of the type that the Agency itself distributes to the public under an established program; or

(4) If it is deemed inappropriate to provide the Contractor with an essentially exclusive commercial publishing right.

(C) Whenever a Contractor establishes claim to copyright subsisting in data first produced in the performance of a contract, the Government normally is granted a paid-up nonexclusive, irrevocable, worldwide license to reproduce, prepare derivative works, distribute to the public, perform publicly and display publicly by or on behalf of the Government, for all such data, as set forth in paragraph (c)(1) of the clause at 1552.227-71, Rights in Data—General.

(ii) *Data not first produced in the performance of a contract.* (A) Contractors are not to incorporate in data delivered under contract any data not first produced under the contract with the copyright notice of 17 U.S.C. 401 or 402 without either:

(1) Acquiring for, or granting to the Government and others acting on its behalf, a paid-up nonexclusive, irrevocable, worldwide license to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government, for all such data; or

(2) Obtaining permission from the Contracting Officer to do otherwise. However, if computer software not first produced under contract is delivered with the copyright notice of 17 U.S.C. 401 or 402, the Government's license will be as set forth in paragraph (g)(3) of the

clause at 1552.227-71, Rights in Data—General, or as otherwise may be provided in a collateral agreement incorporated in or made part of the contract.

(B) Contractors delivering data with an authorized limited rights or restricted rights notice and a copyright notice of 17 U.S.C. 401 or 402 should modify the copyright notice to include the following (or similar) statement: "Unpublished—all rights reserved under the copyright laws." If this statement is omitted, the Contractor may be afforded an opportunity to add it in accordance with paragraph (b)(8) of this section. Otherwise, data delivered with a copyright notice of 17 U.S.C. 401 or 402 may be presumed to be published copyrighted data subject to the applicable license rights set forth in paragraph (b)(6)(ii) of this section, without disclosure limitations or restrictions.

(C) If Contractor action causes limited-rights or restricted rights data to be published with copyright notice after its delivery to the Government, the Government is relieved of disclosure and use limitations and restrictions regarding such data, and the Contractor should advise the Government and request that a copyright notice be placed on the data, and acknowledge that the applicable copyright license set forth in paragraph (b)(6)(ii) of this section applies.

(7) *Unauthorized marking of data.* The Government has, in accordance with paragraph (e) of the clause at 1552.227-71, Rights in Data—General, the right to either return to the Contractor data containing markings not authorized by that clause, or to cancel or ignore such markings. However, markings will not be cancelled or ignored without making written inquiry of the Contractor and affording the Contractor at least 30 days to substantiate the propriety of the markings. The Contracting Officer will also give the Contractor notice of any determination made based on any response by the Contractor. Any such determination to cancel or ignore the markings shall be a final decision under the Contract Disputes Act. Failure of the Contractor to respond to the Contracting Officer's inquiry within the time afforded may, however, result in Government action to cancel or ignore the markings. The Agency reserves the right to modify the above procedures when implementing the Freedom of Information Act (5 U.S.C. 552) if necessary to respond to a request for data thereunder.

(8) *Omitted or incorrect notices.* (i) Data delivered under a contract containing the clause at 1552.227-71,

Rights in Data—General, without a limited rights notice or restricted rights notice, or without a copyright notice, shall be presumed to have been delivered with unlimited rights, and the Government assumes no liability for the disclosure or use, or reproduction of such data. However, to the extent the data has not been disclosed without restriction outside the Government, the Contractor may within 6 months (or a longer period approved by the Contracting Officer for good cause shown) request permission of the Contracting Officer to have omitted limited rights or restricted rights notices, as applicable, placed on qualifying data at the Contractor's expense, and the Contracting Officer may agree to so permit if the Contractor—

(A) Identifies the data for which a notice is to be added or corrected;

(B) Demonstrates that the omission of the proposed notice was inadvertent;

(C) Establishes that use of the proposed notice is authorized; and

(D) Acknowledges that the Government has no liability with respect to any disclosure or use of any such data made prior to the addition of the notice or resulting from the omission of the notice.

(ii) The Contracting Officer may also (A) permit correction at the Contractor's expense, of incorrect notices if the Contractor identifies the data on which correction of the notice is to be made, and demonstrates that the correct notice is authorized, or (B) correct any incorrect notices.

(9) *Release, publication and use of data.* (i) In the clause at 1552.227-71, Rights in Data—General, paragraph (d) provides that Contractors normally have the right to use, release to others, reproduce, distribute, or publish data first produced or specifically used in the performance of a contract; however, to the extent the Contractor receives or is given access to data that is necessary for the performance of the contract and the data contains restrictive markings, the Contractor agrees to treat the data in accordance with such markings unless otherwise specifically authorized in writing by the Contracting Officer.

(ii) Contracting Officers may, on a case-by-case basis, place further limitations or restrictions on the Contractor's right to use, release to others, reproduce, distribute or publish any data first produced in the performance of the contract.

(iii) The provisions of paragraph (b)(9)(i) and (ii) of this section are subject to the EPA Order entitled "Publication Review Procedure" and to the clause at 1552.237-70, Contract Publication Review Procedure.

(10) *Inspection of data at the Contractor's facility.* The Government obtains the right to inspect data at the Contractor's facility as provided in paragraph (j) of the clause at 1552.227-71, Rights in Data—General. The data subject to inspection may be data withheld or withholdable under paragraph (g)(1) of the clause, or any data specifically used in the performance of the contract. Such inspection may be made by the Contracting Officer or other Federal Government employee for the purpose of verifying a Contractor's assertion regarding the limited rights or restricted rights status of the data, or for evaluating work performance under the contract. This right may be exercised at all reasonable times up to 3 years after acceptance of all items to be delivered under the contract. The Contracting Officer may specify in the contract schedule, data items that are not subject to inspection under paragraph (j).

(c) *Production of special works.* (1) The clause at 1552.227-72, Rights in Data—Special Works, applies to contracts (or may be made applicable to portions thereof) that are primarily for the production or compilation of data (other than limited-rights data or restricted computer software) for the Government's internal use, or when there is a specific need to limit distribution and use of the data and/or to obtain indemnity for liabilities that may arise out of the content, performance, or disclosure of the data. This clause shall be used in contracts for:

(i) The production of audiovisual works including motion pictures or television recordings with or without accompanying sound, or for the preparation of motion picture scripts, musical compositions, sound tracks, translations, adaptations, and the like;

(ii) Histories of the Agency, or units thereof;

(iii) Works pertaining to recruiting, morale, training, or career guidance;

(iv) Surveys of Government establishments;

(v) Works pertaining to the instruction or guidance of Government officers and employees in the discharge of their official duties;

(vi) The compilation of reports, studies, surveys, or similar documents which are intended for use in connection with Agency regulatory and/or enforcement activities and that do not involve research, development, or experimental work performed by the Contractor;

(vii) The collection of data containing personally identifiable information such

that the disclosure thereof would violate the right of privacy or publicity of the individual to whom the information relates;

(viii) Investigatory reports; or
(ix) The development, accumulation, or compilation of data (other than that resulting from research, development, or experimental work performed by the Contractor), the early release of which could prejudice follow-on acquisition activities or Agency regulatory and/or enforcement activities.

(2) The contract may specify the purposes and conditions (including time limitations) under which the data may be used, released, or reproduced other than for contract performance. Contracts for the production of audiovisual works, sound recordings, etc. may include limitations in connection with talent releases, music licenses, and the like that are consistent with the purposes for which the works are acquired.

(d) *Acquisition of existing data other than limited-rights data.* (1) *Existing audiovisual and similar works.* The clause at 1552.227-73, Rights in Data—Existing Works, is for use in contracts exclusively for the acquisition (without modification) of existing motion pictures, television recordings, and other audiovisual works; sound recordings; musical, dramatic, and literary works; pantomimes and choreographic works; pictorial, graphic, and sculptural works; and works of a similar nature. The contract may set forth limitations consistent with the purposes for which the works covered by the contract are being acquired. Examples of these limitations are:

- (i) means of exhibition or transmission,
- (ii) time,
- (iii) type of audience, and
- (iv) geographical location.

If the contract requires that works of the type indicated above are to be modified through editing, translation, or addition of subject matter, etc. (rather than purchased in existing form) the clause at 1552.227-72, Rights in Data—Special Works, is to be used. (See 1527.7003(c).)

(2) *Separate acquisition of existing computer software.* (i) If the contract is for the separate acquisition of existing computer software, no specific contract clause contained in this subpart need be used. However, the contract must specifically address the Government's rights to use, disclose, and reproduce the software and must contain terms obtaining sufficient rights for the Government to fulfill the needs for which the software is being acquired. The restricted rights set forth in paragraph (b)(5) of this section should

be used as a guide and are usually the minimum the Government should accept. If the computer software is to be acquired with unlimited rights, the contract must also so state. In addition, the contract must adequately describe the computer programs and/or data bases, the form (tapes, punch cards, disc pack, and the like), and all the necessary documentation pertaining thereto. If the acquisition is by lease or license, the disposition of the computer software (by returning to the vendor or destroying) at the end of the term of the lease or license must be addressed. Also, the Contractor must reveal at the time of contracting any conditions on tapes, discs, or the like which limit use or access thereto, including built-in timer mechanisms and/or "self-destruct" devices.

(ii) If the contract incorporates, makes reference to, or uses a vendor's standard commercial lease, license, or purchase agreement, such agreement shall be reviewed to assure that it is consistent with paragraph (d)(2)(i) of this section. Caution should be exercised in accepting a vendor's terms and conditions since they may be directed to commercial sales and may not be appropriate for Government contracts. Any inconsistencies in a vendor's standard commercial agreement shall be addressed in the contract and the contract terms shall take precedence over the vendor's standard commercial agreement, and the contract shall state this order of precedence.

(iii) If a prime Contractor under a contract containing the clause at 1552.227-71, Rights in Data—General, acquires restricted computer software from a subcontractor (at any tier) as a separate acquisition for delivery to the Government, the Contracting Officer may approve any additions to, or limitations on the restricted rights in the Restricted Rights Notice of paragraph (g)(3) of the clause in a collateral agreement incorporated in and made part of the contract. (See also 1527.7003(b)(5).)

(3) *Other existing works.* (i) Except for existing audiovisual and similar works pursuant to paragraph (d)(1) of this section, and existing computer software pursuant to paragraph (d)(2) of this section, no clause contained in this subpart need be included in (A) contracts solely for the acquisition of books, publications and similar items in the exact form in which such items exist prior to the request for purchase (i.e., the off-the-shelf purchase of such items) unless reproduction rights of such items are to be obtained; or (B) contracts resulting from formal advertising that require only existing data to be

delivered unless reproduction rights for such data (other than limited-rights data) are to be obtained. If reproduction rights are to be obtained, such rights must be specifically set forth in the contract.

§ 1527.7004 Acquisition of data

(a) *General.* (1) It is important to recognize and maintain the conceptual distinction between contract terms whose purpose is to identify the data required for delivery to, or made available to, the Government (i.e., data requirements); and those contract terms whose purpose is to define the respective rights of the Government and the Contractor in such data (i.e., data rights). This section relates to data requirements; 1527.7003 to the data rights.

(2) It is EPA's practice to determine, to the extent feasible, its data requirements in time for inclusion in solicitations. The data requirements are subject to revision during contract negotiations. Since the preparation, reformatting, maintenance and updating, cataloging, and storage of data represents an expense to both the Government and the Contractor, efforts should be made to keep the contract data requirements to a minimum.

(3) To the extent feasible, all known data requirements, including the time and place for delivery and any limitations and restrictions to be imposed on the Contractor in the handling of the data, shall be specified in the contract.

(b) *Additional data requirements.* Recognizing that in some contracting situations, such as experimental, developmental, research, or demonstration contracts, it may not be possible or appropriate to ascertain all the data requirements at the time of contracting, the clause at 1552.227-74, Additional Data Requirements, is provided to enable the subsequent ordering by the Government of additional data first produced or specifically used in the performance of such contracts as the actual requirements become known. Data may be ordered under this clause at any time during contract performance or within a period of 3 years after acceptance of all items to be delivered under the contract. The Contractor is to be compensated for converting the data into the prescribed form, for reproduction, and for delivery. In order to minimize storage costs for the retention of data, the Contractor may be relieved of retention requirements for specified data items by the Contracting Officer at any time during the retention period required by

the clause. Any data ordered under the clause will be subject to the rights in data clause in the contract.

1527.7005 Solicitation provisions and contract clauses.

(a) The Contracting Officer shall insert the provision at 1552.227-70, Notification of Limited-Rights Data and Restricted Computer Software, in any solicitation containing the clause at 1552.227-71, Rights in Data—General. (See 1527.7003(b) (4) and (5).)

(b)(1) The Contracting Officer shall insert the clause at 1552.227-71, Rights in Data—General (see 1527.7003(b)), in solicitations and contracts if it is contemplated that data will be produced, furnished, or acquired under the contract, unless the contract is—

(i) For the production of special works of the type set forth in 1527.7003(c), but the clause at 1552.227-71, Rights in Data—General, shall be included in the contract and made applicable to data other than special works, as appropriate;

(ii) For the separate acquisition of existing works, as described in 1527.7003(d);

(iii) For a Small Business Innovative Research (SBIR) contract (see paragraph (h) of this section);

(iv) To be performed outside the United States, its possessions, and Puerto Rico, in which case the Contracting Officer, in conjunction with the patent attorney and the Project officer, shall develop a clause suitable for the particular acquisition;

(v) For architect-engineer services or construction work, in which case the Contracting Officer, in conjunction with the patent attorney and the Project Officer, shall develop a clause suitable for the particular acquisition. However, the clause at 1552.227-71, Rights in Data—General, may be included in the contract and made applicable to data pertaining to other than architect-engineer services and construction work;

(vi) For the operation of a Government-owned facility to perform research, development or production work, in which case the Contracting Officer, in conjunction with the patent attorney and the Project Officer, shall develop a clause suitable for the particular acquisition.

(2) If a Contracting Officer determines, in accordance with 1527.7003(b)(2), to adopt the alternate definition of "Limited-Rights Data" in paragraph (a) of the clause, the clause shall be used with its Alternate I.

(c) The Contracting Officer shall insert the clause at 1552.227-72, Rights in Data—Special Works, in solicitations

and contracts primarily for the production or compilation of data (other than limited-rights data or restricted computer software) for the Government's internal use, or when there is a specific need to limit distribution and use of the data and/or to obtain indemnity for liabilities that may arise out of the content, performance, or disclosure of the data. Acquisitions to which this clause applies are identified in 1527.7003(c). The contract may specify the purposes and conditions (including time limitations) under which the data may be used, released or reproduced by the Contractor for other than contract performance. Contracts for the production of audiovisual works, sound recordings, etc. may include limitations in connection with talent releases, music licenses, and the like that are consistent with the purposes for which the data is acquired.

(d) The Contracting Officer shall insert the clause at 1552.227-73, Rights in Data—Existing Works, in solicitations and contracts exclusively for the acquisition, without modification, of existing audiovisual and similar works of the type set forth in 1527.7003(d)(1). The contract may set forth limitations consistent with the purposes for which the work is being acquired. The clause at 1552.227-72, Rights in Data—Special Works, shall be used if existing works are to be modified, as by editing, translation, addition of subject matter, etc.

(e) The Contracting Officer shall insert the clause at 1552.227-74, Additional Data Requirements, in all solicitations and contracts (except those using small purchase procedures) containing one of the rights in data clauses at 1552.227. The Contracting Officer may permit the Contractor to identify data the Contractor does not wish to deliver, and may specifically exclude in the contract any requirement that such data be delivered under a rights in data clause or ordered for delivery under the Additional Data Requirements clause if such data is not necessary to meet the Government's requirements for data.

(f) While no specific clause of this subpart need be included in contracts for the separate acquisition of existing computer software, the Contracting Officer shall assure that the contract contains terms to obtain sufficient rights for the Government to fulfill the need for which the software is being acquired and is otherwise consistent with 1527.7003(d)(2).

(g) While no specific clause of this subpart need be included in contracts solely for the acquisition of books,

publications and similar items in the exact form in which such items exist prior to the request for purchase (i.e., the off-the-shelf purchase of such items) (see 1527.7003(d)(3)), if reproduction rights are to be acquired the contract shall include terms addressing such rights. (See 1527.7003(d)(3).)

(h) The Contracting Officer shall insert the clause at 1552.227-75, Rights in Data Developed under Small Business Innovative Research (SBIR) Contracts, in SBIR solicitations and contracts.

2. Part 1552, Table of Contents, is amended by revising the entry for 1552.227-70 and by adding entries for 1552.227-71, 1552.227-72, 1552.227-73, 1552.227-74, and 1552.227-75 to read as follows:

PART 1552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

* * * * *	
1552.227-70	Notification of limited-rights data and restricted computer software.
1552.227-71	Rights in data—General.
1552.227-72	Rights in data—Special works.
1552.227-73	Rights in data—Existing works.
1552.227-74	Additional data requirements.
1552.227-75	Rights in data developed under Small Business Innovative Research (SBIR) Contracts.
* * * * *	

3. Subpart 1552.2 is amended by revising section 1552.227-70 and by adding sections 1552.227-71, 1552.227-72, 1552.227-73, 1552.227-74, and 1552.227-75 to read as follows:

1552.227-70 Notification of limited-rights data and restricted computer software.

As prescribed in 1527.7005(a), insert the following provision in solicitations:

Notification of Limited Rights Data and Restricted Computer Software (Apr 1984)

(a) This solicitation sets forth the work to be performed if a contract award results, and the Government's known requirements for data (as defined in the EPA Acquisition Regulation at 1527.7001). Any resulting contract may also provide the Government the option to order additional data under the Additional Data Requirements clause [EPA Acquisition Regulation, 1552.227-74], if included in the contract. Any data delivered under the resulting contract will be subject to the Rights in Data—General clause [EPA Acquisition Regulation, 1552.227-71] that is to be included in this contract. Under this clause a Contractor may withhold from delivery data that qualifies as limited-rights data or restricted computer software, and deliver form, fit, and function data in lieu thereof. This clause also authorized the Government to require delivery of limited-rights data or restricted computer software that has been withheld or would otherwise be withholdable. In addition, this clause

provides the Government with the right to inspect such data at the Contractor's facility.

(b) The offeror's response to this solicitation shall, to the extent feasible, either state that none of the data qualifies as limited-rights data or restricted computer software, or identify which of the data qualifies as limited-rights data or restricted computer software. Any identification of limited-rights data or restricted computer software in the offeror's response is not determinative of the status of such data should a contract be awarded to the offeror.

(c) If this acquisition is solely for existing computer software and/or data bases, any resulting contract must contain provisions which cover the Government's right to use the software and, at the least, it should normally contain the rights set forth at EPA Acquisition Regulation 1527.7003(b)(5). Consult EPA Acquisition Regulation 1527.7003(d)(2) for further guidance. EPA will consider for incorporation in the contract a vendor's own license or other conditions provided they are not inconsistent with 1527.7003(b)(5) of 1527.7003(d)(2).

(End of provision)

Approved by the Office of Management and Budget under control number 2030-0012.

1552.227-71 Rights in data—general.

As prescribed in 1527.7005(b), insert the following clause in solicitations and contracts:

Rights in Data—General (Apr 1984)

(a) *Definitions.* "Computer software," as used in this clause, means computer programs, computer data bases, and documentation thereof.

"Data," as used in this clause, means recorded information, regardless of form or the media on which it may be recorded. The term includes computer software. The term does not include information incidental to contract administration, such as contract cost analysis or financial, business, and management information required for contract administration purposes.

"Form, fit, and function data," as used in this clause, means data describing, and sufficient to enable, physical and functional interchangeability; as well as data identifying source, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements.

"Limited rights," as used in this clause, means the rights of the Government in limited-rights data as set forth in the Limited Rights Notice of paragraph (g)(2) of this clause.

"Limited-rights data," as used in this clause, means data that embodies trade secrets or is commercial or financial and confidential or privileged, but only to the extent that the data pertains to items, components, or processes developed at private expense, including minor modifications thereof.

"Restricted computer software," as used in this clause, means computer software developed at private expense and that is a trade secret, or is commercial or financial data which is confidential or privileged, or is published copyrighted computer software.

"Restricted rights," as used in this clause, means the rights of the Government in restricted computer software, as set forth in a Restricted Rights Notice of paragraph (g)(3) of this clause, or as otherwise may be provided in a collateral agreement incorporated in and made part of this contract.

"Unlimited rights," as used in this clause, means the right of the Government, without additional cost to the Government, to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

(b) *Allocation of rights.* (1) Except as provided in paragraph (c) of this clause regarding copyright, the Government shall have unlimited rights in—

(i) Data first produced in the performance of this contract;

(ii) Form, fit, and function data delivered under this contract;

(iii) Data delivered under this contract (except for restricted computer software) that constitutes manuals or instructional and/or training material, and

(iv) All other data delivered under this contract unless provided otherwise for limited-rights data or restricted computer software in accordance with paragraph (g) of this clause.

(2) The Contractor shall have the right to—

(i) Use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this contract unless provided otherwise in paragraph (d) of this clause;

(ii) Protect from unauthorized disclosure and use that data which is limited-rights data or restricted computer software to the extent provided in paragraph (g) of this clause;

(iii) Substantiate use of, add or correct limited rights or restricted rights notices and to take other appropriate action, in accordance with paragraphs (e) and (f) of this clause; and

(iv) Establish claim to copyright subsisting in data first produced in the performance of this contract to the extent provided in paragraph (c)(1) of this clause.

(c)(1) *Data first produced in the performance of this contract.* Unless provided otherwise in paragraph (d) of this clause, the Contractor may establish claim to copyright subsisting in scientific and technical articles based on or derived from data first produced in the performance of this contract and published in academic, technical, or professional journals. The prior, express written permission of the Contracting Officer is required to establish claim to copyright subsisting in all other data first produced in the performance of this contract in accordance with EPA Acquisition Regulation 1527.7003(b)(6). When claim to copyright is made, the Contractor shall affix the applicable copyright notices of 17 U.S.C. 401 or 402 to the data when such data is delivered to the Government, and include that notice as well as acknowledgment of Government sponsorship on the data when published or deposited in the U.S. Copyright Office. The Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable

worldwide license to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government, for all such data.

(2) *Data not first produced in the performance of this contract.* The Contractor shall not, without prior written permission of the Contracting Officer, incorporate in data delivered under this contract any data not first produced in the performance of this contract and which contains the copyright notice of 17 U.S.C. 401 or 402, unless the Contractor identifies such data and grants to the Government, or acquires on its behalf, a license of the same scope as set forth in paragraph (c)(1) of this clause; provided, however, that if such data is computer software the Government shall acquire a copyright license as set forth in paragraph (g)(3) of this clause or as otherwise may be provided in a collateral agreement incorporated in or made part of this contract.

(3) The Government agrees not to remove any copyright notices placed on data pursuant to this paragraph (c), and to include such notices on all reproductions of the data.

(d) *Release, publication and use of data.* (1) The Contractor shall have the right to use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this contract, subject, however, to the clause at 1552.237-70, Contract Publication Review Procedure and the copyright provisions of paragraphs (c)(1) and (c)(2) of this clause.

(2) The Contractor agrees that to the extent it receives or is given access to data necessary for the performance of this contract which contains restrictive markings, the Contractor shall treat the data in accordance with such markings unless otherwise specifically authorized in writing by the Contracting Officer.

(e) *Unauthorized marking of data.* (1) Notwithstanding any other provisions of this contract concerning inspection or acceptance, if any data delivered under this contract is marked with the notices specified in paragraphs (g)(2) or (g)(3) of this clause and use of such is not authorized by this clause, the Contracting Officer may either return the data to the Contractor, or cancel or ignore the markings. However, markings will not be cancelled or ignored unless—

(i) The Contracting Officer makes written inquiry to the Contractor concerning the propriety of the markings, providing the Contractor 30 days to respond; and

(ii) The Contractor fails to respond within the 30 day period (or a longer time approved by the Contracting Officer for good cause shown), or the Contractor's response fails to substantiate the propriety of the markings.

(2) The Contracting Officer shall consider the Contractor's response, if any, and determine whether the markings shall be cancelled or ignored. The Contracting Officer shall furnish written notice to the Contractor of the determination, which shall be a final decision under the Contract Disputes Act.

(3) The Environmental Protection Agency reserves the right to modify the above procedures when implementing the Freedom

of Information Act (5 U.S.C. 552) if necessary to respond to a request for data thereunder.

(f) *Omitted or incorrect markings.* (1) Data delivered to the Government without any notice authorized by paragraph (g) of this clause, or without a copyright notice, shall be deemed to have been furnished with unlimited rights, and the Government assumes no liability for the disclosure, use, or reproduction of such data. However, to the extent the data has not been disclosed without restriction outside the Government, the Contractor may request, within 8 months (or a longer time approved by the Contracting Officer for good cause shown) after delivery of such data, permission to have notices placed on qualifying data at the Contractor's expense, and the Contracting Officer may agree to do so if the Contractor—

(i) Identifies the data to which the omitted notice is to be applied;

(ii) Demonstrates that the omission of the notice was inadvertent;

(iii) Establishes that the use of the proposed notice is authorized; and

(iv) Acknowledges that the Government has no liability with respect to the disclosure or use of any such data made prior to the addition of the notice or resulting from the omission of the notice.

(2) The Contracting Officer may also (i) permit correction at the Contractor's expense, of incorrect notices if the Contractor identifies the data on which correction of the notice is to be made, and demonstrates that the correct notice is authorized, or (ii) correct any incorrect notices.

(g) *Protection of limited-rights data and restricted computer software.* (1) When data other than that listed in paragraphs (b)(1) (i), (ii), and (iii) of this clause is specified to be delivered under this contract and qualifies as either limited-rights data or restricted computer software the Contractor, if it desires to continue protection of such data, shall withhold such data and not furnish it to the Government under this contract. As a condition to this withholding the Contractor shall identify the data being withheld and furnish form, fit, and function data in lieu thereof. Limited-rights data that is formatted as a computer data base for delivery to the Government is to be treated as limited-rights data and not restricted computer software.

(2) Notwithstanding paragraph (g)(1) of this clause, this contract may identify and specify the delivery of limited-rights data, or the Contracting Officer may, at any time during contract performance and for a period of 3 years after acceptance of all items to be delivered under this contract, require by written request the delivery of limited-rights data that has been withheld or would otherwise be withholdable. If delivery of such data is so required, the Contractor may affix the following "Limited Rights Notice" to the data and the Government will thereafter treat the data, subject to the provisions of paragraphs (e) and (f) of this clause, in accordance with such Notice:

Limited Rights Notice (Apr 1984)

(a) This data is submitted with limited rights under Government contract No. — (subcontract —, if appropriate). It may be reproduced and used by the Government

with the express limitation that it will not, without permission of the Contractor, be used for purposes of manufacture nor disclosed outside the Government; except that the Government may disclose this data outside the Government for the following purposes, provided that the Government makes such disclosure subject to prohibition against further use and disclosure:

(1) Use by support service Contractors.

(2) Evaluation by nongovernment evaluators.

(3) Use by other Contractors participating in the Government's program of which this contract is a part, for information and use in connection with the work performed under their contracts.

(4) Emergency repair or overhaul work.

(5) Release to a foreign government, as the interests of the United States may require, for information or evaluation, or for emergency repair or overhaul work by such government.

(b) This Notice shall be marked on any reproduction of this data, in whole or in part.

(End of notice)

(3)(i) Notwithstanding paragraph (g)(1) of this clause, this contract may identify and specify the delivery of restricted computer software, or the Contracting Officer may, at any time during contract performance and for a period of 3 years after acceptance of all items to be delivered under this contract, require by written request the delivery of restricted computer software that has been withheld. If delivery of such computer software is so required, the Contractor may affix the following "Restricted Rights Notice" to the computer software and the Government will thereafter treat the computer software, subject to paragraphs (e) and (f) above, in accordance with the Notice:

Restricted Rights Notice (Apr 1984)

(a) This computer software is submitted with restricted rights under Government contract No. — (and subcontract —, if appropriate). It may not be used, reproduced, or disclosed by the Government except as provided below or as otherwise expressly stated in the contract.

(b) This computer software may be—

(1) Used or copied for use in or with the computer or computers for which it was acquired, including use at any Government installation to which such computer may be transferred;

(2) Used with a backup computer if the computer for which it was acquired is inoperative;

(3) Reproduced for safekeeping (archives) or backup purposes;

(4) Modified, adapted, or combined with other computer software, provided that the modified, combined or adapted portions of the derivative software incorporating restricted computer software shall be subject to the same restricted rights; and

(5) Disclosed and reproduced for use by support Contractors or their subcontractors in accordance with paragraphs (b) (1) through (4) of this notice, provided the Government makes such disclosure subject to these restricted rights.

(c) Notwithstanding the foregoing, if this computer software is published copyrighted software, it is licensed to the Government,

without disclosure prohibitions, with the minimum rights set forth in paragraph (b) of this notice.

(d) Any other rights or limitations regarding the use, duplication or disclosure of this computer software are to be expressly stated in the contract.

(e) This Notice shall be marked on any reproduction of this computer software, in whole or in part."

(End of Notice)

(ii) Where it is impractical to include the above Notice on restricted computer software, the following short-form Notice may be used in lieu thereof:

Restricted Rights Notice (Short Form) (Apr 1984)

Use, reproduction, or disclosure is subject to restrictions set forth in contract No. — (and subcontract —, if appropriate) with — (name of Contractor and subcontractor).

(End of notice)

(h) *Subcontracting.* The Contractor has the responsibility to obtain from its subcontractors all data and rights therein necessary to fulfill the Contractor's obligations to the Government under this contract. If a subcontractor refuses to accept terms affording the Government such rights, the Contractor shall promptly bring such refusal to the attention of the Contracting Officer and not proceed with subcontract award without further authorization.

(i) *Relationship to patents.* Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government.

(j) The Contractor agrees, except as may be otherwise specified in this contract for specific data items listed as not subject to this paragraph, that the Contracting Officer or other Federal Government employee may, at all reasonable times up to 3 years after acceptance of all items to be delivered under this contract, inspect at the Contractor's facility any data withheld under paragraph (g)(1) of this clause, or any data specifically used in the performance of this contract, for the purpose of evaluating work performance or verifying the Contractor's assertion pertaining to the limited rights or restricted rights status of the data.

(End of clause)

Alternate 1 (Apr 1984). As prescribed in 1527.7005(b)(2), substitute the following definition for "Limited Rights Data" in paragraph (a) of the clause:

"Limited-rights data," as used in this clause, means data developed at private expense that embodies trade secrets or is commercial or financial and confidential or privileged.

(Approved by the Office of Management and Budget under control number 2030-0012.)

§ 1552.227-72 Rights in data—special works.

As prescribed in 1527.7005(c), insert the following clause in solicitations and contracts:

Rights in Data—Special Works (Apr 1984)**(a) Definitions**

"Data," as used in this clause, means recorded information regardless of form or medium on which it may be recorded. The term includes computer software. The term does not include information incidental to contract administration, such as contract cost analyses or financial, business, and management information required for contract administration purposes.

"Unlimited rights," as used in this clause, means the rights of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly in any manner and for any purpose whatsoever, and to have or permit others to do so.

(b) Allocation of Rights. (1) The Government shall have—

(i) Unlimited rights in all data delivered under this contract, and in all data first produced in the performance of this contract, except as provided in paragraph (c) of this clause.

(ii) The right to limit exercise of claim to copyright in data first produced in the performance of this contract, and to obtain assignment of copyright in such data, in accordance with paragraph (c)(1) of this clause.

(iii) The right to limit the release and use of certain data in accordance with paragraph (d) of this clause

(2) The Contractor shall have, to the extent permission is granted in accordance with paragraph (c)(1) of this clause, the right to establish claim to copyright subsisting in data first produced in the performance of this contract.

(c) Copyright. (1) *Data first produced in the performance of this contract.* (i) The

Contractor agrees not to assert, establish, or authorize others to assert or establish, any claim to copyright subsisting in any data first produced in the performance of this contract without the prior written permission of the Contracting Officer. When claim to copyright is made the Contractor shall affix the appropriate copyright notice of 17 U.S.C. 401 or 402 to such data when delivered to the Government, and include that notice as well as acknowledgment of Government sponsorship on the data when published or deposited in the U.S. Copyright Office. The Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government, for all such data.

(ii) If the Government desires to obtain ownership of copyright in data first produced in the performance of this contract and permission has not been granted as set forth in paragraph (c)(1)(i) of this clause, the Contracting Officer may direct the Contractor to establish, or authorize the establishment of a claim to copyright in such data and to assign, or obtain the assignment of, such copyright to the Government or its designated assignee.

(2) *Data not first produced in the performance of this contract.* The Contractor shall not, without prior written permission of

the Contracting Officer, incorporate in data delivered under this contract any data not first produced in the performance of this contract and which contains the copyright notice of 17 U.S.C. 401 or 402, unless the Contractor identifies such data and grants to the Government, or acquires on its behalf, a license of the same scope as set forth in paragraph (c)(1) of this clause.

(d) Release and use restrictions. Except as otherwise specifically provided for in this contract, the Contractor shall not use for purposes other than the performance of this contract, nor release, reproduce, distribute or publish any data first produced in the performance of this contract, nor authorize others to do so, without written permission of the Contracting Officer.

(e) Indemnity. (1) The Contractor shall indemnify the Government and its officers, agents, and employees acting for the Government against any liability, including costs and expenses, incurred as the result of the violation of trade secrets, copyrights, or right of privacy or publicity, arising out of the creation, delivery, publication or use of any data furnished under this contract; or any libelous or other unlawful matter contained in such data. The provisions of this paragraph do not apply unless the Government provides notice to the Contractor as soon as practicable of any claim or suit, affords the Contractor an opportunity under applicable laws, rules or regulations to participate in the defense thereof, and obtains the Contractor's consent to the settlement of any suit or claim other than as required by final decree of a court of competent jurisdiction; and do not apply to material furnished to the Contractor by the Government and incorporated in data to which this clause applies.

(End of clause)

1552.227-73 Rights in data—existing works.

As prescribed in 1527.7005(d), insert the following clause in solicitations and contracts:

Rights in Data—Existing Works (Apr 1984)

(a) Except as otherwise provided in this contract, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license to reproduce, prepare derivative works, distribute to the public, and perform publicly and display publicly, by or on behalf of the Government, for all the material or subject matter called for under this contract or for which this clause is specifically made applicable.

(b) The Contractor shall indemnify the Government and its officers, agents, and employees acting for the Government against any liability, including costs and expenses, incurred as the result of (1) the violation of trade secrets, copyrights, or right of privacy or publicity, arising out of the creation, delivery, publication or use of any data furnished under this contract, or (2) any libelous or other unlawful matter contained in such data. The provisions of this paragraph do not apply unless the Government provides notice to the Contractor as soon as practicable of any claim or suit, affords the Contractor an opportunity under applicable

laws, rules or regulations to participate in the defense thereof, and obtains the Contractor's consent to the settlement of any suit or claim other than as required by final decree of a court of competent jurisdiction, and do not apply to material furnished to the Contractor by the Government and incorporated in data to which this clause applies.

(End of clause)

1552.227-74 Additional data requirements.

As prescribed in 1527.7005(e), insert the following clause in solicitations and contracts (except those using small purchase procedures):

Additional Data Requirements (Apr 1984)

(a) In addition to the data (as defined in the rights in data clause included in this contract) specified elsewhere in this contract to be delivered, the Contracting Officer may at any time during contract performance or within a period of 3 years after acceptance of all items to be delivered under this contract, order any data first produced or specifically used in the performance of this contract.

(b) The rights in data clause included in this contract is applicable to all data ordered under this Additional Data Requirements clause. Nothing contained in this clause shall require the Contractor to deliver any data which is specifically identified in this contract as not subject to this clause.

(c) When data is to be delivered under this clause, the Contractor will be compensated for converting the data into the prescribed form, for reproduction, and for delivery.

(d) The Contracting Officer may release the Contractor from the requirements of this clause for specifically identified data items at any time during the 3-year period set forth in paragraph (a) of this clause.

(End of clause)

(Approved by the Office of Management and Budget under control number 2030-0012.)

1552.227-75 Rights in data developed under Small Business Innovative Research (SBIR) contracts.

As prescribed in 1527.7005(h), insert the following clause in Small Business Innovative Research solicitations and contracts:

Rights in Data Developed Under Small Business Innovative Research (SBIR) Contracts (Apr 1984)

All rights to data, including computer software, developed under the terms of this contract shall remain with the Contractor, except that the Government shall have the limited right to use such data, including computer software, for Government purposes and shall not have the right to release such data or software outside the Government without permission of the Contractor for a period of two years from completion of the project under which the data or software was generated. However, effective at the conclusion of the two-year period, the Government shall retain a royalty free license for Government use of any data or software delivered under this contract, even if it is patented or copyrighted.

(End of clause)

[FR Doc. 84-18956 Filed 7-18-84; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Final Rule To Determine *Dyssodia tephroleuca* (Ashy Dogweed) To Be an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service determines a plant, *Dyssodia tephroleuca* (ashy dogweed), to be an endangered species under the authority contained in the Endangered Species Act of 1973, as amended. Historically, this plant was known from two counties in Texas. As of 1979, it was known to occur only on 1 acre in Zapata County, Texas. It is a relict species found in an area with other relict grassland plants. The continued existence of this species is endangered by overgrazing, possible further loss of habitat by roadside blading and brush clearing, and by possible collecting or vandalism. This action implements the protection provided by the Endangered Species Act of 1973, as amended.

DATE: The effective date of this rule is August 20, 1984.

ADDRESSES: The complete file for this rule is available for inspection by appointment during normal business hours at the U.S. Fish and Wildlife Service, Region 2, Office of Endangered Species, 421 Gold Avenue, SW., Room 407, Albuquerque, New Mexico 87103.

FOR FURTHER INFORMATION CONTACT: Dr. Jim Johnson, Region 2 Endangered Species coordinator (see ADDRESSES above) (505/766-3972, FTS 474-3972).

SUPPLEMENTARY INFORMATION:**Background**

Dyssodia tephroleuca was first collected by E. L. Clover in 1932, and described by S. F. Blake in 1934. *Dyssodia tephroleuca* (ashy dogweed) was historically known from two populations in southwestern Texas. Only one of these populations is known to exist at the present time. Approximately 1,300 individuals occur in this population, which is located in Zapata County, Texas (Turner, 1980).

Dyssodia tephroleuca is a perennial herb with stiff erect stems up to 30 centimeters in height (Correll and

Johnston, 1970). The leaves are linear and covered with soft, woolly, ashy-white hairs. Crushed leaves emit a pungent odor. The flower heads (both ray and disk florets) are yellow to bright yellow and about 2.5 centimeters in diameter. In poorer habitats or under physiological stress, individuals are shorter, have fewer and smaller flowers, and have a less dense covering of hairs. Flowering is from March to May, depending on rainfall. The plants occur in fine, sandy-loam soils in open areas of a grassland-shrub community. The dominant genera in the area are *Castela*, *Cordia*, *Prosopis*, *Microrhamnus*, *Leucophyllum*, *Cercidium*, and *Yucca*.

The continued existence of this plant is primarily threatened by further reduction of its only known extant population. This population is mainly on private land but also lies partially on State highway right-of-way. Overgrazing and habitat loss due to grazing, chaining, plowing, or other habitat modifications could threaten *Dyssodia tephroleuca*. Taking and vandalism of this plant are also very real threats as this plant occurs along a major north-south highway.

Past Federal governmental actions affecting this plant began with section 12 of the Endangered Species Act of 1973 which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94-51, was presented to Congress on January 9, 1975. On July 1, 1975, the Director published a notice in the *Federal Register* (40 FR 27823) of his acceptance of the report of the Smithsonian Institution as a petition within the context of section 4(c)(2) of the Act (section 4(b)(3)(A) now and of his intention thereby to review the status of the plant taxa named within. On June 16, 1976, the Service published a proposed rule in the *Federal Register* (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to section 4 of the Act. This list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94-51 and the July 1, 1975, *Federal Register* publication. *Dyssodia tephroleuca* was included in the July 1, 1975, Notice of Review and the June 16, 1976, proposal. General comments received in relation to the 1976 proposal were summarized in an April 26, 1978, *Federal Register* publication (43 FR 17909).

The Endangered Species Act Amendments of 1978 required that all

proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. On December 10, 1979, the Service published a notice of withdrawal of the June 16, 1976, proposal, along with four other proposals which had expired (44 FR 70796). *Dyssodia tephroleuca* was included in category 1 of a revised list of plants under review for threatened or endangered classification in the December 15, 1980, *Federal Register* (42 FR 82480). Category 1 includes those taxa for which the Service presently has sufficient biological information to support their being listed as endangered or threatened species. The Service published a proposed rule to list *Dyssodia tephroleuca* as an endangered species on July 22, 1983 (48 FR 33501).

Summary of Comments and Recommendations

In the July 22, 1983, proposed rule (48 FR 33501) and associated notifications, all interested parties were requested to submit factual reports or information which might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice was published in *The Monitor* in McAllen, Texas, on August 23, 1983, which invited general public comment. A total of five written comments were received, one each from the National Park Service, the U.S. Soil Conservation Service, the Texas Parks and Wildlife Department, the International Union for the Conservation of Nature and Natural Resources, and a professional botanist. No public hearing was requested or held.

The Texas Parks and Wildlife Department submitted comments in support of the proposal. They also pointed out that under Chapter 88 of the Texas Parks and Wildlife Code, any Texas plant which is placed on the Federal list as endangered is also required to be added to the Texas State list of endangered species. Thus, this rule will provide both State and Federal protection for *Dyssodia tephroleuca*.

Support for this proposal was also given by the U.S. Soil Conservation Service and by Mr. Harold Beaty, a professional botanist and the leader of the Texas Plant Recovery Team. Neither the National Park Service nor the International Union for the Conservation of Nature and Natural Resources had any substantive comments on the proposal.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Dyssodia tephroleuca* should be classified as an endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (codified at 50 CFR Part 424; under revision to accommodate 1982 Amendments—see proposal at 48 FR 36062, August 8, 1983) were followed. A species may be determined to be an endangered or a threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Dyssodia tephroleuca* Blake (ashy dogweed) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Dyssodia tephroleuca was historically known to occur in two counties in southwestern Texas. Today it is known to exist at only one site in Zapata County. It occurs with other relict grassland species and is subject to heavy grazing pressure. At present, the most immediate threat to the range of this species is from clearing more land for grazing and cultivation.

Currently, approximately 1,300 individuals of this species are known to exist. Approximately 300 plants occur on the west side of the highway, on the State highway right-of-way, and on adjacent private ranchland. On the east side of the highway is a larger group, estimated at 500–1,000 plants. These are on private ranchland in a brushy area currently used for grazing and deer hunting. Adjacent land to the east has been chained recently and no *Dyssodia tephroleuca* were observed in this area. Protection plans need to be developed so that roadside maintenance is done in a way compatible with the continued existence of the *Dyssodia* located on the highway right-of-way.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

It is believed that the disclosure of the one specific locality of *Dyssodia tephroleuca* would further endanger the species continued existence. Taking and vandalism of this easily accessible roadside plant could result if attention were focused on it by the designation of critical habitat.

C. Disease or Predation

In the past, grazing has severely reduced the habitat of this plant. Undisturbed climax grassland now persists in southwestern Texas only as scattered remnants.

D. The Inadequacy of Existing Regulatory Mechanisms

The State of Texas currently has no law protecting *Dyssodia tephroleuca*. However, once the species is added to the Federal list of endangered species, Chapter 88 of the Texas Parks and Wildlife Code requires that it also be added to the Texas list of endangered species.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

The species biology of *Dyssodia tephroleuca* is not well understood, but there is evidence of poor reproductive capability as seedlings and newly established plants appear to be absent. The limited number of individuals in the one existing population make the species vulnerable to natural factors which could lead to its extinction. Natural successional changes in the grassland-shrub mosaic, microclimatic parameters, degree of success in reproductive mechanisms, and identity of pollinators are but a few of the unknown aspects of the species biology that need to be studied before the reasons for the decline can be understood and hopefully reversed.

The Service has carefully assessed the best scientific information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Dyssodia tephroleuca* as endangered. Endangered as opposed to threatened status is appropriate because of the severely limited range of the species and the resulting vulnerability to any disturbance of its habitat.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for *Dyssodia tephroleuca* due to its very restricted geographical distribution and its easy accessibility. Listing of a plant species as endangered publicizes its rarity and hence can make it attractive to collectors of rare plants and researchers, as well as vandals. Publication of critical habitat maps in the Federal Register is required when

critical habitat is designated. Since the only site known to exist for this species is bisected by a major highway, publication of such maps would greatly increase the possibility of taking or vandalism of the plants. Because these plants are located on non-Federal lands, such actions would not be prohibited by the Endangered Species Act. Therefore, it would not be prudent to bring further attention to the one site where this species occurs via critical habitat designation.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402 and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(A)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species. If a Federal action may affect a listed species, the responsible Federal agency must enter into consultation with the Service. The impact of section 7 on this species would probably be minimal as there are no known Federal lands, activities, or involvement in the area where *Dyssodia tephroleuca* occurs.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plant species. With respect to *Dyssodia tephroleuca* all trade prohibitions of section 9(a)(2) of the Act, as implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to

import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. International and interstate commerce in *Dyssodia tephroleuca* is not known to exist. It is not anticipated that many trade permits involving plants of wild origin would ever be issued since this plant is not common in the wild.

Section 9(a)(2)(B) of the Act, as amended in 1982, prohibits the removal and reduction to possession of endangered plant species from areas under Federal jurisdiction. This new prohibition would now apply to *Dyssodia tephroleuca* if populations were found on Federal lands. No such populations are known to exist on Federal lands at present. Permits for exceptions to this prohibition are available through Section 10(a) of the Act, until revised regulations are promulgated to incorporate the 1982 Amendments. Proposed regulations implementing this new prohibition were published on July 8, 1983 (48 FR 31417), and it is anticipated that these will be made final following public comment.

Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, DC 20240 (703/235-1903). It is anticipated that few taking permits for the species will ever be requested.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the *Federal Register* on October 25, 1983 (48 FR 49244).

Literature Cited

- Blake, S.F. 1935. New Asteraceae. *Journal of the Washington Academy of Sciences* 25:320-321
- Correll, D.S., and M.C. Johnston. 1970. *Manual of the Vascular Plants of Texas*. Texas Research Foundation, Renner, Texas. xiii + 1881 pp.
- Turner, B.L. 1980. Status Report: *Dyssodia tephroleuca* Blake. Prepared for the Office of Endangered Species, U.S. Fish and Wildlife Service, Albuquerque, New Mexico. 5 pp.

Authors

The authors of this rule are Ms. Sandra Limerick and Ms. Rosemary H. Carey, Endangered Species staff, U.S.

Fish and Wildlife Service, Department of the Interior, P.O. Box 1306, Albuquerque, NM 87103. Status information was provided by Dr. B. L. Turner, University of Texas, Austin, Texas.

Ms. E. LaVerne Smith of the Washington Office of Endangered Species served as editor.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 reads as follows:

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. Amend § 17.12(h) by adding the following, in alphabetical order, under Asteraceae to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
ASTERACEAE—Aster family:						
<i>Dyssodia tephroleuca</i>	Ashy dogweed	U.S.A. (TX)	E		NA	NA

Dated: July 3, 1984.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84-19093 Filed 7-18-84; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Final Rule To Determine *Cereus robinii* (Key Tree-Cactus) To Be an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service determines *Cereus robinii* (Key tree-cactus) to be an endangered species under the authority contained in the

Endangered Species Act of 1973, as amended. *Cereus robinii* occurs in the Florida Keys and in Cuba, where its range and population numbers have been drastically reduced. The remaining five U.S. populations, three of which occur on privately owned land, are endangered by the continuing urbanization of the Keys and by horticultural exploitation. This rule will provide *Cereus robinii* with the protection of the Endangered Species Act of 1973, as amended. The Service will initiate recovery efforts for this species.

DATES: The effective date of this rule is August 20, 1984.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours (7:00 a.m.—4:30 p.m.) at the Endangered Species Field Station, U.S. Fish and Wildlife Service, 2747 Art Museum Drive, Jacksonville, Florida 32207.

FOR FURTHER INFORMATION CONTACT: Mr. David Wesley, Field Supervisor at the above address (904/791-2580 or FTS 946-2580).