

## § 909.5

the general counsel shall request the Department of Justice to represent the officer or employee.

### § 909.5 Conditions for authorizing testimony.

(a) Any non-Federal party desiring testimony from a NOAA officer or employee shall make a written request therefor addressed to the Office of General Counsel. The request shall include a general statement of the testimony to be elicited, the requester's interest in that testimony, a brief description of the intended use of the testimony and a statement as to why the testimony is not available elsewhere.

(b) The general counsel or designee shall authorize a NOAA officer or employee to provide factual testimony when the requesting party has sufficiently shown: (1) That the evidence to be adduced is not reasonably available from any other source; (2) that no NOAA record or data could be introduced in evidence in substitution for the testimony; and (3) that the other requirements of this part have been met.

(c) Where less than all of the conditions of paragraph (b) of this section are met, the general counsel or designee may authorize NOAA employees and officers to provide factual or expert testimony on any matters where NOAA has a significant interest in the litigation and the outcome may affect the implementation present or future policies, or where circumstances or conditions make it necessary to provide the information in the public interest.

(d) If the general counsel or designee authorizes the testimony of a NOAA officer or employee, then the Office of General Counsel may arrange for the taking of the testimony by methods that are less disruptive of the official activities of the officer or employee than providing testimony in court. Testimony may, for example, be provided by affidavits, answers to interrogatories, written depositions, or depositions transcribed, recorded, or preserved by any other method allowable by law. Costs of providing testimony, including transcripts, will be borne by the party requesting the testimony.

## 15 CFR Ch. IX (1-1-01 Edition)

### PART 911—POLICIES AND PROCEDURES CONCERNING USE OF THE NOAA SPACE-BASED DATA COLLECTION SYSTEMS

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APPENDIX A TO PART 911—ARGOS DCS USE POLICY DIAGRAM

APPENDIX B TO PART 911—GOES DCS USE POLICY DIAGRAM

AUTHORITY: 15 U.S.C. 313, 49 U.S.C. 44720; 15 U.S.C. 1525; 7 U.S.C. 450b; 5 U.S.C. 552.

SOURCE: 63 FR 24922, May 6, 1998, unless otherwise noted.

#### § 911.1 Purpose.

These regulations set forth the procedural, informational and technical requirements for use of the NOAA Data Collection Systems (DCS). In addition, they establish the criteria NOAA will employ when making determinations as to whether to authorize the use of its space-based DCS. The regulations are intended to facilitate the collection of environmental data as well as other such data which the Government is interested in collecting. In those instances where space-based commercial systems do not meet users' requirements, the intent is to not disadvantage the development of the commercial space-based services in this sector. Obtaining a system use agreement to operate data collection platforms pursuant to these regulations does not affect related licensing requirements of other Federal agencies such as the Federal Communications Commission.

#### § 911.2 Scope.

(a) These regulations apply to any person subject to the jurisdiction or control of the United States who operates or proposes to operate data collection platforms to be used with the NOAA DCS either directly or through an affiliate or subsidiary. For the purposes of these regulations a person is

subject to the jurisdiction or control of the United States if such person is:

(1) An individual who is a U.S. citizen; or

(2) A corporation, partnership, association, or other entity organized or existing under the laws of any state, territory, or possession of the United States.

(b) These regulations apply to all existing Geostationary Operational Environmental Satellite (GOES) and Argos DCS users as well as all future applications for NOAA DCS use.

### §911.3 Definitions.

For purposes of this part:

(a) *Approving authority* means NOAA for the GOES DCS; and it means the Argos Participating Agencies, via the Argos Operations Committee, for the Argos DCS.

(b) *Argos DCS* means the system which collects data from fixed and moving platforms and provides platform location data. This system consists of platforms, the Argos French instrument on the Polar-orbiting Operational Environmental Satellites (POES) and other international satellites; a ground processing system; and telemetry ground stations.

(c) *Argos participating agencies* means those agencies of the United States and other countries that participate in the management of the Argos DCS.

(d) *Assistant Administrator* means the Assistant Administrator for Satellite and Information Services, NOAA, or his/her designee.

(e) *Director* means the Director of the Office of Satellite Data Processing and Distribution for the National Environmental Satellite, Data, and Information Service of NOAA.

(f) *Environmental data* means environmental measurement data for the purpose of using the GOES DCS; and it means environmental measurement and environmental protection data for the purpose of using the Argos DCS.

(g) *Environmental measurement data* means data that relate to the characteristics of the Earth and its natural phenomena by helping to better understand, evaluate, or monitor its natural resources.

(h) *Environmental protection data* means data that relate to the charac-

teristics of the Earth and its environment (including its ecosystems and the species which inhabit them) by helping to protect against any unreasonable adverse effects thereto.

(i) *Episodic use* means the use of the system for short events where there is a significant possibility of loss of life, such as for Arctic expeditions or scientific campaigns into remote areas.

(j) *Government interest* means that the use is determined in advance to be of interest to one or more governmental entities of the United States, France or, once they have become an Argos Participating Agency, Japan or a European Organization for the Exploitation of Meteorological Satellites (EUMETSAT) member state; or also, in the case of the GOES DCS, a state or local government.

(k) *Government user* means agencies of international governmental organizations, national government or any subdivision thereof, or any of those agencies' contractors or grantees, so long as the contractor is using the data collected by the NOAA DCS to fulfill its contractual obligations to the government agency or in the case of a grantee that these data are being used in accordance with the statement of work for the award.

(l) *NOAA DCS* means the GOES and Argos space-based DCS.

(m) *Non-profit user* means a not-for-profit academic, research, or other non-governmental organization, which is using these data, for education and/or scientific, non-commercial purposes.

(n) *Operational use* means the use of data in a situation where the utility of the data are significantly reduced if not collected or delivered in a specific time window. This includes situations where extensive preparation work is in place and a delay in acquisition of data would jeopardize the project.

(o) *Platform compatibility* means the compatibility of the platform with the space segment of the system, and includes elements such as message length and composition, signal strength, and transmission protocol (e.g., continuous versus event drive).

(p) *Testing use* means the use of the NOAA DCS by manufacturers of platforms for use in conjunction with the