

**§ 908.19 Publication of notice of proposed amendments.**

Whenever required by law, and in other cases whenever practicable, notice of proposed amendments to these rules will be published in the FEDERAL REGISTER. If not published with the notice, copies of the text of proposed amendments will be furnished to any person requesting the same. All comments, suggestions, and briefs received within the time specified in the notice will be considered before adoption of the proposed amendments, which may be modified in the light thereof. Informal hearings may be held at the discretion of the Administrator.

**§ 908.20 Effective date.**

These rules are effective on June 10, 1976.

**§ 908.21 Report form.**

Public Law 92-205 and these rules should be studied carefully prior to reporting. Reports required by these rules shall be submitted on forms obtainable on request from the Administrator, or on an equivalent format.<sup>1</sup> In special situations, such alterations to the forms as the circumstances thereto may render necessary may be made, provided they do not depart from the requirements of these rules or of Public Law 92-205.

**PART 909 [RESERVED]**

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

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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:

<sup>1</sup>Filed as part of the original document.

(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 characteristics 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) *Sensitive use* means the use of the NOAA DCS where the users' requirements dictate the use of a governmental system such as National security, homeland security, law enforcement and humanitarian operations.

(q) *Testing use* means the use of the NOAA DCS by manufacturers of platforms for use in conjunction with the NOAA DCS, for the limited purpose of testing and certifying the compatibility of new platforms with the technical requirements of the NOAA DCS.

(r) *User* means the entity and/or organization that owns or operates user platforms for the purpose of collecting and transmitting data through the NOAA DCS, or the organization requiring the collection of the data.

(s) *User platform* means device designed in accordance with the specifications delineated and approved by the Approving Authority used for the in-situ collection and subsequent transmission of data via the NOAA DCS. Those devices which are used in conjunction with the GOES DCS are referred to as data collection platforms (DCP) and those which are used in conjunction with the Argos DCS are referred to as Platform Transmitter Terminals (PTT). For purposes of these regulations, the terms "user platform," "DCP", and "PTT" are interchangeable.

(t) *User requirement* means the requirement expressed and explained in the System Use Agreement.

[63 FR 24922, May 6, 1998, as amended at 68 FR 45161, Aug. 1, 2003]

#### **§911.4 Use of the NOAA Data Collection Systems.**

(a) Use of the NOAA DCS will only be authorized in accordance with the conditions and requirements set forth in paragraphs (b), (c), (d), (e), and (f) of this section.

(b)(1) Use of the NOAA DCS will only be authorized where it is determined that there are no commercial space-based services available that meet the user's requirements.

(2) A determination under paragraph (b)(1) of this section must be based on such factors as satellite coverage, accuracy, data throughput, platform power consumption, size and weight, service continuity and reliability, platform compatibility, system access mode, and, in the case of government agencies, cost-effectiveness.

(c)(1) Except as provided in paragraphs (c)(2), (3), (4), and (5) of this section, NOAA DCS shall only be used for the collection of environmental data by governmental and/or non-profit users.

(2) Non-governmental, environmental use of the NOAA DCS is only authorized where there is a Government interest in the collection and/or receipt of the data.

(3) Except as provided in paragraph (c)(4) of this section, non-environmental use of the NOAA DCS is only authorized for government use and non-profit users where there is a gov-

ernment interest. The NOAA DCS will continue to be predominantly used for environmental applications. Non-environmental use of the system shall be limited to sensitive use, and to episodic use as defined below in paragraph (c)(4) of this section.

(4) Episodic use of the NOAA DCS may also be authorized in specific instances where there is a significant possibility for loss of life. Such use shall be closely monitored.

(5) Testing use of the NOAA DCS will only be authorized for manufacturers of NOAA DCS platforms, that require access to the system in order to test and certify prototype and production models.

(d) Because of capacity limitations on the GOES DCS, system applicants will be admitted to use the GOES system in accordance with the following priority:

(1) NOAA programs or users whose data are required for implementation of NOAA programs, as determined by the Assistant Administrator, will be accorded first priority.

(2) Users whose data are desired to support NOAA programs will be accorded second priority.

(3) Users whose data and/or use of the GOES DCS will further a program of an agency or department of the U.S. Government, other than NOAA, will be accorded third priority.

(4) Users whose data are required by a state or local Government of the United States will be accorded fourth priority.

(5) Testing users of the system will be accorded fifth priority.

(6) No other usage will be authorized for the GOES DCS.

(e) In the event that Argos DCS capacity limitations require that priority determinations be made, priority will be given to those platforms that provide environmental data of broad international interest, especially of an operational nature, and to those requiring the unique capabilities of the Argos DCS, such as platform location or polar coverage.

[63 FR 24922, May 6, 1998, as amended at 68 FR 45161, Aug. 1, 2003]