

In subsection 911.4(c)(4), episodic use is now recognized for all NOAA DCS, not just Argos DCS.

Subsection 911.5(c) is amended by inserting “for System Use Agreements and renewals” following “user requests” to clarify which user requests are covered.

Subsection 911.5(e)(1) is amended by inserting “environmental” before the word “data.”

Subsection 911.5(e)(3) and 911.5(e)(4) are added to define the period of performance for non-environmental use of GOES DCS.

Section 911.6 has been revised to ensure that users are on notice regarding the open data transmission aspects of the NOAA DCS. The proposed regulation amends section 911.6 as follows:

- Subsection 911.6(a) is amended to require users to permit NOAA and other agencies to make “appropriate use as determined by NOAA” of the data;
- Subsection 911.6(a) is further amended by inserting “environmental” before “data” to clarify which data will be subject to “full, open, timely, and appropriate use” by NOAA and other U.S. Government agencies;
- Subsection 911.6(a) also is amended to delete the last sentence in the current rule which refers to the protection of proprietary data (new subsections 911.6(b) and (c), below, will address this issue);
- A new subsection 911.6(b) is inserted to provide notice that the raw data from the NOAA space segment is openly transmitted and accessible; and
- A new subsection 911.6(c) is inserted to provide notice regarding the accessibility of NOAA DCS data during the ground segment.

The new provisions in 911.6 put users on notice that NOAA can only control data distribution once it is received at NOAA ground stations and, even then, only within the design limitations of the ground system segment. The revised rule notifies DCS users that raw data may be openly received during the space segment transmission of the data where access is not controlled. After the data is received, access to the processed data from the ground segment is affected by the user’s specifications and the system design limitations.

Appendix A (Argos DCS Use Policy Diagram) and Appendix B (GOES DCS Use Policy Diagram) have been updated to incorporate the effects of the proposed changes on the NOAA DCS system use policy.

Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*)

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that the proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

The factual basis for this certification is as follows. A fundamental principle underlying NOAA’s DCS rule is that Government will not allow its space-based DCS to be used where there are commercial space-based services available that fulfill user’s requirements. Moreover, the proposed rule provides for non-environmental use of the NOAA DCS in two discrete situations, one involving episodic uses in instances where there is a significant possibility of loss of life, and the other where there is a governmental interest and the use of commercial services is not appropriate due to the sensitive nature of the applications, such as for National security or law enforcement purposes. Thus the proposed rules are not expected to impact small businesses. As such, no initial regulatory flexibility analysis has been prepared.

Paperwork Reduction Act of 1995 (35 U.S.C. 3500 *et seq.*)

This rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The collection of this information has been approved under OMB Control Number 0648–0157.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

The public reporting burden for this collection of information is estimated to average 3 hours per GOES agreement and 1 hour per Argos agreement, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this collection of information to Kay Metcalf, NOAA, National Environmental Satellite, Data, and Information Service, Direct Services Division, E/SP3, Room 3320, FB–4, 5200 Auth Road, Suitland, Maryland 20746–4304; and to OMB at the Office of Information and Regulatory Affairs, Washington, D.C. 20503 (Attention: NOAA Desk Officer).

National Environmental Policy Act (42 U.S.C. 4321 *et seq.*)

Publication of the final regulations does not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, an environmental impact statement is not required.

Executive Order 12866

This rule has been determined to be not significant for purposes of E.O. 12866.

List of Subjects in 15 CFR Part 911

Scientific equipment, Space transportation and exploration.

Dated: March 28, 2003.

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For the reasons set out in the preamble, 15 CFR part 911 is proposed to be amended as follows:

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

1. The authority citation for part 911 continues to read as follows:

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.

2. Revise § 911.3(p), (q), (r), and (s) and add paragraph (t) as follows:

§ 911.3 Definitions.

* * * * *

(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.