

livestock products, (milk, eggs, wool, etc.).

(B) When the lender requesting the guarantee needs the subordination of the Agency's lien position to maintain its lien position when servicing or restructuring.

(C) When the lender requesting the guarantee is refinancing the debt of another lender and the Agency's position on real estate security will not be adversely affected.

(vi) The Agency may subordinate its security interest in chattels and real estate, or both to permit a Contract of Guarantee—Line of Credit to be advanced for annual operating needs in accordance with §1980.175 (c)(2) only when the following conditions are met:

(A) The value of the total security for the direct loan or loans exceeds the total unpaid balance of the direct loan that it secures by at least 25 percent of the amount of the proposed line of credit after the subordination.

(B) The applicant cannot obtain sufficient credit through a conventional guaranteed loan.

(C) The subordination is limited to a specific amount.

(D) The loan funds will not be used in such a way that will contribute to erosion of highly erodible land or conversion of wetlands for the production of an agricultural commodity according to part 1940, subpart G of this chapter.

(E) The borrower has not been convicted of planting, cultivating, growing, producing, harvesting or storing a controlled substance under Federal or State law. "Borrower" for purposes of this provision, specifically includes an individual or entity borrower and any member stockholder, partner, or joint operator, of an entity borrower and any member, stockholder, partner, or joint operator of an entity borrower. "Controlled substance" is defined at 21 CFR part 1308. The borrower will be ineligible for a subordination for the crop year in which the conviction occurred and the 4 succeeding crop years. Applicants must attest on the Agency application form that it and its members, if an entity, have not been convicted of such a crime.

(F) No subordination will exist in favor of another creditor on the same security.

(G) The subordination is not in favor of another USDA agency.

(H) Any stock required in connection with the loan secured by the subordinated security will be assigned to the Agency.

(I) The borrower can document the ability to repay the total amount due

under subordination and pay all other debt payments scheduled for the subject operating cycle.

(J) The borrower will complete an application provided by the Agency to receive consideration for a subordination, and

(K) The lienholder requesting the subordination will agree to give notice of foreclosure as required by the Agency.

* * * * *

(d) *Relationship between Agency loans, direct and guaranteed.* A guaranteed FO or OL loan may be made to an insured borrower with the same type of direct loan provided:

(1) The outstanding combined direct and guaranteed FO or OL principal balance owned by the loan applicant or owed by anyone who will sign the note as cosigner may not exceed the authorized guaranteed loan limit for that type of loan.

(2) Chattel and real estate collateral must be separate and identifiable so as to be discernible from the collateral pledged to the Agency for a direct loan. Different lien positions on real estate are considered separate and identifiable collateral.

7. Section 1980.175 is amended to add paragraph (h)(3) as follows:

§1980.175 Operating Loans.

* * * * *

(h) *Special security requirements.* (1) * * *

(3) Subject to the requirements of this section, the Agency may approve a Contract of Guarantee for a line of credit to be secured by basic chattel or real estate security in which the Agency has subordinated its lien position in accordance with § 1980.108.

* * * * *

Signed in Washington, DC, on September 2, 1997.

Dallas Smith,

Acting Under Secretary for Farm and Foreign Agricultural Services.

Jill Long Thompson,

Under Secretary for Rural Development.

[FR Doc. 97-23750 Filed 9-8-97; 8:45 am]

BILLING CODE 3410-05-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 911

[Docket No. 970725178-7178-01]

Policies and Procedures Regarding Use of the NOAA Space-Based Data Collection Systems

AGENCY: National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) proposes regulations revising its policies and procedures for authorizing the use of its space-based Data Collection Systems which operate on NOAA's Geostationary Operational Environmental Satellites (GOES) and Polar-orbiting Operational Environmental Satellites (POES). These proposed regulations revise the current policy on the use of the GOES Data Collection System (DCS), and formalize a new policy for the use of the Argos Data Collection and Location System (Argos DCS) which flies on the POES. The regulations are intended to harmonize, as much as practicable, the system use policies for the two systems which in the past have been disparate. The fundamental principle underlying these regulations is that the Government will not allow its space-based data collection systems to be used where there are commercial services available that fulfill users' requirements.

DATES: Comments must be received by November 10, 1997.

ADDRESSES: Comments should be sent to Mr. Dane Clark, NOAA National Environmental Satellite, Data, and Information Service, Direct Services Division (E/SP3), 4700 Silver Hill Road, Stop 9909, Room 0158, Washington, D.C. 20233-9909.

FOR FURTHER INFORMATION CONTACT: Dane Clark at (301) 457-5678, e-mail: satinfo@nesdis.noaa.gov or Kira Alvarez at (301) 713-0053, e-mail: Kira.Alvarez@noaa.gov.

SUPPLEMENTARY INFORMATION: NOAA operates environmental data collection systems on its GOES and on its POES.

The GOES DCS consists of: U.S. Government instruments on NOAA geostationary satellites; user Data Collection Platforms (DCP); data receipt and data dissemination systems. With the exception of the DCP, which are managed by the individual users, the GOES DCS is managed by NOAA. The

data collection system on the POES is provided through a cooperative program with the Centre National d'Etudes Spatiales (CNES), the French national space agency. This system, which is known as the Argos Data Collection and Location System (Argos DCS), is managed by NOAA and CNES jointly and consists of: Instruments provided by CNES, which are flown aboard NOAA polar-orbiting satellites; user platform transmitter terminals; and global data receipt and data processing centers. Argos instruments are also scheduled to fly on Japanese and European polar-orbiting satellites.

Both the GOES DCS and the Argos DCS are operated to support environmental applications, e.g., meteorology, oceanography, hydrology, ecology, and remote sensing of Earth resources. In addition, the Argos DCS currently supports applications related to protection of the environment, e.g., hazardous material tracking, fishing vessel tracking for treaty enforcement, animal tracking, and oil and gas pipeline monitoring to prevent leakage. Presently, the majority of users of these systems are government agencies and researchers and, in fact, much of the data collected by both the GOES DCS and the Argos DCS are provided to the World Meteorological Organization via the Global Telecommunications System for inclusion in the World Weather Watch Program.

The GOES DCS was established in 1974 to obtain data from remote locations which were required for the effective management of programs by the NOAA. Given that the capacity of this system could more than provide for all of NOAA's requirements, NOAA, through its regulations, currently in effect, made the excess capacity of the GOES DCS available to non-NOAA users (46 F.R. 48634, as amended at 51 F.R. 3465). These non-NOAA users include Federal and state agencies or local governments, as well as private persons and firms and foreign government agencies whose use of the system supports a program of a U.S. agency.

While no similar regulations were published concerning the Argos DCS, in March 1992, NOAA made a small portion, i.e., less than five percent of system capacity, available for non-environmental use. This policy was announced in the *Commerce Business Daily* on March 2, 1992, and was consistent with the *U.S. Commercial Space Guidelines of 1991* which encouraged government agencies to promote commercial entities' access to excess U.S. space-based assets in order to facilitate the growth of the emerging

U.S. commercial space industry. This policy of allowing the non-environmental use of up to five percent of the system's capacity successfully allowed commercial developers of space-based data collection systems to access an operational space-based system to help develop, but not implement, their nascent services.

In 1996, NOAA recognized that a commercial industry was starting to emerge in the area of data collection and location services (e.g., Mobile Space Services). Guided by the U.S. Government's long-standing policy against competing with the private sector, NOAA in October 1996 (61 Fed. Reg. 52775) announced that it would no longer promote the use of the Argos DCS for commercial non-environmental applications.

NOAA, moreover, has been eager to explore new opportunities for meeting mission requirements that are presented by the development of private space-based data collection systems. To explore these opportunities, NOAA initiated a dialogue between users of the systems and both public and private sector service providers by hosting a public meeting in December 1996. This meeting brought together more than 100 individuals representing current and planned space-based data collection service providers and users to present, discuss and document pertinent information necessary to reevaluate and reexamine government practice and policy.

As demonstrated at the public meeting, there are operational and soon-to-be operational commercial data collection systems. However, the government users of the current NOAA-provided systems require a demonstrated operational capability from the private sector service providers before contemplating a change away from these government-provided systems. Based on the presentations, both oral and written, made at the public meeting, the commercial providers are currently unable to provide such a capability to the vast majority of government users. Consequently, there is still a need for the government to provide a data collection system for government use until such a time as the government's requirements can be met by the commercial sector. However, given the evolving state of the commercial industry, government users must take into account the progress and development of these commercial systems. As a result, any new system use policy should be focused on meeting the requirements of the government users, while also

encouraging them to canvass the commercial marketplace on a periodic basis.

The participants expressed interest in the issuance of new consolidated regulations that clarify the system use policies for the Argos DCS and the GOES DCS. The participants indicated that new regulations establishing a clear set of criteria for allowing access to the government systems would accord them the predictability and transparency necessary to make rational business decisions.

Major Revisions

These proposed regulations would revise the existing regulations to include the Argos DCS under the regulatory regime that previously only governed the GOES DCS. To the greatest extent possible, the proposed regulations would treat the two systems the same. However, due to the distinct nature of each system and its uses, it was not possible to harmonize every aspect of system regulation. In particular, the system priorities are separate and distinct for the two systems. Also, the authorized users and uses are different. For both systems an important prerequisite in reviewing applications for use is that there be no commercial space-based services available which meet the users' requirements in terms of satellite coverage, accuracy, data throughput, platform power consumption, size and weight, service continuity and reliability, platform compatibility and, in the case of government agencies, cost-effectiveness.

The GOES DCS can only be used for environmental purposes while the Argos DCS can be used for environmental and some very limited non-environmental purposes. The non-environmental use of the Argos system is primarily authorized for government users, for such applications as humanitarian cargo tracking, or for national security purposes. Non-governmental use of the Argos system would be curtailed, and a prerequisite that there be a government interest in the collection of the data would be added. This prerequisite is similar, but not the same, as the current GOES sponsorship requirement. In addition to government users only non-profit users may be allowed to use the Argos DCS for non-environmental uses, except in cases where there is a significant possibility of the loss of life. However, at no time will non-environmental use of the Argos DCS exceed five percent of the system's total use. This is a reduction from current practice which allows up to five percent of the system's capacity to be used for non-

environmental data collection. Tying the upper limit for non-environmental use of the system to a percentage of actual system use rather than 'system capacity' substantially reduces the allowance for such use of the system. The term of system use agreements would have been shortened: For use of the GOES system, the term would be reduced from 10 years to 5 years; for use of the Argos System, the term would be reduced from a maximum of 5 years to a maximum of 3 years. This would be done to ensure that users will periodically canvass the marketplace to determine whether commercial services have developed the capabilities to meet their requirements. The chart in Annex 1 to this proposed regulation maps out the system use policy for the Argos DCS and has been included to help users understand these regulations.

Another major revision to the existing regulations is that the former complicated proprietary information section would be eliminated. Protection of proprietary information would be in accordance with the Freedom of Information Act 5 U.S.C. § 552, and the Departmental procedures for compliance with that statute (see 15 CFR 4). The existing provisions were promulgated in 1981 when the GOES DCS was first opened up to private users. At the time, it was anticipated that these private users might be transmitting proprietary data to which they would not want their competitors to have access. However, these procedures were rarely used. NOAA believes that adequate protection for proprietary information is contained in the Freedom of Information Act.

As a result of revising the GOES DCS regulations to encompass use of the Argos DCS, a definition section was added for the purpose of clarity. This section defines most of the relevant terms used in the regulations, such as government user, non-profit user, platform user, and government interest.

Classification

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

This proposed rule establishes a process intended to promote the development of the industry while at the same time minimizing, as much as practicable, any adverse impact on any entity, large or small, which may seek to operate data collection platforms. Accordingly, the Assistant General Counsel for Legislation and Regulation of the Department of Commerce has 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.

B. Paperwork Reduction Act of 1980 (44 U.S.C. 35)

This proposed rule contains collection-of-information requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). The proposed rule revises collection-of-information requirements that were previously approved by the OMB under control number 0648-0157. Public reporting burden for these collections of information is estimated to average 72 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments regarding this burden estimate or any other aspect of this collection of information to Dane Clark, NOAA, National Environmental Satellite, Data, and Information Service, Direct Services Division (E/SP3), 4700 Silver Hill Road, Stop 9909, Room 0158, Washington, D.C. 20223-9909 and to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 (Attention: NOAA Desk Officer). Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to 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.

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

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

List of Subjects in 15 CFR Part 911

Scientific equipment, Space transportation and exploration.

Dated: September 3, 1997.

Robert S. Winokur,

Assistant Administrator.

Accordingly, for the reasons set forth above Part 911 of Title 15 of the Code of Federal Regulations is proposed to be revised to read as follows:

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

Sec.

911.1 Purpose.

911.2 Scope.

911.3 Definitions.

911.4 Use of the NOAA Data Collection Systems.

911.5 NOAA Data Collection Systems Use Agreements.

911.6 Treatment of Data.

911.7 Continuation of the NOAA Data Collection Systems.

911.8 Technical Requirements.

Appendix A to Part 911—Argus System 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.

§ 911.1 Purpose.

These regulations set forth the procedural, informational and technical requirements to use the NOAA Data Collection Systems. In addition, they establish the criteria NOAA will employ when making determinations as to whether to authorize the use of its space-based data collection systems. The regulations are intended to facilitate the collection of environmental data as well as other such data which the Government is interested in collecting, while at the same time not disadvantaging 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 data collection systems 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 United States 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 GOES and Argos DCS users as well as all future applications for DCS use.

§ 911.3 Definitions.

For purposes of this part:

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

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 POES (and planned to fly on-board the ADEOS II Japanese spacecraft and the EUMETSAT METOP spacecraft); a ground processing system; and telemetry ground stations.

Argos participating agencies are a combination of joint effort between NOAA; the Centre National d'Etudes Spatiales (CNES) of France; the National Space Development Agency (NASDA) of Japan; and the European Organization for the Exploitation of Meteorological Satellites (EUMETSAT).

Assistant Administrator means the Assistant Administrator for Satellite and Information Services or his/her designee.

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

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.

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.

Episodic use means the use of the system for short events where the possibility of loss of life is high.

Experimental use means the use of the GOES DCS by equipment manufacturers for the purposes of testing and assessing new equipment that is to be used in conjunction with the GOES DCS.

Government interest means relating to the mission of a U.S. Federal agency or

the mission of one of the Argos participating agencies, or also, in the case of the GOES DCS, a state or local government.

Government user means agencies of Federal, state, or local governments 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.

NOAA data collection systems means the GOES and Argos space-based data collection systems.

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.

Operational use means the use of data in a situation where the utility of the data is 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.

User means the entity and/or organization which owns or operates user platforms for the purpose of collecting and transmitting data through the NOAA DCS.

User platform means devices, 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 data collection systems. Those devices which are used in conjunction with the GOES DCS are referred to as 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.

User requirement means the requirement expressed and explained in the System Use Agreement.

§ 911.4 Use of the NOAA Data Collection Systems.

(a) Use of the NOAA Data Collection Systems 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) NOAA Data Collection Systems will only be authorized where there are no commercial services available that meet the user's requirements.

(c) (1) Except as provided in paragraphs (2), (3) and (4) of this section, NOAA DCS shall only be used for the collection of environmental data.

(2) Except as provided in paragraph (c)(3) of this section, non-environmental use of the Argos DCS is only authorized for government use and non-profit users where there is a government interest. Non-environmental use of the system shall not exceed five percent of the system's total use.

(3) Episodic, non-environmental use of the Argos DCS may also be authorized in specific instances when there is a significant possibility for loss of life. Such use shall be closely monitored.

(4) Experimental use of the GOES DCS is only authorized for manufacturers of GOES DCS compatible equipment, such as platforms, that require access to the system in order to test and assess the compatibility of their new products.

(d) Non-governmental use of the NOAA DCS will only be authorized where there is a government interest in the collection and/or receipt of the data.

(e) 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) Experimental users of the system will be accorded fifth priority.

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

(f) 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.

§ 911.5 NOAA Data Collection Systems Use Agreements.

(a) In order to use a NOAA DCS, each user must have an agreement with the approving authority for that system.

(b) These agreements will address, but will not be limited to, the following matters:

(1) The period of time the agreement is valid and procedures for its termination,

(2) The authorized use(s), and its priorities for use,

(3) The extent of the availability of commercial services which meet the user's requirements and the reasons for choosing the Government system,

(4) Any applicable government interest in the data,

(5) Required equipment standards,

(6) Standards of operation,

(7) Conformance with applicable ITU and FCC agreements and regulations,

(8) Reporting time and frequencies,

(9) data formats,

(10) Data delivery systems and schedules, and

(11) User-borne costs.

(c) The Director, Office of Satellite Data Processing and Distribution for the National Environmental Satellite, Data, and Information Service shall evaluate user requests and conclude agreements for use of the NOAA Data Collection systems.

(d) (1) Agreements for the collection via the Argos DCS of environmental data by government agencies or non-profit institutions shall be valid for 3 years from the date of initial *in-situ* deployment of the platforms, and may be renewed.

(2) Agreements for the collection of environmental data via the Argos DCS by for-profit users shall be valid for 1 year from the date of initial *in-situ* deployment of the platforms, and may be renewed annually thereafter but only

for so long as there exists a governmental interest in the receipt of these data.

(3) Agreements for the collection of non-environmental data via the Argos DCS by government agencies or nonprofit institutions shall be valid for 1 year from the date of initial *in-situ* deployment of the platforms and may be renewed annually.

(4) Agreements for episodic collection of non-environmental data via the Argos DCS under 911.4(c)(3) shall be of short, finite duration not to exceed 1 year without exception, and usually shall not exceed 6 months. These agreements shall be closely monitored and shall not be renewed.

(e) (1) Agreements for the collection of data by the GOES DCS shall be valid for 5 years from the date of initial *in-situ* deployment, and may be renewed.

(2) Agreements for the experimental use of the GOES DCS by equipment manufacturers shall be valid for 2 years from the date of initial *in-situ* deployment, and may be renewed.

§ 911.6 Treatment of Data.

(a) All NOAA DCS users must agree to permit NOAA and other agencies of the U.S. Government the full, open and timely use of all data collected from their platforms. Any proprietary data will be protected in accordance with applicable laws.

§ 911.7 Continuation of the NOAA Data Collection Systems.

(a) NOAA expects to continue to operate satellite-based data collection systems on its geostationary and polar-orbiting satellites, subject to the availability of future appropriations.

(b) As use of the system in support of NOAA programs increases, it eventually may be necessary to further restrict system usage by other users. If such restrictions on use become necessary, or in the event that NOAA discontinues operation of GOES and/or POES, NOAA will provide, to the maximum extent practicable, advance notice to the affected users.

(c) NOAA will not be responsible for any losses resulting from the nonavailability of the NOAA DCS.

§ 911.8 Technical Requirements.

(a) All platform operators of the NOAA DCS must use a data collection platform radio set whose technical and design characteristics conform to applicable specifications and regulations.

(b) All platform operators are responsible for all costs associated with the procurement and operation of the platforms, and for the acquisition of data from those platforms either directly from the satellite or from the applicable data processing center.

BILLING CODE 3510-08-P

Appendix A to Part 911—Argos System Use Policy Diagram



Argos System Use Policy Diagram

