

§ 908.18

with the provisions of Public Law 92-205 and subject to such other requirements as may be imposed.

§ 908.18 Matters not specifically provided for in rules.

All matters not specifically provided for or situations not specifically addressed in these rules will be decided in accordance with the merits of each case by or under the authority of the Administrator, and such decision will be communicated in writing to all parties involved in the case.

§ 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.¹ 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.

¹Filed as part of the original document.

15 CFR Ch. IX (1-1-97 Edition)

PART 909—POLICIES AND PROCEDURES REGARDING DISCLOSURE OF INFORMATION AND NOAA EMPLOYEE TESTIMONY IN LITIGATION NOT INVOLVING THE UNITED STATES

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AUTHORITY: 15 U.S.C. 315, 1512, 1518; 33 U.S.C. 884; 43 U.S.C. 1458, 1460, 1461.

Source: 43 FR 36240, Aug. 16, 1978, unless otherwise noted.

§ 909.1 Purpose and policy.

(a) The regulations in this part describe NOAA policies and procedures for the disclosure of information, records, and data to parties and testimony by NOAA employees in litigation not involving the United States.

(b) It is the policy of NOAA to provide information, data, and records to non-Federal litigants to the same extent that they are available to the general public. The availability of NOAA employees to testify in non-Federal litigation is governed by the NOAA policy of maintaining strict impartiality among non-Federal litigants. To this end NOAA witnesses generally may provide only factual testimony except as provided for in § 909.5(c) and shall not appear as expert witnesses in litigation not involving the United States.

§ 909.2 Disclosure and certification of information and records.

(a) Requests for identifiable information, records, and data in NOAA's possession will be complied with consistent with the NOAA freedom of information regulation (15 CFR part 903), the Department of Commerce privacy regulations (15 CFR part 4b), and 15 U.S.C. 1525. Requests for records, information, and data should be addressed as specified in 15 CFR Part 903.

(b) Certified copies of NOAA records will be provided upon request. Requests for certified copies of these types of information should be referred to the following offices: Weather and Climatological Records; Director, National Climatic Data Center, National Environmental Satellite, Data, and Information Service, NOAA, Federal Building, Asheville, NC 28801. Weather Forecasts and Warnings; Aviation Services Branch (W/OM13), National Weather Service, NOAA, Silver Spring, MD 20910. Aeronautical Charts; Aeronautical Charting Division (N/CG3), National Ocean Service, NOAA, Rockville, MD 20852. Nautical Charts; Chart Information Section (N/GC222), National Ocean Service, NOAA, Rockville, MD 20852. Other; Office of the General Counsel, National Oceanic and Atmospheric Administration, Washington, DC 20230.

(c) Requests for the appearance of NOAA employees to give testimony in litigation not involving the United States should be addressed to the Office of General Counsel at the address shown in paragraph (b) of this section.

[43 FR 36240, Aug. 16, 1978, as amended at 48 FR 17064, Apr. 21, 1983]

§ 909.3 Response to subpoena duces tecum.

(a) Any officer or employee served with a subpoena duces tecum or the equivalent for the production of any NOAA record shall promptly notify the Office of General Counsel. The subpoena duces tecum shall be treated as a request for records, information, or data under 15 CFR part 903.

(b) The officer or employee served shall decline to produce the record that is the subject of a subpoena duces tecum until its release has been authorized pursuant to 15 CFR part 903. If, as a result of having complied with the preceding sentence of this subsection, the officer or employee is ordered to show cause why he or she should not be held in contempt of the court issuing the subpoena, the General Counsel shall request the Department of Justice to represent the officer or employee.

§ 909.4 Testimony by NOAA employees in litigation not involving the United States.

(a) No NOAA officer or employee shall give testimony in any tribunal concerning any function of NOAA, or any data, information, or record created or acquired by NOAA as a result of the discharge of its official duties, without the prior authorization of the general counsel or the general counsel's designee.

(b) Upon receiving a subpoena which orders the giving of testimony, a NOAA officer or employee shall immediately notify the Office of General Counsel. The officer or employee shall decline to testify unless otherwise authorized by the general counsel or designee. If, as a result of having complied with the provisions of this section, the officer or employee is ordered to show cause why he or she should not be held in contempt of the court issuing the subpoena, 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.

**PART 911—THE UNITED STATES
GEOSTATIONARY OPERATIONAL
ENVIRONMENTAL SATELLITE
(GOES) DATA COLLECTION SYS-
TEM (DCS)**

Sec.

- 911.1 General information.
- 911.2 Use of the GOES DCS.
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AUTHORITY: 15 U.S.C. 313; 49 U.S.C. 1463; 15 U.S.C. 1525; 7 U.S.C. 450b; 5 U.S.C. 552.

SOURCE: 46 FR 48635, Oct. 2, 1981, unless otherwise noted.

§ 911.1 General information.

(a) The GOES Data Collection System (DCS) provides an effective method for obtaining environmental data from remote locations where conventional communications are either absent or inadequate. The use of the DCS is limited to the collection of environmental data in accordance with applicable International Telecommunication Union (ITU) regulations concerning use of the allocated frequency bands.

(b)(1) The DCS was established in 1974 to obtain from remote locations data

required for the effective accomplishment of programs of the National Oceanic and Atmospheric Administration. The DCS capacity can more than provide for all of NOAA's present and near future domestic and international requirements. This makes it possible to offer to Federal and State agencies or local governments of the United States, and to those private users and foreign government agencies whose use of the system would support a program of a United States agency, the opportunity to make use of the DCS. Policy guidelines are set forth below.

(2) For purposes of this part, *user* refers to a private or governmental organization, whether for-profit or not for-profit, that owns or operates environmental data collection platforms for the purpose of collection and transmission of environmental data through the GOES DCS and for which a Federal agency or State or local government has a requirement for or interest in obtaining the data.

(3) For purposes of this part, *Assistant Administrator* means the Assistant Administrator for Environmental Satellite, Data, and Information Services or his/her designee.

[46 FR 48635, Oct. 2, 1981, as amended at 51 FR 3466, Jan. 28, 1986]

§ 911.2 Use of the GOES DCS.

(a) Use of the GOES DCS can be authorized only for the purpose of collecting environmental data. Environmental data as used here means observations and measurements of the physical, chemical or biological properties of the ocean, rivers, lakes, solid earth, and atmosphere (including space).

(b)(1) Except as provided in paragraph (b)(2) of this section, the GOES DCS is not to be used for data collection where adequate private common carrier communications exist to provide the service. (Adequate is defined in terms of capacity, speed and reliability with respect to the particular use envisioned.) A user must document, with a request for use of the GOES DCS, why private common carrier communications are not adequate.

(2) NOAA may authorize the use of the GOES DCS for environmental data collection critical to a federal program