DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

15 CFR Part 270

[Docket No. 970822201–7202–00]

Procedures for the Evaluation of Energy-related Inventions; Removal of Regulations

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Final rule.

SUMMARY: The National Institute of Standards and Technology (NIST) is terminating the current NIST program which evaluated inventions as a service to the Department of Energy's (DOE) Energy-Related Inventions Program (ERIP). During the twenty-plus years of the evaluation program's existence, NIST transmitted recommendations based on its evaluations to the Department of Energy, which used the recommendations in its decision-making for DOE's award of grants to inventors and small businesses for further development of the NIST-recommended inventions.

The Department of Energy will continue the Energy Related Inventions Program with a newly designed evaluation process consistent with a competitive procurement. The DOE has renamed ERIP as part of the DOE-operated Inventions and Innovation Program. DOE will issue a solicitation for proposals to be evaluated by DOE under the new program, beginning on May 1, 1998.

Since DOE will now process evaluations through a competitive procurement and since evaluations made by NIST under 15 CFR part 270 will no longer be used in the award selection process, there is no function for the NIST Energy-Related Invention Evaluation Program to perform, and the NIST evaluation program is being terminated.

EFFECTIVE DATE: May 1, 1998.

FOR FURTHER INFORMATION CONTACT: Dr. Michael E. McCabe at telephone number (301) 975–5504.

SUPPLEMENTARY INFORMATION: Title 15 part 270 of the Code of Federal Regulations prescribes procedures for the evaluation of energy-related inventions. These procedures were issued in 1976 to partially implement section 14 of the Federal Non-nuclear Energy Research and Development Act of 1974, Pub. L. 93–577 (codified as amended at 42 U.S.C. 5901, *et seq.* hereinafter referred to as the Act). The Act established a comprehensive national program for research and development of all potentially beneficial energy sources and utilization technologies. Section 14 of the Act directed the National Bureau of Standards (now the National Institute of Standards and Technology) to give particular attention to the evaluation of all promising energy-related inventions, especially those submitted by individual inventors and small companies for the purpose of obtaining direct grants from the Administrator of the Energy Research and Development Administration which was later incorporated into the Department of Energy.

Since 1975 NIST has been providing the prescribed evaluation services to the Department of Energy, which has overall management and budgetary responsibility for the Energy-Related Inventions Program (ERIP). NIST has completed all processing for the 33,430 requests for evaluation which were received on or before August 2, 1997. Evaluation was not performed for requests received after that date.

Of the evaluation requests received on or before August 2, 1997, 17,482 were not accepted for evaluation, largely due to inadequate documentation, obvious technical flaws in projected invention operation, or insufficient energy relation. Of the 15,948 accepted, 14,239 were rejected in a first-stage evaluation, which included commentary generally by at least two consultants, usually for lack of competitive advantage. Of the 1709 remaining (not rejected in the first stage) 741 were recommended for DOE support. The continuous multi-stage evaluation process yielded, on average, two to three recommendations per month. For each of the 15,207 cases which were not recommended, a report was provided to the inventor commenting on the technology and giving reasons why DOE support was not warranted.

The DOE will continue to evaluate inventions under its new Inventions and Innovation Program. DOE has issued a solicitation for proposals to be evaluated under the new program beginning on May 1, 1998.

NIST finds good cause to issue this rule in final without opportunity for notice and comment and delayed effective date because those procedures are unnecessary pursuant to 5 U.S.C. 553(b)(B) and 5 U.S.C. 553(d)(3), since the Department of Energy is continuing the program in its entirety.

Executive Order 12866

It has been determined that this Rule is ''not significant'' under section 3(f) of E.O. 12866.

List of Subjects in 15 CFR Part 270

Energy, Inventions and patents.

Accordingly, under the authority of 15 U.S.C. 271 et seq., part 270 is removed from Title 15 of the Code of Federal Regulations.

Dated: April 30, 1998.

Robert E. Hebner,

Acting Deputy Director.

[FR Doc. 98–12043 Filed 5–5–98; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 911

[Docket No. 970725178–8087–02]

RIN 0648–AK04

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

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

ACTION: Final rule.

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

DATES: Effective June 5, 1998.

ADDRESSES: Send comments on the collection information to Dane Clark, NOAA, National Environmental Satellite, Data, and Information Service, Direct Services Division (E/SP3), 4700 Silver Hill Road, Stop 9909, Room 3320,

Washington, DC 20223–9909, and to the Office of Management and Budget (OMB) at the Office of Information and Regulatory Affairs, OMB, Washington, DC 20503 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Dane Clark at (301) 457–5681, e-mail: satinfo@nesdis.noaa.gov; or Kira Alvarez at (301) 713–0053, e-mail: Kira.Alvarez@noaa.gov.

SUPPLEMENTARY INFORMATION: For general background on NOAA's Data Collection Systems (Argos DCS and GOES DCS), please refer to the notice of proposed rulemaking published in the **Federal Register** on September 9, 1997, at 62 FR 47388.

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 8, 1996, (61 FR 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 DCS. To explore these opportunities, NOAA initiated a dialogue among 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 DCS. However, the government users of the current NOAA-provided systems require an established operational capability that meets users' requirements from the private sector service providers before contemplating a change away from these government-provided systems. Based on the representations, 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 space-based 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 and that build in the incentive to investigate the opportunities available from the private sector. 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.

On September 9, 1997, (62 FR 47388), NOAA published a proposed rule in the **Federal Register.** Comments on the proposed rule were invited through November 10, 1997. A total of eight letters of comment on the proposed rule were received.

Response to Comments

Comment 1: The statements in the notice of proposed rulemaking that commercial providers are currently unable to provide a demonstrated operational capability to the vast majority of government users and that consequently, there is still a need for the Government to provide a DCS for government use until such time as the Government's requirements can be met by the commercial sector, are categorically incorrect.

Response: NOAA has determined that there is still a need for the Government to provide a space-based DCS. This determination was made with the consultation of a U.S. Government (USG) users group, which advised NOAA on the government requirements for space-based DCS. These government agencies determined their own current and future requirements and then conveyed the same to NOAA. NOAA and the user group assessed the commercial alternatives available and compared them with the existing government services and determined that no commercial service currently available had the requisite demonstrated operational capability to meet all of the USG user requirements. Nonetheless, this rulemaking serves notice that this situation will not be indefinite and viable commercial space-based alternatives may eventually obviate the need for NOAA to operate its own space-based DCS.

Comment 2: The 1991 U.S. Space Policy encouraging U.S. agencies to promote access to excess U.S. space-based assets is ''outdated and no longer applicable.''

Response: NOAA agrees, and in this regard, announced in the **Federal Register** on October 8, 1996, (61 FR 52775), that it was no longer promoting commercial use of the Argos System.

Comment 3: A major point of contention is the degree to which particular applications are conducted for environmental protection versus economic considerations. NOAA must recognize that certain applications may serve both purposes. What is the definition of cost-effectiveness? Full cost accounting should be used, including the full cost of providing the NOAA DCS service. NOAA should not use user switching costs in this assessment.

Response: Cost-effectiveness is only a valid criterion to be considered in the case of government agencies. Furthermore, it is the individual agency that determines what is cost-effective for their particular agency, as a user of the system. It is not a valid consideration for non-governmental entities. Moreover, for non-governmental entities, not only must the use be environmental, but there is the additional criterion that there must be government interest in the collection of the data.

Comment 4: In section 911.1, Purpose, change the italicized language: ''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.*'' The following is proposed as a replacement: ''The regulations are intended to facilitate the collection of environmental data as well as other such data which the Government is interested in collecting, *and to allow for the use of commercial space-based services where possible while precluding all direct or indirect government competition with such services.*''

Response: The proposed change is inaccurate because it implies that NOAA has the authority to disallow the use of commercial services by other USG agencies. Moreover, NOAA has not taken any steps to discourage the use of commercial services. However, the language will be changed to clarify NOAA's position as follows:

''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.''

Comment 5: ''The revised regulations should explicitly state that all non-government users of government spectrum must be licensed by the Federal Communications Commission (FCC). This NOAA must include as an integral part of its review and approval process for Argos System use certification that the candidate user of Argos has met these requirements.''

Response: While an explicit statement in the regulations that non-government users subject to U.S. jurisdiction must be licensed by the FCC is appropriate, it would be inconsistent with Administration regulatory policy to include a certification requirement pertaining to FCC license procedures that essentially duplicates existing requirements. However, it should be noted that System Use Agreements will include an obligation that users must obtain authorization from the appropriate national agencies, in the case of the United States—the FCC, to transmit on the assigned frequencies and to comply with all applicable national telecommunications laws and regulations.

Comment 6: NOAA should set up a vetting process similar to the FCC's, which includes the publication at designated intervals, of a Request for Information in the Commerce Business Daily, that would include the details of user requests since the previous notice, and would allow for timely comment by commercial providers before the signing of any agreements.

Response: Requiring the completion of such an administrative process before allowing access to the NOAA DCS would create an unfair burden on potential users and, in some cases would interfere with the ability of certain users to have timely access to data which may be mission critical. Under the USG's current regulatory reform program, any new regulatory burdens on the public must be kept to the minimum necessary to achieve the stated goal and this proposed administrative process would clearly be contrary to this policy.

Comment 7: The scope of the regulations is too narrow and these regulations should be applicable globally. As a result, include in § 911.2, Scope, the following language: ''regardless of whether an applicant is subject to the jurisdiction and control of the United States.''

Response: This proposed statement overreaches the territorial jurisdiction of the United States, and as such is inappropriate. However, NOAA agrees with the observation that the Argos DCS is a global system which should be operated under a consistent and uniform set of globally applicable rules. As a result, the Argos Operations Committee has adopted these regulations as part of the governing rules for the system.

Comment 8: Under which category of users would international government users fall?

Response: International government users would fall under the definition of government users.

Comment 9: ''Government Interest'' is defined too ambiguously.

Response: By necessity, this definition is broad. It would be impractical to give the exhaustive list of the relevant missions of all government agencies that utilize these data for operational and research purposes.

Comment 10: The definitions of ''Environmental Data,'' ''Environmental Protection Data,'' and ''Environmental Measurement Data'' are too broad. In addition, the definitions of ''Environmental Measurement Data'' and ''Environmental Protection Data'' should include the following statement: ''It is recognized that in many cases, commercial services may be available that adequately address user requirements and that these user needs may be motivated by reasons in addition to environmental-related concerns. Instances of such cases will be viewed as non-environmental applications for the purposes of these regulations.''

Response: These definitions accurately reflect the environmental stewardship mission requirements of the primary USG agencies for which these systems are operated. And because these systems are primarily operated for environmental purposes, these definitions serve as a primary justification for use of the system. However, we do understand the concerns expressed in the comment, and that is why NOAA also requires that, for non-governmental use of the system, the user show that there is a government interest in the collection of the data. We note, though, that the statement of policy proposed in the comment is inappropriate in the definition section of a regulation. Such a statement, moreover, concerns the use of the system for cost-effective purposes, and as we noted in comment 3 above, except in the case of government agencies, cost-effectiveness is not an appropriate consideration for potential users of the system. We feel that the operative sections of the regulations already take into account the concerns expressed in the commenter's proposed statement.

Comment 11: It is unclear what types of events fall under the definition of Episodic Use. Please clarify with examples.

Response: NOAA agrees, and as a result, examples of such uses have been added to the final rule. These examples include: Arctic expeditions and scientific campaigns into remote areas, which represent events in which there is a significant possibility for the loss of life.

Comment 12: Who decides whether there are commercial services that meet the users' requirements? How will NOAA validate user requirements?

Response: Users determine whether there are commercial space-based services that meet their program's requirements. Not only are the users asked to provide the reasons why they have determined that they need to use the Argos System, but they must also certify that there are no commercial space-based services which meet their requirements.

Comment 13: Why was an explanation of the factors of the users' requirements that may not be met by commercial space-based services included in the preamble, but not in the actual proposed rule?

Response: NOAA agrees that the factors should be included in the text of the rule; as a result, these factors have now been incorporated into § 911.4(b).

Comment 14: The reduction in non-environmental use of the system, while ''well intended, * * * fails to address the real issue that, in the majority of cases, non-environmental user requirements can be met by commercial providers.''

Response: We reiterate the fact that the primary requirement for use of the system is that there be no commercial space-based services which meet the users' requirements. Only after a user has determined that fact, and certified to it, will NOAA apply the other criteria to determine if they are qualified to use the system. For non-environmental use of the system there are only two instances where use of the system is allowed: (1) For episodic uses, where there is the significant possibility of loss of life, which is consonant with NOAA's (and all USG agencies' inherent) public safety mission(s); and (2) for government users and non-profit users where there is a governmental interest. For government users there may be instances where 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); however, this is a determination made by the individual agency, not NOAA.

As we have stated previously, NOAA will monitor the commercial sector to determine whether they are developing and implementing the necessary capabilities. We encourage service providers to continue to interact with NOAA and keep us informed of their progress. We are committed to facilitating government-industry interface and dialogue. In fact we are already aware of several government agencies that are testing and using commercial space-based services.

Comment 15: All agreements for non-governmental, non-environmental use should be terminated upon publication of a final rule and no new non-governmental, non-environmental use agreements should be signed from this point forward.

Response: NOAA cannot arbitrarily terminate all non-governmental, non-environmental agreements upon publication of the final rule. However, we have stated previously that such agreements will not be renewed and will terminate upon expiration. We have also stated previously that no new non-governmental, non-environmental agreements will be approved, with the exception of those for episodic use, which are consonant with our public safety mission.

Comment 16: Section 911.7(a) should be amended; the following language should be included at the end: ''However, the existence of viable commercial space-based alternatives may eventually obviate the need for NOAA to operate its own satellite-based DCS.''

Response: NOAA agrees that it must convey a strong signal that it is determined not to compete with viable commercial providers of space-based DCS services. NOAA has incorporated the suggested language, with a slight modification; § 911.7(a) now reads: ''NOAA expects to continue to operate DCS on its geostationary and polar-orbiting satellites, subject to the availability of future appropriations. However, viable commercial space-based alternatives may eventually obviate the need for NOAA to operate its own space-based DCS.''

Comment 17: What is the reasoning behind limiting non-environment users to 5 percent of the terminals in use for the Argos DCS. With the expected decline in users, the non-environment users will continually need to remove terminals from the system. What will be the selection process in removing those terminals (which users will be impacted)? the existing limit has never created a problem for the operation of the system.

Response: NOAA established these systems to further its environmental stewardship responsibilities. Moreover, the radio spectrum frequencies within which these systems operate are allocated primarily for environmental use. Thus by strictly limiting the nonenvironmental use of the system to 5 percent of total system use, the integrity of the use of the allocated frequencies is maintained, while also accomplishing the additional goal of not competing unfairly with the private sector.

In accordance with this rule, current non-governmental, non-episodic, non-environmental agreements will not be renewed. Terminals operating under expired agreements should be deactivated at the end of the current agreement. Since any remaining non-environmental uses of the system will only be approved for one year terms, this will allow for an orderly decrease in the non-environmental use of the system.

Comment 18: There is concern that the statement: ''The fundamental principle underlying these regulations is that the Government will not allow its space-based DCS to be used where there are commercial services available that fulfill the users' requirements'', indicates not only that users will have to convert to commercial services when/where available, but also an eventual retreat by the Government from providing a data collection service without a definite discussion of how and when that would happen.

Response: Government user requirements will continue to dictate which instruments fly on government assets. Moreover, it is inappropriate for the Government to compete unfairly with the private sector. At this point in time, NOAA, in consultation with government users, has determined that there are no commercial providers of space-based services that can meet the government's needs, and so the Government will continue to operate its own systems. While this rulemaking serves notice that this situation will not be indefinite, it is impossible given the state of development in the commercial marketplace to determine with any accuracy when or how the full transition to the private sector will take place. When such a transition is warranted, NOAA will provide, to the maximum extent practicable, advance notice to the affected users to allow for an orderly transition.''

Comment 19: We believe that canvassing the market every 3–5 years is not enough. Also, what level of diligence does this require?

Response: NOAA has decreased the duration of the System Use Agreements in order to create a forcing function to make the users periodically reassess their requirements and their options for meeting them. This creates a dynamic process wherein applications and renewals have varying durations for 6 months to 5 years, and are received on a continuing basis. Hence, the canvassing of the commercial marketplace will take place on a continuing basis.

For existing users of the system, the following outlines the schedule for transitioning to new system use agreements:

1. Government and non-profit, environmental users of the Argos DCS shall be required to submit a new system use agreement within 3 years from the effective date of this rule or upon expiration of their current system use agreement, whichever occurs first;

2. Government, non-profit, and non-government, environmental users of the GOES DCS shall be required to submit a new system use agreement within 5 years from the effective date of this rule, or upon expiration of their current system use agreement, whichever occurs first;

3. Government and non-profit, non-environmental users of the Argos DCS shall be required to submit a new system use agreement within 1 year from the effective date of this rule or upon expiration of their current system use agreement, whichever occurs first;

4. Non-government, environmental users of the Argos DCS shall be required to submit a new system use agreement within 1 year from the effective date of this rule, or upon expiration of their current agreement, whichever comes first; and

5. Non-government, non-environmental users of the Argos DCS will be required to submit new system use agreements within 1 year from the effective date of this rule, or upon expiration of their current agreement, whichever comes first.

Please note, however, that submission of a new system use agreement does not imply acceptance of such an agreement, especially for non-governmental, non-environmental uses.

As to the level of diligence, NOAA requires a certification for each user that the use of the NOAA DCS is required because there are no commercial space-based services that meet its program requirements.

Comment 20: There needs to be further detail provided on what the ''platform compatibility'' factor is and how it is determined.

Response: NOAA agrees that this term should be defined. The ''platform compatibility'' factor addresses the compatibility of the platform with the space segment of the system and includes elements such as message length and composition, signal strength, as well as transmission protocol (e.g., continuous versus event driven).

Comment 21: These proposed rules do not support the needs of small businesses, the commercialization of space, the needs of the environmental users and the Government's requirements to allow access to underutilized assets of the Government to non-governmental users.

Response: As noted in the notice of proposed rulemaking, NOAA had previously made the excess capacity of its DCS available to non-NOAA users. This was consistent with the National Space Policy then in effect, which encouraged government agencies to promote commercial access to excess U.S.C. space-based assets in order to promote the growth of the emerging U.S. commercial space industry. However, by 1996, NOAA recognized that a commercial industry was staring to emerge in the area of space-based data collection and location services. Given the U.S. Government's long-standing policy against competing with the private sector, NOAA undertook a reassessment of its role in this market sector. This reassessment eventually led to those new regulations.

Changes from the Proposed Rule

For a description of the proposed rule, see 62 FR 47388. The following seven changes have been made to the text of the proposed rule in response to comments.

In § 911.1, language was added to clarify the intent of these regulations.

The definition of ''episode use'' in § 911.3, was clarified with further examples.

The definition of ''government use'' in § 911.3 was clarified, and now specifies that government approval is necessary in advance.

The definition of ''government user'' in § 911.3 was clarified to specify that international government users are included.

A definition of ''platform compatibility'' was added to § 911.3.

Section 911.4(b)(2) was added, which lists the factors that help users determine when commercial space-based services meet their requirements, was included. This list was included in the preamble of the notice of proposed rulemaking, but not in the actual rule.

A statement was added at the end of § 911.&(a) which qualifies the first sentence and states that while NOAA expects to continue to operate a DCS, in the future, the existence of viable commercial space-based systems may eventually obviate this need.

Additional Technical Changes to the Proposed Rule

A definition of ''Director'' was added to § 911.3, which defines the term as the Director of the Office of Satellite Data Processing and Distribution of the National Environmental Satellite, Data, and Information Service.

The term ''space-based'' was included in § 911.4(b) to modify the term ''commercial services'' to clarify the fact that NOAA will be looking at whether other space-based alternatives to the use of the NOAA DCS are available. This allows the comparison between systems to be a more accurate ''apples to apples'' comparison.

The requirements of former § 911.4(d) have now been incorporated into § 911.4(c). These sections were rearranged after some consideration, because the new arrangement leads to a more logical flow and makes the regulatory scheme easier to understand.

The section previously classified as § 911.4(c)(4), and which is now classified as § 911.4(c)(5), was revised to specify that the experimental use provisions applied to both NOAA DCS services. The name of this category was also changed from ''experimental use'' to ''testing use'' to better reflect the nature of the use; this change was also made in §§ 911.4(d)(5) and 911.5(e)(2).

Section 911.5(a)(2) was added, which directs persons who are interested in using the NOAA DCS to contact the Director.

A language change in § 911.5(b)(3) reflects that it is not by choice, but rather by necessity that a user requires access to the NOAA DCS.

Section 911.5(d)(5) was added; this is a conforming change that was necessary in order to reflect that the experimental use of the Argos System is also allowed. As a result, it was necessary to indicate the length of time of approval of agreements for this category of use of the system.

Appendix B was added to map out the system use policy for the GOES DCS and has been included to help users understand how the regulations apply to that system.

Classification

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

The Assistant General Counsel for Legislation and 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. No comments were received regarding this certification. As such, no final regulatory flexibility analysis has been prepared.

B. 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 by 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.

Public reporting burden for this collection of information is estimated to average 3 hours per GOES agreement and 30 minutes 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 Dane Clark, NOAA, National Environmental Satellite, Data, and Information Service, Direct Services Division (E/SP3), 4700 Silver Hill Road, Stop 9909, Room 3320, Washington, DC. 20233–9909, and to OMB at the Office of Information and Regulatory Affairs, Washington, DC 20503 (Attention: NOAA Desk Officer).

C. 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.

D. 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: April 28, 1998.

Robert S. Winokur,

Assistant Administrator for Satellite and Information Services.

Accordingly, for the reasons set forth above part 911 of Title 15 of the Code of Federal Regulations is 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—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.

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

(q) *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.

(r) *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 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.

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

§ 811.4 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 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.

(4) Episodic 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.

(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.

§ 911.5 NOAA Data Collection Systems Use Agreements.

(a)(1) In order to use a NOAA DCS, each user must have an agreement with the approving authority for that system.

(2) Persons interested in entering into a system use agreement should contact the Director.

(b) These agreements will address, but may 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 space-based services which meet the user's requirements and the reasons for necessitating the use of 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 shall evaluate user requests and conclude agreements for use of the NOAA DCS.

(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 for additional 3-year periods.

(2) Agreements for the collection of environmental data, via the Argos DCS, by non-government users shall be valid for 1 year from the date of initial in-situ deployment of the platforms, and may be renewed for additional 1-year periods, 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 non-profit institutions where there is a government interest, shall be valid for 1 year from the date of initial in-situ deployment of the platforms, and may be renewed for additional 1-year periods.

(4) Agreements for the episodic collection of non-environmental data, via the Argos DCS under § 911.4(c)(4), 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.

(5) Agreements for the testing use of the Argos DCS by equipment manufacturers shall be valid for 1 year from the date of initial testing, and may be renewed for additional 1-year periods.

(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 for additional 5-year periods.

(2) Agreements for the testing use of the GOES DCS, by equipment manufacturers, shall be valid for 1 year from the date of initial testing, and may be renewed for additional 1-year periods.

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; this may include the international distribution of environmental data under the auspices of the World Meteorological Organization. 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 DCS on its geostationary and polar-orbiting satellites, subject to the availability of future appropriations. However, viable commercial space-based alternatives may eventually

obviate the need for NOAA to operate its own space-based DCS.

(b) If use of the system in support of NOAA programs increases, it eventually may be necessary to the 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 and an orderly transition.

(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 are certified to 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.

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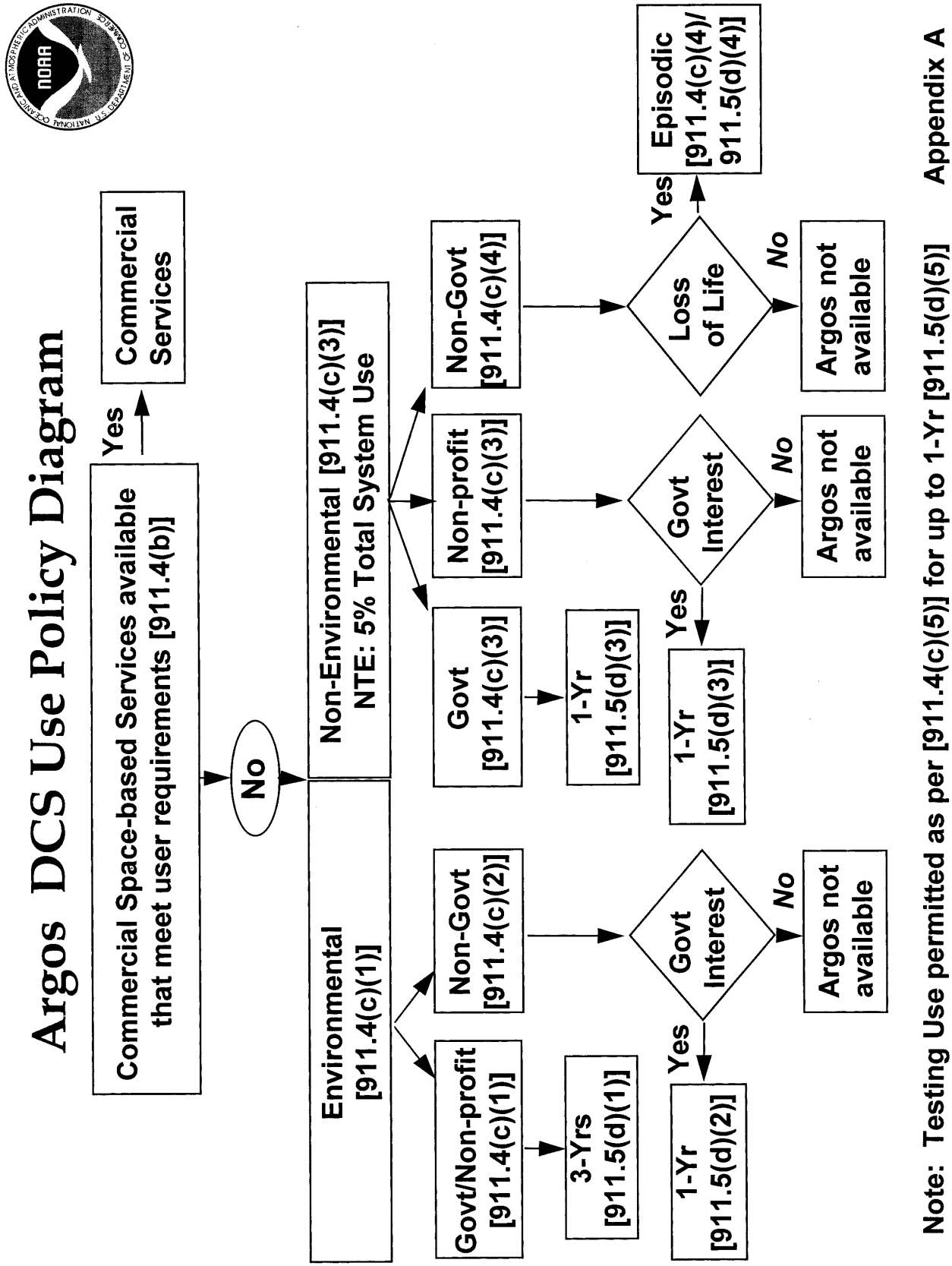
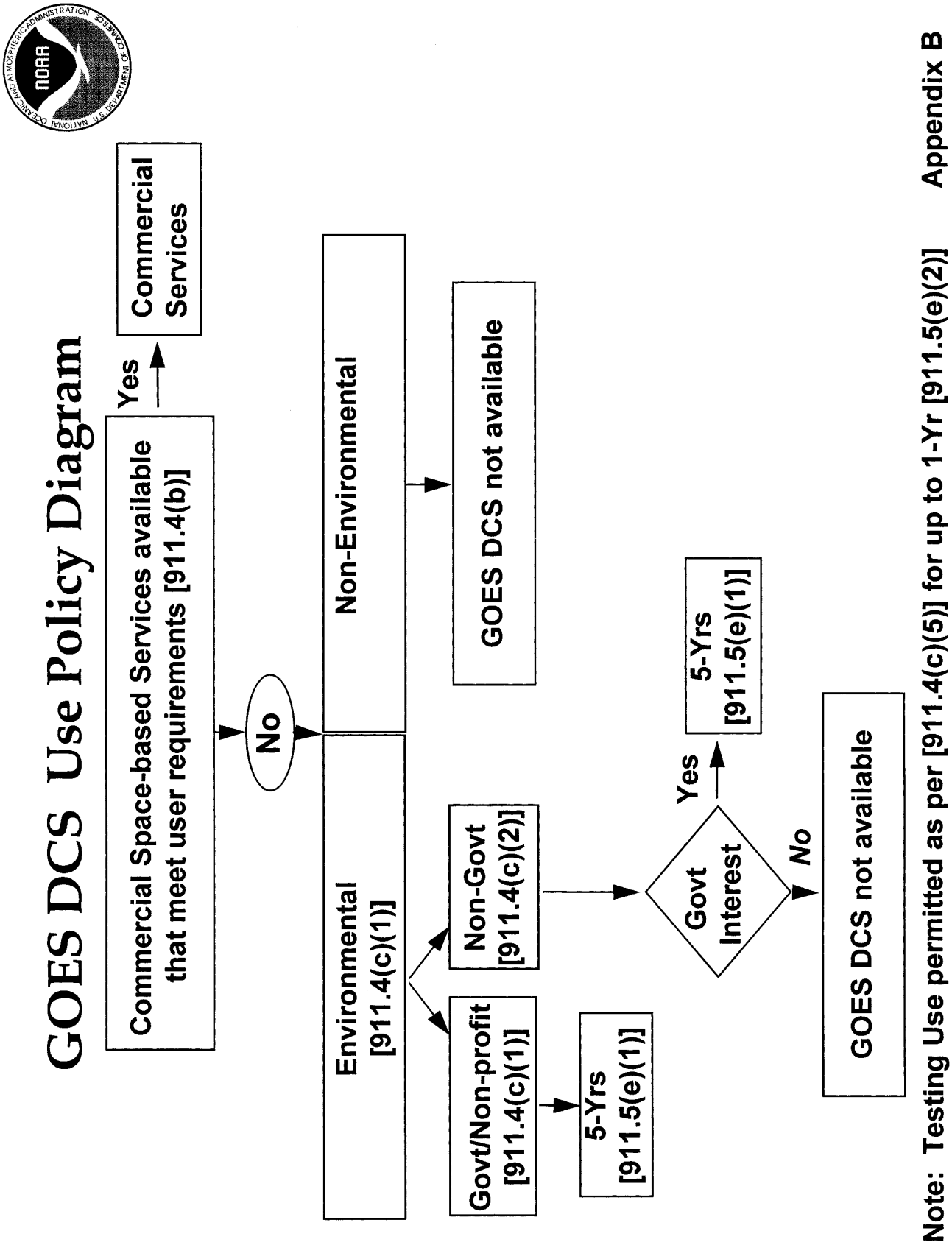
Appendix A to Part 911—Argos DCS Use Policy Diagram



Appendix B to Part 911—GOES DCS Use Policy Diagram



[FR Doc. 98–11970 Filed 5–5–98; 8:45 am]
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SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

RIN 0960–AE74

Federal Old-Age, Survivors, and Disability Insurance Benefits; Supplemental Security Income for the Aged, Blind, and Disabled; Organization and Procedures; Application of Circuit Court Law

AGENCY: Social Security Administration (SSA).

ACTION: Final rules.

SUMMARY: These final regulations revise the current regulations governing how we apply holdings of the United States Courts of Appeals (circuit courts) that we determine conflict with our interpretation of the Social Security Act or regulations in adjudicating claims under title II and title XVI of the Social Security Act (the Act). The regulations explain the new goal we have adopted to ensure that Acquiescence Rulings (ARs) are developed and issued promptly and the new procedures we are implementing to identify claims pending in the administrative review process that might be affected by ARs.

EFFECTIVE DATES: These amendments are effective June 5, 1998.

FOR FURTHER INFORMATION CONTACT: Gary Sargent, Litigation Staff, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–1695 for information about these rules. For information on eligibility or claiming benefits, call our national toll free number, 1–800–772–1213.

SUPPLEMENTARY INFORMATION: On January 11, 1990, (55 FR 1012) we published final regulations, set out at 20 CFR 404.985 and 416.1485, to implement a revised policy explaining how we apply circuit court holdings that we determine conflict with our interpretation of the Act or regulations to subsequent claims within that circuit involving the same issue. Under those regulations, we prepare ARs which explain the circuit court holdings and provide instructions to adjudicators, at all levels of the administrative review process, on how to apply the circuit court's holding to subsequent claims within the circuit involving the same issue. Those regulations reflected the agency's decision in 1985 to abandon its prior policy of applying circuit court holdings that we determined conflicted with our interpretation of the Act or regulations only to the named party or parties to the decision, rather than to other cases pending in the administrative review process involving the same issue or issues.

On July 2, 1996, we issued Social Security Ruling (SSR) 96–1p (61 FR 34470) clarifying and reaffirming the rules established in the 1990 regulations. Since that time, we have reviewed our rules and our implementing procedures to determine what changes could be instituted to further improve the acquiescence process. Based upon that review, on September 18, 1997, we published at 62 FR 48963, proposed revisions to the acquiescence regulations, which we are now publishing as final rules.

The proposed rules provided the addition of new paragraphs 404.985(b)(1) and 416.1485(b)(1) to establish a general goal for issuing ARs no later than 120 days from the date of our receipt of a precedential circuit court decision. The proposed rules also provided, by the addition of new paragraphs 404.985(b)(3) and 416.1485(b)(3), for new procedures to identify claims pending within SSA which may be affected by an AR that may subsequently be issued. These same sections also provided that, once an AR is issued, we will send notices to those individuals whose claims have been identified as potentially being affected by the AR informing them of their right to request a readjudication, as described in paragraphs 404.985(b)(2) and 416.1485(b)(2) of the rules.

The Final Rules

The Role of Litigation in the Policymaking Process

Our review indicated that it is important to reaffirm the principle that our goal in administering our programs is to have uniform, national program standards. Our procedures, which provide for acquiescence within the circuit when a circuit court issues a precedential decision containing a holding that we determine conflicts with our interpretation of the Act or regulations, result in differing rules in different sections of the country. This situation is not desirable and ordinarily should not, if possible, continue indefinitely.

Therefore, we wish to make it clear that generally ARs are temporary measures. When we receive a precedential circuit court decision containing a holding that we determine conflicts with our interpretation of the Act or regulations, we consider whether the rules at issue should be changed on a nationwide basis to conform to the court's holding. If we continue to believe that our interpretation of the statute or regulations at issue is correct and we seek further judicial review of the circuit court's decision, we will stay further development of the AR until the judicial review process runs its course. If our assessment shows that we should change our rules and adopt a circuit court's holding nationwide, we will, at the time we publish the AR, have determined the steps necessary to do so. This may require changing our regulations or rulings; it may also require seeking a clarifying legislative change to the Act. We would then proceed to issue an AR because changing our nationwide rules through legislation or rulemaking may require a significant period of time.

Similarly, if our assessment shows that our rules represent a reasonable interpretation of the Act or regulations, but we are unable to resolve the matter by seeking further judicial review, we will issue an AR and at the time we publish the AR have determined the appropriate steps to attempt to address the issue which was the subject of the circuit court's holding. This may mean issuing clarifying regulations or seeking legislation. There are certain instances when an issue cannot be resolved, such as a constitutional issue which the Supreme Court chooses not to review or legislation is required but not enacted and, therefore, an AR may remain in effect.

Although our goal to have uniform national standards is implicit in the current regulations, we are including in this preamble an explicit statement of our commitment to maintaining a uniform nationwide system of rules. In addition to making minor editorial corrections to the current regulations, these rules amend the regulations in two substantive areas, as follow:

Establishing a Timeliness Goal for Issuing ARs

A common criticism regarding the acquiescence process has involved the length of time it has taken for us to prepare and issue an AR. As a result, we have reassessed our procedures and have decided to place in our regulations our goal to release an AR for publication in the **Federal Register** no later than 120 days from the time we receive a precedential circuit court decision for which the AR is being issued, unless further judicial review of that decision is pending. This timeframe will also not apply when publication of an AR requires such coordination with the Department of Justice and/or other Federal agencies that it becomes no longer feasible. We are adding new