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## **Title 15 – Commerce and Foreign Trade**

### **Subtitle B – Regulations Relating to Commerce and Foreign Trade**

#### **Chapter IX – National Oceanic and Atmospheric Administration, Department of Commerce**

##### **Subchapter G – Requirements for Certification by NOAA of Non-Federal Assets into the Integrated Coastal and Ocean Observation System**

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## **PART 997—REGIONAL COASTAL OBSERVING SYSTEM**

**Authority:** 33 U.S.C. 3602-3603.

**Source:** 79 FR 32460, June 5, 2014, as amended at 87 FR 16634, Mar. 24, 2022, unless otherwise noted.

### **Subpart A—General**

## § 997.1 Definitions.

**Certification.** For purposes of these regulations, the term “certification” means the granting by NOAA of status to a non-federal entity as a participating RCOS of the System authorized by section 12304 of the ICOOS Act. An applicant will not be considered to be participating in the System unless 1) it agrees to meet the certification standards issued by the Administrator issued herein, and 2) the Administrator declares the applicant to be part of the System as a certified RCOS.

**Equipment.** For purposes of these regulations, the term “equipment” is defined as a tangible asset that is functionally complete for its intended purpose and has a capital cost of over \$5,000. Both individual sensors and collections of sensors on a platform are considered equipment and are subject to the \$5,000 minimum cost.

**Non-Federal assets.** The term “non-Federal assets” means all relevant coastal and ocean observation technologies, related basic and applied technology research and development, and public education and outreach programs that are integrated into the System and are managed through State, regional organizations, universities, nongovernmental organizations, or the private sector.

**Owned and/or operated by the RCOS.** The term “owned and/or operated by the RCOS” means non-Federal Assets that are either owned and/or operated directly by the RCOS, or supported financially in part or in full by the RCOS.

**Regional Coastal Observing System (RCOS).** The term “regional coastal observing system” means an organizational body that is certified or established by contract or memorandum by the lead Federal agency (NOAA) designated in the ICOOS Act, and that coordinates State, Federal, local, and private interests at a regional level with the responsibility of engaging the private and public sectors in designing, operating, and improving regional coastal and ocean observing systems in order to ensure the provision of data and information that satisfy the needs of user groups from the respective regions. The term “regional coastal observing system” includes regional associations described in the System Plan.

**Employee of a Regional Information Coordination Entity.** The term “Employee of a Regional Information Coordination Entity” means an individual identified in § 997.23(d)(3) or (f)(1) of these Regulations and satisfies the requirements listed in § 997.26(c).

**System.** The term “System” means the National Integrated Coastal and Ocean Observation System established in accordance with section 12304 of the ICOOS Act (33 U.S.C. 3603).

**System Plan.** The term “System Plan” means the plan contained in the document entitled “Ocean.US Publication No. 9, The First Integrated Ocean Observing System (IOOS) Development Plan,” as updated by the Council under these regulations.

## § 997.2 Acceptance of procedures by a RCOS.

By its voluntary entrance or participation in the System, the RCOS acknowledges and accepts the procedures and requirements established by these regulations.

## Subpart B—Certification and Decertification Process for a Regional Coastal Observing System (RCOS)

### § 997.10 Eligibility.

Any non-Federal entity may submit an application for certification as an RCOS as defined in the ICOOS Act and these Regulations.

### § 997.11 Application process.

- (a) The applicant for certification shall submit an application package containing the information and documentation outlined in subpart C of this part. The submission package shall include the application form, available online at <http://www.ioos.noaa.gov/certification>.
- (b) Submission shall be made to NOAA at the following address, or to such other address as may be indicated in the future: Director U.S. IOOS Office, NOAA, 1315 East West Hwy., Suite 3000, Silver Spring, MD 20910. Submissions may also be made online at <http://www.ioos.noaa.gov/certification>.

[79 FR 32460, June 5, 2014, as amended at 87 FR 16634, Mar. 24, 2022]

### § 997.12 Review by NOAA.

- (a) After receiving an application package, NOAA shall have up to 90 calendar days to review the application package and decide whether to certify the applicant.
- (b) Before the 90 calendar days have elapsed, NOAA may request additional information, in which case NOAA shall have up to 30 additional calendar days after that additional information has been received by NOAA, above and beyond the original 90 calendar days, to review the application package and decide whether to certify the applicant.
- (c) NOAA's decision whether to certify the applicant shall be based on whether the RCOS demonstrates that it satisfies the current IOOC certification criteria and these regulations.

### § 997.13 Certification process.

- (a) NOAA's decision whether to certify the applicant, along with the reason for its decision, shall be delivered to the applicant via letter delivered by first class mail and by electronic means.
- (b) Applicants receiving a certification determination in the affirmative shall be designated as "certified" RICEs by NOAA. NOAA shall memorialize this status via a memorandum of agreement with the applicant. Certification shall mean that an RCOS is incorporated into the System.
- (c) A certified RCOS shall provide NOAA with written notification of the RICE's intention to substantively change its organizational structure or Strategic Operational Plan, and shall request approval from NOAA for the change. After receiving the written notification, NOAA shall have up to 30 calendar days to review the requested change and decide whether to approve the requested change. NOAA's decision, along with the reason for its decision, shall be included in a written notification to the RCOS.

### § 997.14 Certification duration and renewal.

- (a) Certification of an RCOS shall be for a term of 5 years, unless otherwise specified by the NOAA Administrator.
- (b) Certification may be renewed, at the request of the RCOS, for a period of five years. An RCOS seeking to renew its certification shall provide NOAA with a written request to renew at least 120 calendar days before the expiration of the existing certification. The request shall include the application form, available online at <http://www.ioos.noaa.gov/certification>, and all information providing evidence that the applicant satisfies the IOOC certification criteria and NOAA regulations promulgated to certify and integrate non-Federal assets into the System.

- (c) After receiving a written request for renewal of certification, NOAA shall have up to 90 calendar days to review the request and decide whether to renew the certification.
- (d) Before the 90 calendar days have elapsed, NOAA may request additional information, in which case NOAA shall have up to 30 additional calendar days after that additional information has been received by NOAA, above and beyond the original 90 calendar days, to review the request and decide whether to renew the certification.
- (e) NOAA's decision whether to renew the certification shall be based on whether the RCOS continues to demonstrate that it satisfies the current IOOC certification criteria and these regulations. NOAA's decision, along with the reason for its decision, shall be included in a written notification to the RCOS.

### § 997.15 Audit and decertification.

- (a) NOAA may audit an RCOS that it has certified to ensure compliance with the IOOC certification criteria and these regulations. NOAA will notify the RCOS of its intent to conduct an audit and will coordinate with the RCOS on the audit schedule and process.
- (b) NOAA may decertify an RCOS. In general, an RCOS may be decertified when:
  - (1) The results of an audit indicate that the RCOS no longer satisfies the requirements under which it was certified; or
  - (2) Other relevant reasons for decertification become apparent.
- (c) NOAA's intent to decertify an RCOS, along with the identification of a specific deficiency(ies) and a recommended corrective action(s), shall be included in a written notification to the RICE. After receiving NOAA's written notification, an RCOS shall have up to 45 calendar days to request in writing that NOAA reconsider its intent to decertify the RCOS. The RCOS's request for reconsideration shall contain sufficient information for NOAA to determine whether to grant the request for reconsideration. Alternatively, the RCOS may correct the deficiency(ies) identified by NOAA within 45 calendar days, notify NOAA in writing of the corrective action(s) taken, and provide sufficient evidence for NOAA to determine the correctness and effectiveness of the corrective action(s) taken.
- (d) If an RCOS submits to NOAA a written request for reconsideration or a written assertion that the identified deficiency(ies) has been corrected, NOAA shall have up to 60 calendar days after receipt of the request or assertion, to review the request for reconsideration or the assertion of corrective action. NOAA's decision, along with the reason for its decision, shall be delivered to the applicant via letter delivered by first class mail and by electronic means.
- (e) Upon decertification, an RCOS shall no longer be incorporated into the System.
- (f) An RCOS may act voluntarily to terminate its certification at any time by notifying NOAA in writing of its desire to do so. Upon receipt of the notification by NOAA, the RICE will no longer be incorporated into the System.

### § 997.16 Final action.

NOAA's decision, whether to certify, renew or decertify an RCOS shall be considered final agency action.

## Subpart C—Certification and Application Requirements for an RCOS

## § 997.20 General.

- (a) For the purposes of these certification regulations, when the verb “describe” is used it indicates that the RICE shall give an account in text that responds to the requirement. This text shall contain sufficient information to demonstrate how the RCOS satisfies the certification requirement. The RCOS may include a link(s) to additional information. When the verb “document” is used, it indicates that the RCOS shall furnish a document(s) that responds to the requirement. A text statement accompanying the document(s) will normally be necessary to provide context for the document(s) and to demonstrate how the RCOS satisfies the certification requirement. The RICE may include a link to a document in the accompanying text statement.
- (b) Documentation that addresses the certification requirements may include references to existing RCOS documents. All documents and materials may be submitted directly to the U.S. IOOS Office or made accessible for public viewing on the RCOS's Web site.
- (c) To become certified, an RCOS must submit an application that addresses each of the requirements listed in this subpart.

## § 997.21 Organizational structure.

- (a) To become certified, an RCOS must demonstrate an organizational structure capable of gathering required System observation data, supporting and integrating all aspects of coastal and ocean observing and information programs within a region and that reflects the needs of State and local governments, commercial interests, and other users and beneficiaries of the System and other requirements specified in this subchapter and the System Plan.
- (b) The application shall:
  - (1) Describe the RCOS's organizational structure (e.g., 26 U.S.C. 501(c)(3) tax-exempt organization, establishment via MOU or MOA).
  - (2) Document the RCOS's ability to satisfy applicable legal criteria for accepting and disbursing funds, and entering into agreements. Sufficient documentation may be provided in the form of: Evidence of a current grant, cooperative agreement, or contract in good standing with the Federal government; or evidence of fiscal agreements, standard operating procedures for financial activities, and proof of an audit process.
  - (3) Document the RCOS's measures for addressing issues of accountability and liability. For this criterion, accountability and liability refer to the RCOS's governance and management activities. Sufficient documentation may be provided in the form of a conflict of interest policy for the Governing Board or governing body, which clearly states that a member of the governing board will declare any conflict of interest he or she may have and will recuse him or herself from associated funding decisions that may result in the Board member or a direct family member benefiting financially, and a policy statement in the RICE's by-laws that addresses liability issues.
  - (4) Describe the process the RCOS uses to set priorities for distributing funds (e.g., requirement for Governing Board or governing body approval when responding to funding opportunities or adjusting to funding level changes in existing agreements); and
  - (5) Document the by-laws, signed articles of agreement, or any binding agreements that demonstrate how the RCOS establishes and maintains a Governing Board or governing body. The documentation shall demonstrate:

- (i) How the composition of the Governing Board or governing body is selected and how it is representative of regional ocean observing interests. NOAA defines “representative” in this specific context to include geographic, sector, expertise, and stakeholder considerations.
- (ii) How and with what frequency the RCOS solicits and receives advice on RICE participant diversity, stakeholder coordination, and engagement strategies, to ensure the provision of data and information that satisfy the needs of user groups.
- (iii) How the RCOS collects and assesses user feedback to gauge the effectiveness of the regional system and subsystems in satisfying user needs, and how the RCOS responds to this user feedback in setting its priorities. Sufficient documentation may be provided in the form of a description of the method the RCOS uses in its annual planning process to assess priorities among the identified user needs in the region and to respond to those user needs, and
- (iv) Steps the RCOS takes to ensure decisions on priorities and overall regional system design are transparent and available. At a minimum, RCOS priorities and regional system design decisions shall be made accessible for public viewing on the RCOS's Web site.

### § 997.22 Membership policy.

The application shall describe:

- (a) The process by which individuals or organizations may formally participate in the governance activities of the RCOS;
- (b) The rights and responsibilities of this participation;
- (c) The process by which the RCOS strives for organizational diversity through intra-regional geographic representation, and diversity of activities and interests from both public and private sectors; and
- (d) How the RCOS allows for participation from adjacent regions or nations.

### § 997.23 Strategic operational plan.

- (a)
  - (1) To become certified, an RCOS must:
    - (i) Develop and operate under a strategic operational plan that will ensure the efficient and effective administration of programs and assets to support daily data observations for integration into the System, pursuant to the standards approved by the Council; and
    - (ii) Work cooperatively with governmental and non-governmental entities to identify and provide information products of the System for multiple users within the service area of the regional information coordination entities.
  - (2) The application must contain a Strategic Operational Plan, which is a high-level document that outlines how an RCOS manages and operates an integrated regional observing system. This Plan should evolve as an RCOS matures, new technologies become available, regional priorities change, and new users and stakeholders are identified. The Plan may be responsive to changing funding levels, and shall contain sections that each address the requirements in paragraphs (b) through (g) of this section, referencing other plans directly when applicable.

- (b) **Background and Context.** The Strategic Operational Plan shall contain a Background and Context section that describes:
- (1) The role of the RCOS in furthering the development of the regional component of the System;
  - (2) The process by which the RCOS updates the Strategic Operational Plan at least once every five years and how the RICE seeks inputs from the broader user community; and
  - (3) The RCOS's primary partners and any contributing observing systems. For the purposes of § 997.23, NOAA defines a primary partner as any organization or individual that contributes significant staff time, funding or other resources to project activities. This is not an exhaustive list of all RCOS partners but the primary partners the RICE is working with on a given project.
- (c) **Goals and Objectives.** The Strategic Operational Plan shall contain a Goals and Objective section that describe:
- (1) How the RCOS addresses marine operations; coastal hazards; ecosystems, fisheries and water quality; and climate variability and change; and
  - (2) The major objectives that guide the RCOS's priorities for data collection and management, development of products and services, research and development, and education and outreach.
- (d) **Operational Plan for the Observing System.** The Strategic Operational Plan shall include or reference an Operational Plan for the Observing System that:
- (1) Describes the desired outcomes of the observing system;
  - (2) Describes the elements of the operational integrated observing system that will deliver those outcomes;
  - (3) Documents to NOAA's satisfaction that the individual(s) responsible for RCOS operations has the necessary qualifications and possesses relevant professional education and work experience to deliver observations successfully. At a minimum the Strategic Operational Plan shall:
    - (i) Identify the individual(s) responsible for overall RCOS management;
    - (ii) Identify, as applicable, the individual(s) responsible for observations system management across the region;
    - (iii) Provide the curriculum vitae for each identified individual; and
    - (iv) Identify the procedures used to evaluate the capability of the individual(s) identified in § 997.23(d)(3) to conduct the assigned duties responsibly; and
  - (4) Describes how the RCOS manages ongoing regional system operations and maintenance. At a minimum the Strategic Operational Plan shall:
    - (i) Describe the RCOS's standard operating procedures for calibrating, validating, operating, and maintaining equipment owned and/or operated by the RCOS regularly and in accordance with manufacturer guidance or industry best practice. Equipment is defined in § 997.1; and
    - (ii) Describe the RCOS's standard operating procedures for maintaining equipment inventories, shipping logs and instrument history logs for equipment owned and/or operated by the RCOS.

- (e) **Development of a Strategy to Sustain and Enhance the System.** The Strategic Operational Plan shall describe its strategy for balancing changes in regional priorities with the need to maintain established data sets, the primary value of which may be in their long-term records. At a minimum the description shall:
- (1) Identify the guiding principles that inform the strategy;
  - (2) Reference and show connections to a long-term (five-to-ten-year) regional Build-out Plan for the full implementation of the regional observing system based on the RCOS's priorities and identified user needs; and
  - (3) Relate the annual planning process the RCOS uses to review its priorities in light of funding levels and its plans for system enhancement as outlined in the regional Build-out Plan.
- (f) **Data Management and Communications (DMAC) Plan.** The Strategic Operational Plan shall include or reference a DMAC Plan that:
- (1) Documents to NOAA's satisfaction that the individual(s) responsible for management of data operations for the RCOS has the necessary technical skills, and possesses relevant professional education and work experience to support DMAC capabilities and functionality for the System. At a minimum the DMAC Plan shall:
    - (i) Identify the individual(s) responsible for the coordination and management of observation data across the region;
    - (ii) Provide the curriculum vitae for the identified individual(s); and
    - (iii) Identify the procedures used to evaluate the capability of the individual(s) identified in § 997.23(f)(1) to conduct the assigned duties responsibly.
  - (2) Describes how data are ingested, managed and distributed, including a description of the flow of data through the RCOS data assembly center from the source to the public dissemination/access mechanism. The description shall include any transformations or modifications of data along the data flow pathway including, but not limited to, format translations or aggregations of component data streams into an integrated product.
  - (3) Describes the data quality control procedures that have been applied to data, not obtained through a federal data source, that are distributed by the RCOS. All data shall be quality controlled and QARTOD procedures shall be employed for data with QARTOD manuals. For each data stream, describe the quality control procedure applied to the data, by the RCOS or other named entity, between the data's collection and publication by the RICE. The description will also include a reference to the procedure used.
  - (4) Adheres to the NOAA Data Sharing Procedural Directive.<sup>[1]</sup> The System is an operational system; therefore the RICE should strive to provide as much data as possible, in real-time or near real-time, to support the operation of the System. When data are collected in part or in whole with funds distributed to an RCOS through the U.S. IOOS Office, the RICE should strive to make the data available as soon as logistically feasible for each data stream. When data are not collected with funds distributed to an RCOS through the U.S. IOOS Office, the data may be made available in accordance with any agreement made with the data provider.

- (5) Describes how the RCOS will implement data management protocols promulgated by the IOOC and the U.S. IOOS Office in a reasonable and timely manner as defined for each protocol; and
  - (6) Documents the RCOS's data archiving process or describes how the RICE intends to archive data at a national archive center (e.g., NODC, NGDC, NCDC) in a manner that follows guidelines outlined by that center. Documentation shall be in the form of a Submission Agreement, Submission Information Form (SIF) or other, similar data producer-archive agreement.
- (g) **Budget Plan.** The Strategic Operational Plan shall include or reference a Budget Plan that:
- (1) Identifies who supports the RICE financially;
  - (2) Identifies how RCOS priorities guide funding decisions; and
  - (3) Assesses funding constraints and the associated risks to the observing System that the RCOS must address for the future.

### § 997.24 Gaps identification.

- (a) To become certified, an RCOS must identify gaps in observation coverage needs for capital improvements of Federal assets and non-Federal assets of the System, or other recommendations to assist in the development of annual and long-term plans and transmit such information to the Interagency Ocean Observing Committee via the Program Office.
- (b) The application shall:
  - (1) Document that the RCOS's asset inventory contains up-to-date information. This could be demonstrated by a database or portal accessible for public viewing and capable of producing a regional summary of observing capacity;
  - (2) Provide a regional Build-out Plan that identifies the regional priorities for products and services, based on its understanding of regional needs, and a description of the integrated system (observations, modeling, data management, product development, outreach, and R&D). The RCOS shall review and update the Build-out Plan at least once every five years; and
  - (3) Document the priority regional gaps in observation coverage needs, as determined by an analysis of the RICE asset inventory and Build-out Plan. The RCOS shall review and update the analysis of priority regional gaps in observation coverage needs at least once every five years.

### § 997.25 Financial oversight.

- (a) To become certified, an RCOS must comply with all financial oversight requirements established by the Administrator, including requirement relating to audits.
- (b) The application shall document compliance with the terms and conditions set forth in 2 CFR Part 215—Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-profit Organizations, Subpart C—Post Award Requirements. Subpart C prescribes standards for financial management systems, among others. (Compliance with this criterion can be demonstrated by referencing any existing grant, cooperative agreement, or contract the RICE has with NOAA.)

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<sup>[1]</sup> NOAA Data Sharing Policy for Grants and Cooperative Agreements Procedural Directive, Version 2.0  
[https://www.nosc.noaa.gov/EDMC/documents/EDMC\\_PD-DSPNG\\_final\\_v2.pdf](https://www.nosc.noaa.gov/EDMC/documents/EDMC_PD-DSPNG_final_v2.pdf)

- (c) The RCOS shall document annually the RCOS's operating and maintenance costs for all observing platforms and sensors, etc., owned and/or operated by the RCOS. This information shall be made available to NOAA upon request.

### § 997.26 Civil liability.

- (a) For purposes of determining liability arising from the dissemination and use of observation data gathered pursuant to the ICOOS Act and these regulations, any non-Federal asset or regional information coordination entity incorporated into the System by contract, lease, grant, or cooperative agreement that is participating in the System shall be considered to be part of the National Oceanic and Atmospheric Administration. Any employee of such a non-Federal asset or regional information coordination entity, while operating within the scope of his or her employment in carrying out the purposes of this subtitle, with respect to tort liability, is deemed to be an employee of the Federal Government.
- (b) The ICOOS Act's grant of civil liability protection (and thus the RCOS's limited status as part of NOAA) applies only to an RCOS that:
  - (1) Is participating in the System, meaning the RCOS has been certified by NOAA in accordance with the ICOOS Act and these regulations; and
  - (2) Has been integrated into the System by memorandum of agreement with NOAA.
- (c) An "employee" of a regional information coordination entity is an individual who satisfies all of the following requirements:
  - (1) The individual is employed or contracted by a certified RCOS that has been integrated into the System by memorandum of agreement with NOAA, and that is participating in the System, as defined in § 997.26(b);
  - (2) The individual is identified by the RCOS, as required in § 997.23(d)(3) and (f)(1)(i), as one of the individuals responsible for the collection, management, or dissemination of ocean, coastal, and Great Lakes observation data; and
  - (3) The individual is responsive to federal government control.
- (d) The protection afforded to employees of an RCOS with regard to liability applies only to specific individuals employed or contracted by an RCOS who meet the requirements of § 997.26(c) and who are responsible for the collection, management, or dissemination of ocean, coastal, and Great Lakes observation data. The RCOS must identify to NOAA's satisfaction: The individual(s) responsible for overall system management, as applicable, the individual(s) responsible for observations system management across the region, and the individual(s) responsible for management of data operations across the region. In accepting certification, the RCOS will concede to NOAA the power to ensure these individuals comply with the requirements of this rule in their daily operations and that they are responsive to NOAA through the agreement the RCOS has with NOAA.