

**NATIONAL WEATHER SERVICE INSTRUCTION 1-1201**

**JULY 27, 2016**

**Administration and Management**

**Policy Directive 1-12**

**OBTAINING ENVIRONMENTAL DATA FROM EXTERNAL PARTIES**

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**NOTICE:** This publication is available at: <http://www.nws.noaa.gov/directives/>.

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**Certified by:** W/COO (J. Murphy)

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**SUMMARY OF REVISIONS:** This directive supersedes NWSI 1-1201 *Obtaining Environmental Data from External Parties* dated February 7, 2014. Changes were made to reflect the NWS Headquarters reorganization effective April 1, 2015:

Sec. 7 provides instruction regarding which NWS officials have authority to sign data agreements that place any restrictions on NWS use of the data or agreements that have a budgetary impact (i.e., cost). PD 1-12 gives the authority to sign such data agreements to the AA, DAA, ACIO, COO and the OPPSD director and removes ex officio signature authority from heads of NWS Financial Management Centers.

Sec. 7.1 was modified to ensure compliance with NWS governance and corporate decision-making policies and procedures.

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Signed  
John Murphy  
Chief Operating Officer

July 13, 2016  
Date

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## 1 Purpose

This Instruction is intended to guide National Oceanic and Atmospheric Administration (NOAA) National Weather Service (NWS) officials through compliance with NWS Policy Directive 1-12, “Obtaining Environmental Data from External Parties.”<sup>1</sup> NWS obtains environmental data from external parties under a variety of agreements that establish terms and conditions for use of the data. This Instruction examines various terms of use that may be required by external data providers as a condition for providing data to NWS. The aim of this Instruction is to assist NWS officials in evaluating proposed terms of use to determine whether they are appropriate and acceptable, and to ensure that NWS enters into agreements that have the least restrictive terms possible, especially regarding redistribution rights. Specific language is suggested for use in contracts, grants, Memoranda of Understanding/Agreement (MOU/MOA), licensing agreements, and other agreements on data sharing and exchange. A template for a data sharing agreement is attached to this Instruction. Hereafter, this Instruction will use the term “data sharing agreement” and “data agreement” interchangeably.

## 2 Scope

This Instruction provides guidance for NWS officials engaged in the process of negotiating data agreements and terms of use. The most important terms of use relate to NWS’ authority to redistribute data. Redistribution rights take three fundamental forms: unrestricted; temporarily restricted; and restricted. Restrictions on redistribution of data may be subject to specific exemptions, for example, an exemption may allow redistribution of data during emergencies. Other important terms of use relate to attribution, indemnification, non-exclusivity, security controls, and compensation. This Instruction provides guidance and specific language that may be used in negotiating and drafting data agreements with external parties, particularly regarding requirements that are mandatory or prohibited as a matter of NWS or general U.S. Government policy and practice. This Instruction provides references and identifies sources of expertise within NWS to enable NWS officials involved in drafting data agreements to obtain additional support.

Sometimes data agreements are included within other agreements, such as contracts and grants, which are governed by federal and departmental regulations and policies. This Instruction is not intended to serve as a substitute for these regulations and policies, and NWS officials need to ensure that data agreements comply with the requirements of these regulations and policies, as necessary.

NWS officials should consult with the NOAA Office of General Counsel Weather, Satellites and Research Section (GCWSR), and the NWS Office of the Chief Operating Officer (OCOO) if there appears to be a discrepancy between this Instruction and other policies, or if assistance is needed in developing the terms of use for a data agreement.

There are various policies and regulations regarding information management, technology, security, data stewardship, and the like that this Instruction neither addresses nor contravenes. U.S. Government information policy is based on the premise that government information is a

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<sup>1</sup> <http://www.nws.noaa.gov/directives/sym/pd00112curr.pdf>

valuable national resource and economic benefits to society are maximized when taxpayer-funded information is made available as inexpensively and as widely as possible. This policy is expressed in the Paperwork Reduction Act of 1995 and in Office of Management and Budget Circular A-130, “Management of Federal Information Resources.”<sup>2</sup> In addition, NOAA Administrative Order (NAO) 212-15, “Management of Environmental and Geospatial Data and Information,” sets forth the policy for management of environmental and geospatial data and information. Data obtained from external parties must be managed in a manner consistent with NAO 212-15. NWS data agreements should adhere to these federal and agency policies.<sup>3</sup>

This Instruction does not contravene or serve in the place of specific policies that apply to the management of environmental data once acquired, or to the management of information technology used to acquire, store, and use environmental data from external parties, including NWS Directives 60-6, “Information Technology Privacy Policy,” and 60-7, “Information Technology Security Policy.”

This Instruction does not address the acquisition of observing equipment, software, or other tools that might be used to collect and produce environmental data. The focus of this Instruction is on establishing NWS’ terms of use for obtaining data that already have been collected or produced by external providers.

This Instruction does not address technical requirements that are common to environmental data exchange regardless of whether NWS produces the data itself or obtains it from external providers. These technical requirements include, but are not limited to, accuracy, reliability, reporting formats, update frequency, quality assurance and control, and other technical requirements such as spatial/temporal resolution.<sup>4</sup>

### **3 Organization**

This Instruction is organized around the requirements of NWSPD 1-12 and the elements that generally comprise a data agreement in order to assist NWS officials in developing specific data agreements. This Instruction provides an explanation of NWS policy (Section 4), defines various terms of use, and provides guidance on negotiating and drafting specific terms of use for data agreements (Section 5). In addition, it explains the considerations to be addressed by NWS officials when determining whether to approve a data agreement (Section 7). Section 8 provides guidance on the various kinds of data agreement, and Section 10 explains record keeping responsibilities. Appendix A is a worksheet for use in developing agreements for obtaining data from external parties. Appendix B is a template for a new data sharing agreement.

### **4 NWS Policy on Information Obtained from External Parties**

In order to carry out its mission and programs, the NWS must obtain access to many kinds of data from external sources. It is NWS policy to make all data in its possession available to

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<sup>2</sup> See, 44 U.S.C. §§ 3501 et seq.

<sup>3</sup> See also, the NOAA Policy on Partnerships in the Provision of Environmental Information ([http://www.corporateservices.noaa.gov/ames/administrative\\_orders/chapter\\_216/216-112.html](http://www.corporateservices.noaa.gov/ames/administrative_orders/chapter_216/216-112.html)), and the guidelines for implementation of this policy within NWS under NWS Directive 1-10 “Managing the Provision of Environmental Information” (<http://www.nws.noaa.gov/directives/sym/pd00110curr.pdf>).

<sup>4</sup> See, NWS Instruction 10-1301, “Instrument Requirements and Standards for the NWS Surface Observing Programs (Land).”

public and private sector users without restriction, to the extent practical and within resource constraints. The ability of NWS to honor its commitment to open and unrestricted use of its data may be affected whenever NWS agrees to restrictions as a condition of receiving data from external parties.

NWS recognizes that other parties may have legitimate proprietary interests (e.g., a property right or other valid economic interests) in their data. Other parties also may have interests that are not solely economic in nature (e.g., privacy or security concerns). When NWS accepts data under restrictive terms, protection of such data from unauthorized use and disclosure is necessary to protect the provider's rights and interests from being compromised. Failure to honor a provider's restrictions on data use may result in the loss of NWS access to or use of such data, and could require NWS to compensate the provider if it suffers harm or economic loss. In most cases, there is a cost to NWS when it must protect proprietary information. The cost can range from a minimal administrative burden to the need for new information systems and dedicated staff. The loss of public access to data in NOAA's possession should be viewed as part of the total cost to the public for obtaining data with restrictions on NWS use.

**NWS officials should negotiate the least restrictive terms of use possible.** Providers may legitimately charge a premium for data provided under terms that allow NWS to redistribute the data to the public without restriction, since NWS redistribution would reduce the provider's ability to charge others for data that NWS provides for free. When obtaining data from providers who seek such a premium, NWS officials must decide whether it is more appropriate to pay a premium for less restrictive terms of use or to pay a lower price and accept more restrictive terms. NWS officials must strike a balance between the Government's (and the public's) need and the provider's legitimate proprietary interests.

## 5 Terms of Use

### 5.1 Redistribution Restrictions

External providers often seek to restrict the right to redistribute their data. Such restrictions can take different forms, as described below. For definitional purposes, NWS considers "redistribution" of data to include the distribution of any product from which the original data can be readily extracted. Conversely, if NWS transforms or combines certain environmental data into a product from which the original data cannot be readily extracted or retrieved, and distributes such a "derivative product" to others, NWS takes the position that it has not "redistributed" the original data. This definition is a practical one, but it creates a gray area regarding what exactly is meant by "readily extracted." This approach has been used successfully by NWS in its data agreements with external providers and it is a distinction recognized by the World Meteorological Organization. Data agreements typically include some mechanism for resolving disputes (e.g., contracts typically contain such provisions) that could be invoked if there is a disagreement regarding whether or not distribution of some derivative product, in effect, also redistributes the original data. NWS can reduce the likelihood of such disputes by ensuring that the external provider's original data is not able to be readily extracted from NWS products and/or by ensuring that proprietary information is protected from unauthorized access.

An example of a derivative product from which proprietary data cannot be readily extracted is an

NWS thunderstorm product that integrates NWS radar data with national lightning data provided by an external party under a contract. The terms of use in the current agreement for lightning data limit NWS' redistribution rights. Because of this restriction, the NWS thunderstorm product must denote regions of thunderstorm activity without identifying the underlying lightning data, that is, without making it possible to "readily extract or retrieve" the proprietary information.

There are three main categories of restrictions on the redistribution of data; 1) unrestricted; 2) temporarily restricted; and 3) restricted. These are discussed below.

### **5.1.1 Unrestricted**

The preferred "category of restriction" on the redistribution of data is "no restriction", which will allow the immediate redistribution of data. Data obtained from other government agencies (federal, state, local, tribal, or other countries), academic institutions, other types of non-governmental organizations, and private citizens is often (though not always) available under unrestricted terms.<sup>5</sup> Be aware that if other government agencies are transferring data that has been obtained from external parties with restrictions, those restrictions convey to NWS and must be honored by NWS in its use of the data.

### **5.1.2 Temporarily Restricted**

This category restricts the immediate redistribution of data yet allows the redistribution of the data at a later time. This restriction allows the NWS to retain the data and distribute it freely at some future time, with the delay between receipt of the data and the expiration of the restriction on redistribution subject to negotiation with the provider. Proprietary data obtained from commercial sector parties will often entail some form of temporary restriction on NWS redistribution in order to protect the market value of the information. However, the public benefit of access to this information may be diminished by a delay in redistribution.

### **5.1.3 Restricted**

A clause restricting the redistribution of data often does so in perpetuity. Clauses describing restricted data rights should clearly define what "redistribution" means and explicitly state that NWS retains the right to distribute its derivative products. The following language should appear at some place in a data agreement:

*"NWS may disclose or redistribute derivative products incorporating [Name of Other Party] data in whole or part as long as such derivative products do not have sufficient information to enable the [Name of Other Party] data to be readily retrieved or extracted."*

## **5.2 Exemptions to Restrictions**

When NWS accepts restrictions (temporarily or in perpetuity) on redistribution, NWS officials should seek to negotiate exemptions to these restrictions on NWS use of data. The exemption text in italics in Sections 5.2.1 - 5.2.7 may be used in drafting data sharing agreements. The text as it appears in the data agreement template in Appendix B also may be used.

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<sup>5</sup> See, NWS Instruction 10-1301, "Instrument Requirements and Standards for the NWS Surface observing Programs (Land)."

### 5.2.1 In Case of Emergency

*“NOAA is exempt from the restrictions and limitations on the distribution and/or use of the data when NOAA deems it appropriate to distribute the data, in raw form or otherwise, in order to protect life and property in situations that would constitute an emergency. In such cases, notification that the data has been redistributed will be made as soon as practical by NOAA to [Name of Other Party].”*

The use of an emergency clause in a data agreement absolves NWS from liability if NWS distributes obtained data, in raw form or otherwise, to others in an emergency. Recognizing the importance of public safety, almost all external partners have agreed to this exemption in recent data sharing agreements. One easy-to-understand example would be the redistribution of otherwise-restricted wind data in response to an airborne toxic release. NWS should seek to exempt redistribution during emergencies from restrictions on redistribution of data in any data agreement.

Back-up. As a special case of an emergency exemption, a “back-up” clause will authorize the redistribution of obtained data if the primary source of data fails – in effect it defines one of the “emergencies” as the failure of the primary source of the data. For example:

*“Data obtained under this agreement may be used by NWS as an alternative for a primary source of information routinely obtained by NWS through other means. In cases of failure of the NWS primary source, NWS may distribute [Name of Other Party] data, in raw form or otherwise, to others as it deems appropriate under the circumstances. In all cases of such distribution of data, NWS will notify [Name of Other Party] of the circumstances of such distribution as soon as is practical.”*

### 5.2.2 With Permission from the Provider

*“NOAA is exempt from the restrictions and limitations on the distribution and/or use of the data when express written permission has been granted by [Name of Other Party].”*

A clause providing redistribution rights given the express written permission of the provider makes it clear that NWS needs to seek such permission for any redistribution not covered by other exemptions. Such clauses are recommended because they provide additional clarity especially when a data agreement contains a clause prohibiting commercial use. See Section 5.3.

### 5.2.3 When Data is Received from a Third Party Without Duty of Confidentiality

*“NOAA is exempt from the restrictions and limitations on the distribution and/or use of the data when the data is received by NOAA from a third party without a duty of confidentiality, or is disclosed by [Name of Other Party] to a third party without a duty of confidentiality.”*

When NWS receives data from a third party without restriction on NWS use, then that data may be redistributed regardless of whether that data is subject to a data sharing agreement with a second party that places restrictions on NWS use of that data. The second party’s restrictions do not apply if a third party with appropriate rights to the data has provided that data to NWS

without a duty of confidentiality. This data has a similar status to data that has become a matter of public knowledge.

#### **5.2.4 When Data has become Public Knowledge**

*“NOAA is exempt from the restrictions and limitations on the distribution and/or use of the data when the data has become a matter of public knowledge.”*

The requirement for NWS to protect the confidentiality of data becomes moot when that data becomes a matter of public knowledge. Including this exemption is important so that NWS is not required to protect proprietary information after that information is available elsewhere to the public.

#### **5.2.5 For Distribution within NOAA and among Federal Agencies**

*“NOAA is exempt from the restrictions and limitations on the distribution and/or use of the data when the data is redistributed to other parts of NOAA, or to other federal agencies, on occasions when access to the data is needed to fulfill their respective missions. In such cases, NWS will ensure the recipients are aware of, and agree to abide by, the restrictions and limitations on the use applicable to this data. Notification that the data has been redistributed will be made as soon as practical by NWS to [Name of Other Party].”*

The use of a federal agency redistribution clause allows NWS to share obtained data with other NOAA Line Offices and other federal agencies. This clause contributes to overall government efficiency by consolidating government needs for the subject data under a single data agreement. It is important to support structuring such clauses appropriately by determining which other agencies require the data covered by the data agreement and documenting their requirements. Data Acquisition Officers (DAOs) should seek the right to redistribute data to any NOAA office, with the understanding that all NOAA offices that obtain the data from NWS will honor the same terms in the data agreement. For example:

*“NWS is permitted to share [Name of Other Party] data or derivative products incorporating [Name of Other Party] data with other NOAA line and staff organizations and other government agencies. It is understood and agreed that NWS will take appropriate steps to ensure that such organizations and agencies are aware of, and agree to abide by, the restrictions on redistribution reflected herein.”*

Restrictions may be further limited as follows: NWS-only; NOAA-only; and/or U.S. Government-only. These restrictions may include the possibility of making these data available to either a contractor or institution supporting each of these entities under agreement in support of its mission.

#### **5.2.6 When Cited Incidentally in Products and Publications**

*“NOAA is exempt from the restrictions and limitations on the distribution and/or use of the data when the data is cited by NOAA incidentally in a NOAA product or publication.”*

An “incidental use” exemption on restrictions to obtained data restricts the redistribution of data as a regular practice, but allows NWS to incidentally cite the data in an NWS product and/or NWS publication. A clause of this sort is beneficial because it: costs the provider little, since the data is only occasionally distributed by incidental reference; gives the provider an opportunity to publicize the use of its data to support the NWS mission; and safeguards NWS from liability in the case of incidental use of that data. Furthermore, incidental use of restricted data in NWS publications comes after the event for which that data has had its greatest commercial value. As such, providers generally are agreeable to such an exemption to restrictions on data because it will result in greater public awareness of the value of its data and of NOAA’s use of its data.

### **5.2.6.1 Incidental Use in NWS Products**

DAOs may seek a less-general incidental use clause that authorizes NWS to incorporate data obtained under a data agreement, especially in products supporting public safety, even if the original data is easily extracted. For example:

*“NWS may utilize data obtained under this data agreement by occasionally incorporating such data through references within standard NWS products, even when such references allow the original data to be extracted.”<sup>6</sup>*

### **5.2.6.2 Incidental Use in NWS Publications**

If a NWS employee writes a scientific paper that includes data covered by the data agreement, the data agreement’s terms of use may also apply to use in the scientific publication. Scientific publication often will include derivative products rather than original data and in such cases the exemption on derivative product restrictions applies. (See, Section 6.2.1.1.) If the scientific publication includes original data it may be necessary to get express written permission from the provider for use in the publication absent a prior agreement in an exemption. (See, Section 6.2.2.1.) NWS also may seek to expand an incidental use exemption by adding the phrase “or scientific publications” to the above clause, viz. “... through references within standard NWS products or scientific publications, even ...”

### **5.2.7 When Required by Law**

*“NOAA is exempt from the restrictions and limitations on the distribution and/or use of the data when release is required by applicable law or is directed by a court of competent jurisdiction. In such cases, NOAA will provide prompt written notice to [Name of Other Party] prior to its planned release of the data.”*

In some cases, information disclosure laws, such as the Federal Freedom of Information Act (FOIA), or a U.S. District Court may require NOAA to release data that are otherwise subject to distribution restrictions agreed to by NOAA in a data acquisition agreement. It is important to include this clause to make the data provider aware of this possibility. In general, it is expected

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<sup>6</sup> Some providers may seek to limit the types of NWS products in which such incidental references are allowed, for example, “within NWS products that support public safety such as watches and warnings.” The sample text would allow incidental references to data obtained under an agreement within *any* NWS product.

that these instances will be rare and NOAA will avail itself of legal arguments under the FOIA and other statutes to resist such release. However, in cases where NOAA will be required to make a release, NOAA commits in the agreement to provide prompt advance written notice to the data provider. This notice will allow the provider the opportunity to take appropriate legal action on its own behalf that might be successful in preventing the release by NOAA.

### 5.3 Non-Commercial Use

Data providers may be willing to accept agreements that include a clause authorizing redistribution of data to other parties for specified purposes. Such clauses are usually intended to allow research/academic use of the redistributed data, but not to allow commercial uses of the data. NWS compliance with these clauses can be problematic if the burden of proof is shifted to NWS to determine whether data was redistributed to a commercial entity. Once NWS releases its data to the public the commercial use of that data cannot be prevented. As a matter of policy, NOAA encourages the commercial use of its data as a market incentive to increase the public benefit of NOAA information through the generation of new products and services. Therefore, it is preferable to include and utilize the clause in Section 5.2.2.1 that allows redistribution when the other party gives written permission. Using this clause will provide a way to document the provider's approval of the redistribution to a specific party and make the provider responsible for determining whether or not any specific use meets its standard for "non-commercial use."

### 5.4 Expiration of Restrictions

NOAA is responsible for the long-term archival of environmental data to establish the Nation's climate record.<sup>7</sup> To further this mission, DAOs should consider including a clause in the data agreement that causes all redistribution restrictions to expire after a period of time. This exemption should be considered as a separate item from the "temporarily restricted" category of data rights; the idea being that after some lengthy interval the data will have little or no commercial value to the provider, but may be useful for future use to further scientific inquiry. For example:

*"All other terms and conditions within this agreement notwithstanding, NWS will have unrestricted rights to use the data provided under this agreement for any purpose, including redistribution to others, after a period of [number] years following the receipt of the data."*

The clause terminating the restrictions on redistribution could be combined with the following clause to give the provider assurance the restrictions will remain in effect for a given period of time.

*"Any restrictions on NOAA's use of this data shall remain in effect for a period of [number] year[s] after the receipt of such data, the termination of this Agreement notwithstanding."*

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<sup>7</sup> See, NAO 212-15 Management of Environmental and Geospatial Data and Information and NOAA Procedure for Scientific Records Appraisal and Archive Approval.

## 5.5 Attribution

Sometimes the provider will request that NWS provide some form of attribution regarding the source of the data. NWS almost always<sup>8</sup> will provide information regarding its acquisition of data from other parties, for example, by making the text of any data agreement available to the public. However, NWS should avoid attribution within the text or content of official NWS products.<sup>9</sup> The following text should be included in any data sharing agreement:

*“NOAA may freely describe its use of the other Party’s data in derivative products, but is not required to do so.”*

## 5.6 Endorsement

Providers may want to cite NWS use of their data in press releases, advertising, etc. NWS should scrupulously avoid making any statements which could be construed as an endorsement of any provider. Any DAO approached by an external party desiring to cite NWS’ use of its data in a press release or similar document should contact the NWS Public Affairs Office for further guidance. Furthermore, NWS should seek to include a non-endorsement clause in the data agreement, in an effort to remove any ambiguity about NWS endorsement of one provider over another. For example:

*“Nothing in any of the Parties’ programs, announcements, press releases or other written, verbal, or electronic communications may constitute an endorsement, expressed or implied, by NOAA of the other Party and/or any commercial products produced or promoted by the other Party.”*

## 5.7 Security Controls

Transfer of environmental data to NWS necessarily requires some form of connection between the external provider and NWS – exposing NWS information systems to potential risk. To manage these risks, Data Acquisition Officers need to assess the need for security controls for each data agreement to ensure that each agreement complies with Department of Commerce and NOAA information security policies and standards. The Assistant Chief Information Officer (ACIO) for Weather is the authority on this matter and DAOs should consult the CIO regarding the security controls that may be required in any data agreement. DAOs should make the Data Agreement Approving Official aware of his/her assessment of security controls and of any specific requirements prior to the approval of a data agreement. Data agreements that are implemented through contracts have explicit requirements for security controls that are addressed below. The DAO may elect to follow this guidance for other forms of data agreements. The following text, or something similar, should be included in the data sharing agreement.

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<sup>8</sup> In rare cases, NOAA/NWS may decide not to acknowledge that it has obtained data from an external provider, e.g., when such disclosure would raise national security concerns.

<sup>9</sup> Attribution of the external source of data within an NWS product may be necessary for the product to achieve its intended use, but attribution should not be used as a means of “giving credit” to the data provider in a manner that could be construed as favoritism or an attempt to provide a commercial advantage .

A. *[Name of Other Party]:*

1. *Will not publish or disclose in any manner, without NOAA's written consent, the details of any safeguards either designed or developed under this Agreement or otherwise provided by the Government;*

2. *Will not deny reasonable access by the Government to its facilities, installations, technical capabilities, operations, documentation, records, and databases, to the extent required to carry out a program of inspection to safeguard against threats and hazards to the security, integrity, and confidentiality of Government data; and*

B. *[Line Office] and [Name of Other Party(s)]:*

*Shall immediately bring to the attention of the other Party(s) any new or unanticipated threats or hazards that are discovered by any Party, or if existing safeguards have ceased to function.*

### **5.7.1 Security Controls under Contracts**

Data agreements implemented through contracts must comply with:

Federal Acquisition Regulations (FAR) 39.107, Contract Clause, which requires contracting officers to insert a clause substantially similar to FAR 52.239-1;

FAR 52.239-1, Privacy or Security Safeguards, which requires security of information technology, and/or are for the design, development, or operation of a system of records using commercial information technology services or support services;

Commerce Acquisition Regulations (CAR) 1339.70, Department of Commerce Telecommunications Acquisitions, which sets forth the policy applicable to all acquisitions for telecommunication and network services and equipment;

CAR 1352.239-73, Security Requirements for Information Technology Resources, which establishes security requirements for information technology resources; and

CAR 1352.239-74, Security Processing Requirements for Contractors/Subcontractor Personnel for Accessing DOC Information Technology Systems, which proscribes security processing requirements for contractors/subcontractor personnel for accessing document information technology systems.

### **5.8 Indemnification**

In many data agreements among private sector parties indemnification clauses are included to provide for compensation if one party suffers loss, damage, or harm resulting from the activities of the other party that are carried out under the agreement. The U.S. Government is often asked to enter into a data agreement that includes an indemnification clause. Because this type of clause creates a risk the Government might be required to pay an amount in excess of available funds, an agreement that includes such a clause is deemed to violate both the Anti-deficiency

Act, 31 U.S.C. § 1341, and the Adequacy of Appropriations Act, 41 U.S.C. § 11. Therefore, NWS is prohibited from entering into data agreements that include indemnification clauses.

At times this can create a difficult situation in negotiations because the other party may routinely include indemnification clauses in data agreements it enters into with non-government entities, and/or may not understand that federal government agencies do not have their own independent authority to commit to indemnify another party. There are statutory provisions that create limited waivers of sovereign immunity and include funding mechanisms that allow claims against the U.S. Government. The following clause has been developed to explain how NWS will address claims for damage or injury resulting from its actions under a data agreement:

*“NWS agrees to promptly consider and adjudicate any and all claims that may arise out of actions it takes pursuant to the provisions of this agreement, and to pay for any damage or injury as may be required by Federal law. Such adjudication will be pursued under the Federal Tort Claims Act, 28 U.S.C. §§ 2671 - 2680, or under such other legal authority as may be pertinent. NWS also agrees to consider and adjudicate any claims for damage or injury sustained by NWS personnel in the performance of their official duties. Such adjudication will be made pursuant to the Federal Employees Compensation Act, 5 U.S.C. §§ 8101 - 8193, or other such legal authority as may be pertinent.”*

The above clause may be proposed as a substitute for the external provider’s standard indemnification clause. However, this clause **is not required** because it merely states the law. It can be used when the other party does not want the data agreement to be silent on the matter of indemnification.

## **5.9 Non-Monetary Compensation**

Sometimes NWS will be asked to provide non-monetary compensation in exchange for receipt of data. There are three main categories of actions NWS may be asked to provide in exchange for receipt of data: “offering of service”; “trading on NWS name”; and “exchanging information with the external entity.”

### **5.9.1 Provision of Service**

In exchange for the receipt of data, NWS may be asked by the external party to provide a specific service, for example, monitoring, quality control, or siting guidelines.

NWS officials should: (1) only agree to provide a service the NWS can in fact do; (2) be prepared to follow through with the requested service; (3) be willing to provide the same service for other external entities under similar conditions; and (4) be careful not to commit future resources NWS may not have. The following is an example of a “service” clause:

*“NWS and [Name of Other Party] will work jointly to determine data communication, data coding and formatting requirements, to ensure compatibility with NOAA systems so as to help facilitate the assimilation of such data by NOAA.”*

### 5.9.2 Use of the NWS Name

On occasion, NWS is asked by an external party to authorize their use of NWS' "good name" in securing additional business. In an effort to gain credibility with a third party, an external entity may want to highlight the use of their data by NWS using such terms as "on behalf of the National Weather Service," or through use of the NWS or NOAA emblem. This type of cooperation may imply that NWS endorses or is affiliated with the provider and its data, which is not acceptable. Additionally, the NOAA emblem is an official registered trademark of the United States Department of Commerce and may not be used without the express permission of NOAA. If an external party requests authorization to use NWS' name in exchange for receipt of data, contact the NWS OCOO or NOAA GCWSR for further guidance.

### 5.9.3 Exchanging Information

Sometimes, a provider wishes to include a clause within a data agreement that calls for NWS to exchange its information in return for the provider's data. NWS may generally agree to this condition because most of the information held by NWS is available to the public under open and unrestricted terms. However, when a provider requests information that NWS does not normally distribute, there is probably some barrier to distribution that must be addressed before such exchange can be approved.

One typical barrier is the cost to consolidate and/or distribute the information requested. If NWS does not have funds already budgeted for this purpose, these costs must be considered in evaluating the acquisition. If NWS does agree to distribute the requested information, it should be clearly stated that this is not an exclusive arrangement. NWS may decide to distribute this information to others under similar terms. (See, non-exclusivity in Section 6).

When NWS agrees to "exchange" information with an external party and the NWS information already is available to the public upon request or otherwise, such an agreement may create the appearance that NWS is charging a fee, albeit in kind. NWS is prohibited from charging a fee for its data and products (produced at taxpayer expense) without explicit authorization. As a result of these complexities, DAOs who contemplate exchanging NWS information as a form of non-monetary compensation in a data agreement should contact the NWS OCOO for guidance, unless the requested data is already available as an approved NWS environmental information service.

Sometimes a barrier to exchanging information arises when the information requested contains retrievable data that has come into NWS' possession from a third party that has placed restrictions on its redistribution. These restrictions must be honored. In order to address situations when NWS products may include such information, the data agreement should contain a clause similar to the following example from an agreement involving the National Hurricane Center:

*"NWS acknowledges, however, cooperation and information from NWS and TPC/NHC may be needed in order to provide the forecasts requested hereunder. Without limiting the foregoing, TPC/NHC agrees to provide [Name of Other Party] all data feeds it has provided [Name of Third Party] during prior hurricane seasons for the purposes of real-time super ensemble work*

*in the same timely manner, subject to receipt of necessary third party consents.”*

## **5.10 Standard Terms of Use**

In some cases external data will be offered under “standard” terms for all users and the negotiation of specific terms for NWS use is impractical. The fundamental choice for NWS officials is whether these terms are acceptable. Potential providers may have a standard license agreement that they ask all of their data clients to accept (e.g., a “click through” license on a web site), or may offer data via the internet with some standard documentation of the terms and conditions under which the data is provided. (See, <http://www.weather.gov/disclaimer.php> as an illustration of how NWS does this through its “disclaimer.”) DAOs should not assume that “standard” terms under which data is offered by external providers are acceptable to NWS. DAOs need to get a copy of the “standard” terms under which the data is offered, and evaluate the standard agreement to determine how it treats each of the terms/clauses describe above (i.e., redistribution rights, attribution/endorsement, indemnification, non-exclusivity, and (rarely) non-monetary compensation). Unless the standard language includes unrestricted terms for redistribution, is non-exclusive, contains no form of endorsement expressed or implied, and makes the data available at little or no cost, further analysis will be needed, as discussed below. If there is any doubt as to the intent of a standard agreement, contact the NWS OCOO for help in interpreting the language.

## **5.11 Different Terms for Different Data**

Although it is much simpler if all data (and associated metadata) are obtained under the same terms, this is not always possible. As a real-world example, NWS obtains real-time meteorological observations from ships at sea which identify, by name, the ship as part of the metadata associated with each observation. However, some ship owners do not wish to have their ship locations known (e.g., due to concerns about piracy) and are thus unwilling to have the ship name distributed in real time along with the remainder of the report (including time and location). As an alternative, NWS redistributes these observations in real time with the generic name “Ship” while retaining the actual name as an aid to quality control procedures and for potential delayed redistribution. In effect, the ship owner provides the report under unrestricted terms for all of its component data EXCEPT the ship name which is provided under temporarily restricted terms. When such cases arise, each component that has a different set of terms must be analyzed separately.

## **6 Non-Exclusivity**

An NWS data agreement must clearly state that it is not exclusive and that both parties are free to enter into similar data agreements with other entities without the consent or approval of the other. For example:

*“NWS and [Name of Other Party] recognize that this is a nonexclusive agreement and that NOAA and [Name of Other Party] may enter into similar agreements with other entities without the consent or approval of the other. This agreement does not affect the rights and obligations the parties may have under any other agreement nor does it preclude other arrangements between the parties.”*

## 7 Determining Whether to Obtain Data from an External Party

Having determined the terms of use that are required for the specific situation, NWS needs to decide whether to obtain the data. If the terms of use place any restrictions on NWS use of the data or if obtaining the data has a budgetary impact (i.e., cost), a written data agreement is required that must be signed by either the Director of the Office of Planning and Programming for Service Delivery (OPPSD), the Chief Operational Officer (COO), the NOAA Assistant Chief Information Officer for Weather Services (ACIO), or the Assistant Administrator or Deputy Assistant Administrator for Weather Services. In this capacity, the official who signs the agreement and accepts the terms of use is referred to as the Data Agreement Approving Official (DAAO). For agreements with restrictions on NWS use of data or that have a cost, signature authority is at a specific level and cannot be delegated. However, it is expected that the negotiation and management of the data agreement will be conducted by an NWS official under the supervision or authority of the DAAO. This official shall be referred to as the DAO.

### 7.1 DAAO Responsibilities

The DAAO shall follow relevant NWS governance policies and procedures for corporate decision-making and ensure that, prior to approval, each data agreement is evaluated regarding the:

1. **importance** of the data to the NWS mission;
2. **terms of use**, including any restrictions on NWS use of data;
3. **costs** of implementing the data agreement;
4. **compatibility** of the data agreement with NWS information management policies and operational systems; and
5. **relevance** of other NWS and NOAA policies and directives.

In addition, the DAAO should:

6. determine if the need for the data constitutes a requirement that warrants review and approval by the Mission Delivery Council;
7. ensure that NWS has the resources to comply with the terms of use of any data agreements they approve;
8. consult with the NOAA ACIO for Weather Services, the COO, and the OPPSD Director, as needed, prior to approving data agreements that place restrictions on NWS use of data in order to ensure that the data agreement is compatible with NWS information management and data sharing policies; and
9. consult with the system Authorizing Official(s) for the system(s) involved in the data exchange, as needed, prior to approving data agreements that place restrictions on NWS use of data.

The DAAO also is required to:

10. obtain the concurrence of the NOAA Office of General Counsel, Weather, Satellites and Research Section prior to approving data agreements that place restrictions on NWS use of data or agreements that have a cost to NWS;
11. provide information about every data agreement approved by the DAAO on behalf of NWS to the Office of the Chief Information Officer (OCIO) (See, Section 10, below;) and
12. maintain a permanent file for each data agreement. At a minimum, the permanent file should contain the original version of the signed data agreement and any records regarding evaluation of the agreement.

## **7.2 Evaluating the Agreement Prior to Approval**

It is expected that the DAO will assist the DAAO in evaluating the agreement and that the DAO will document the analysis of the following factors.

### **7.2.1 Importance to the NWS Mission**

Identify the data, information, and products to be shared, exchanged or transferred. Describe the purpose for the exchange or transfer of data, information, and products. Describe how these data/information/products will be used by NOAA and their importance to the NWS mission. If the DAAO determines that the need for the data from an external party warrants review and approval by the NWS Mission Delivery Council (MDC), the procedures outlined in the MDC Charter shall be followed.

(<https://drive.google.com/a/noaa.gov/file/d/0B8kSuw-Nst9ZSndIR2JRMURQMjg/view>.)

In drafting the agreement, use a separate paragraph for each specific kind of data/information/product to be exchanged. It is envisioned that the Parties may exchange many different kinds of data and it is possible that some information may be proprietary while other data may be able to be used by NOAA without restriction.

### **7.2.2 Terms of Use**

The DAO should negotiate the least restrictive terms of use possible. If certain restrictions are required by the provider, the analysis should explain why the restrictions are required and what the impact will be on NWS use of the data. The analysis also should explain when the restrictions expire. Any restrictions on redistribution must not apply to data used in NWS products from which the data provided cannot be readily retrieved. If the DAO is recommending that the DAAO agree to certain restrictions, every effort should be made to exempt NWS from the restrictions during emergencies and in the other situations described in Section 5, above. The analysis of the agreement should provide a justification for NWS acceptance

### **7.2.3 Costs**

Having determined the terms of use that are required for the specific situation, the DAAO must decide whether the value of the data to be obtained justifies the total cost associated with the acquisition. Some parts of the total or “true” costs to NWS/NOAA of obtaining data from external parties are straightforward, but others may be neither obvious nor easy to determine. Furthermore, some of these costs may depend on the terms of use (as described in Section 5

above) of the data agreement itself. DAAOs should consider all of these costs, but they also need to balance the effort expended evaluating these costs with the importance of the data itself.

Components of the true cost include:

**7.2.3.1 Fees.** Fees are the easiest component of total cost to estimate.<sup>10</sup> They are simply any actual payments made by NWS to the provider for the data;

**7.2.3.2 Administrative Costs.** Administrative Costs involve the effort required to administer any restrictive terms in the data agreement, for example, a data management system modification that is required to separate the obtained data from other data in such a manner that NWS can assure that redistribution restrictions are honored. The point is to estimate the costs associated with any special processing or handling that must be developed to assure that NWS can and does honor any restrictive terms/clauses in the data agreement.

NOAA offices outside NWS may be affected by administrative costs if NWS obtains data on their behalf. For example, the National Climate Data Center (NCDC) may be a service provider for data in its archival systems.

DAOs should be aware of hidden costs relating to administering restricted data agreements. For illustration, as part of the effort to improve the environmental modeling capability for NWS, it partners with academic researchers to improve the dynamics and physics packages of numerical models. As the non-governmental researchers work on improving these models and then work to transition the improved models to operations, there is a need to use data collected in our operational numerical modeling process to test and evaluate the utility of these developed models. For the vast majority of these data there are no dissemination restrictions; however, there are restrictions imposed by some data providers on redistribution based on proprietary rights or other limitations.

At present, NWS systems are not able to discriminate between freely available data and restricted data, which results in restricting all the data from use by outside partners. As a result, research partners are not able to use the operational data streams in their developmental test and evaluation of their models. Therefore, the models cannot prove their operational utility in a timely manner resulting in additional resources required to fully evaluate the developed models.

The additional time and resources required to perform this operational evaluation degrades NWS ability to transition research to operations – these delays and added costs due to the small quantity of restricted data are “hidden costs” for obtaining these data.

**7.2.3.3 Technology Costs.** Technology Costs are common to all of the data that NWS handles. A particular external acquisition may have extraordinary costs (e.g. establishing a new telecommunications connection or developing software to decode the data itself).

**7.2.3.4 Exposure to Risk.** Exposure to risk may be difficult to estimate, but should be considered at least in a qualitative fashion. Some of the administrative costs are intended to

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<sup>10</sup> The payment of fees for any service must conform with NOAA Acquisition Policy. See, Section 9.1

reduce the risk that some term of use in the data agreement is not honored. However, any data agreement that includes restrictive terms of use will entail some risk that the provider will seek damages should NWS fail to honor those restrictions.

**7.2.3.5 Non-Monetary Costs.** Non-monetary costs apply whenever NWS offers some form of non-monetary consideration as part of the data agreement. The DAO should estimate the costs to NWS of honoring these terms in the data agreement, and include this estimate as part of the total costs.

**7.2.3.6 Determining if Value Exceeds Cost.** To justify a decision to obtain data from an external party, the DAAO must make a determination that the benefit exceeds the cost of obtaining the data. Two fundamental approaches to making this determination are discussed below: examining costs of alternative sources and estimating value through expected improvements in NWS services.

**7.2.3.7 Alternative Sources.** It may be possible to estimate the costs of an alternative source of the data, and in such cases the DAO should determine whether the cost of the data from an alternative source exceeds the cost from the source being considered. For example, if an external party owns and operates an observing system that NWS could replicate at government expense, then the cost of the (hypothetical) government-owned and operated system can be estimated. Such estimates should include the complete costs (labor and capital) to develop, deploy, and operate a government alternative. It will not always be possible to hypothesize an alternative source since environmental data may be unique (i.e., an external source may have proprietary rights to the methods used to produce the data). In such cases, there may be no reasonable way to estimate the cost of a government-owned alternative.

**7.2.3.8 Value Through Improved Services.** The impetus to obtain data from an external source is to improve the services that NWS provides. In evaluating the expected improvement in services, the DAO should understand that the value of environmental data is usually cumulative in nature, that is, one particular source of data is combined with other sources to produce better estimates/predictions of environmental conditions. The value of a particular source of data will typically appear in the form of a marginal improvement to one or more NWS products that provide some estimate of environmental conditions. Sometimes these improvements can be estimated directly, for example, by evaluating the performance of a model for the two cases where the particular source is added or withheld from the model's data assimilation system, or by assessing the capacity of human forecasters to improve products/services when the subject data is provided versus the baseline performance when the source is withheld. When the subject data is so unique in nature that some NWS service could not be provided at all without it, then the value of the service in an absolute sense may need to be estimated. Putting these two approaches together, the DAO needs to assess whether: (1) the value of the external data to be obtained is worth the total cost of obtaining the data; and (2) there are no alternative sources for the data which can be obtained for less cost.

#### **7.2.4 Compatibility with NWS Information Systems**

The information management system(s) that will be used to transfer the data from the provider needs to be identified and if there are restrictions on NWS use of the data concurrence from the system authorizing official is required. When assessing the cost of the data agreement, the impact on NWS information systems and personnel needs to be considered. NWS officials should recognize that periodically NWS may redesign its information systems and that if a long-term data exchange is anticipated it is advisable to consult with the ACIO and OPPSD to consider the most appropriate information management system for the specific data agreement.

#### **7.2.5 Relevance of Other NWS Policies and Directives**

Data sharing agreements that result in the shared information being disseminated by NWS to external parties or that may change important characteristics of NWS products may be governed by NWSPD 1-10, and may require public notification and consultation, a public comment period, and equity in providing the same information to other similar entities. Also, there are specific policies that apply to the management of environmental data once acquired, or to the management of information technology used to acquire, store, and use environmental data NWS obtains from external parties. These policies include NWS Directives 60-6, Information Technology Privacy Policy, 60-7, Information Technology Security Policy, and 1-10, Managing the Provision of Environmental Services.

#### **7.2.6 Additional Analysis Required by the Kind of Agreement Used**

The particular kind of data agreement (i.e., contract, license, MOU/MOA, etc.) may include specific requirements for analyses to support this decision, and this instruction is not intended to serve as a substitute for these requirements, policies, or regulations. (See, Section 13.)

### **8 Determining the Appropriate Kind of Data Agreement**

Data agreements can take many forms, but the principles regarding thoughtful establishment of the terms and conditions under which NWS obtains data from others apply regardless of the form of the data agreement. A template for a free standing Data Agreement is provided in Appendix B. This form of agreement is similar in legal status to an MOU and when it places restrictions on NWS use of the data obtained from an external party it must be cleared by the NOAA Office of General Counsel.

This section provides guidance regarding the approach the DAO is expected to take when implementing terms and conditions within various forms of data agreements, including, but not limited to a: contract; license; MOU/MOA; Open Source; Grant; Cooperative Agreement; Cooperative Research and Development Agreement (CRADA);, and Joint Project Agreement.

#### **8.1 Data Agreement Under a Contract**

Data agreements implemented in the form of contracts are subject to law, regulation, and policy including the following:

- NWS Policy Directive 1-11, Acquisition Management (<http://www.nws.noaa.gov/directives/sym/pd00111curr.pdf>)

- NWS Instruction 1-1101, Acquisition Management Instruction, (<http://www.nws.noaa.gov/directives/sym/pd00111001curr.pdf>)
- NOAA acquisition policies ([http://www.ago.noaa.gov/acquisition/regulation\\_and\\_guidance.html](http://www.ago.noaa.gov/acquisition/regulation_and_guidance.html))
- Federal Acquisition Regulations (<https://www.acquisition.gov/?q=browsefar>)

DAOs should be aware that other references apply to acquisitions and that all of the above references take precedence over the information contained in this instruction (i.e., nothing in this instruction supersedes the legal, regulatory, or policy requirements associated with federal acquisitions). Within NOAA, the final authority on contract matters is the Director of NOAA's Acquisition and Grants Office.

The Federal Acquisition Regulations (FAR) include instructions regarding all phases of federal contracting from acquisition planning through contract negotiations and administration. The FAR also include standard language intended for use in federal contracts to cover a wide variety of federal contracting situations, and these FAR clauses are often included by reference in federal contracts.

FAR clauses and instructions do address in general terms “rights in data” – for data acquired under federal contracts (e.g., FAR subpart 27.4, and various FAR clauses in subpart 52-227, in particular, FAR 52-227-14 and FAR 52-227-17). However, these standard FAR clauses do not address, in a comprehensive manner, specific concerns NWS may have with respect to acquisition of environmental data. Be prudent when using standard FAR clauses in NWS contracts that acquire environmental data. In particular:

- FAR 52.227-17, Rights in Data—Special Works, should only be used when NWS seeks, and the contractor agrees to, unrestricted redistribution rights (as described in this instruction). See: <https://www.acquisition.gov/?q=/browse/far/52>.
- FAR 52.227-14, Rights in Data—General, can be used to create a general framework when NWS seeks and the contractor agrees to temporarily restricted or restricted redistribution rights (as described in this instruction). However, contract provisions other than this general FAR clause will be needed to describe in detail the terms and conditions under which the data is provided. See: <https://www.acquisition.gov/?q=/browse/far/52>.

In addition to the two data right clauses cited in the preceding paragraphs, there are additional FAR clauses applicable to data rights, copyrights, and patents, which may be appropriate depending upon the specific situation. In some instances, an appropriate clause does not exist for the specific intended purpose, and one must be developed.

## **8.2 Data Agreement Under a Grant or Cooperative Agreement**

As is the case with contracts, there are explicit requirements in law, regulation, and policy which all NOAA grants/cooperative agreements are subject to and which take precedence over this instruction. Within NOAA, the final authority on grants/cooperative agreements is the Director

of NOAA's Acquisition and Grants Office.

It is not appropriate to use a grant or cooperative agreement for the sole purpose of obtaining environmental data for NWS. However, grants and cooperative agreements may include provisions that have the effect of making environmental data available to NWS as a consequence of the agreement, making the issues addressed in this instruction relevant.

Grants and cooperative agreements may contain provisions under which NWS obtains environmental data directly or indirectly. Direct provisions make the data available to NWS through the grant or cooperative agreement itself. Indirect provisions require the grantee to make the data available to the public, allowing NWS to obtain the data under the same terms.

### **8.3 Data Agreement Through Licenses**

A license is a form of permission granted by the owner of data to a prospective user of the data. If the license involves the payment of a fee for use, the FAR authorities described in section 13.1 also may apply. From the perspective of the NWS official responsible for negotiating the license agreement, the decision to enter into such an agreement should be guided by this Instruction. If the proposed terms in the license are unclear, or the DAO is unsure of whether the license terms are acceptable, contact the NWS OCOO and the NOAA Office of General Counsel for additional guidance. If a license is deemed to be appropriate for NWS, a copy of the license must be retained as a record of the terms and conditions under which NWS has obtained the data. This is true even if the license is a "click through" for data obtained from a web site.

If a provider offers environmental data that is of interest to NWS, but under a license that is not acceptable, the DAO should contact the OCOO for assistance in negotiating alternative language.

### **8.4 Data Agreement Under a MOU/MOA**

A Memorandum of Understanding or Agreement (MOU/MOA) can be an appropriate form of data agreement for obtaining data from other federal agencies with or without payment to those agencies, and from parties other than federal agencies when no payment is required. Data agreements that involve payments to non-federal parties in return for environmental data are subject for Federal Acquisition Regulations (See, Sections 13.1-13.2) and should not use an MOU/MOA.

### **8.5 Data Agreement Under Open Source**

Many organizations make environmental data available openly on their web sites, but it is not always clear what terms of use apply to this data. NWS officials who use such data are responsible for documenting the terms of use under which data is obtained even for "open source" data available to all on a web site accessible to the general public.

Sometimes these terms of use are documented on the web site itself. Look for links to terms like "disclaimer" or "terms of use" or "policies." For example, NWS documents the standard terms of use for information on National Weather Service web sites on its "disclaimer" page (<http://www.weather.gov/disclaimer.php>), the U.S. Geological Survey has a similar disclaimer

page (<http://www.usgs.gov/laws/privacy.html>), and the Weather Underground web site has a “Terms of Use” page (<http://www.wunderground.com/members/tos.asp>).

If there is no apparent documentation of the terms and conditions under which open source data is offered, NWS officials should not assume that the data is provided under open and unrestricted terms just because it is available from a public web site. Since provisions of copyright law may apply even if there is not an explicit reference to copyright on the web site, the DAO will contact the provider to obtain an explicit statement of the terms and conditions for the data. A simple email to the web site may be sufficient, for example:

“The National Weather Service (NWS) wishes to use data from your web site (<insert URL here>). Are there any limitations that apply to NWS use of this data, and, if so, what are they?”

The reply to such an email may serve as the data agreement for open source data.

If the DAO has any questions regarding stated terms and conditions under which open source data is provided, contact the NWS OCOO for guidance.

#### **8.6 Data Agreement Under Cooperative Research and Development Agreements (CRADA) and Joint Projects Agreements (JPA)**

There may be cases where other types of agreements such as CRADA or JPA include provisions that make environmental data available to NWS. These cases are expected to be rare, and NWS officials responsible for such agreements should contact the NWS OCOO and the NOAA GCWSR for guidance.

### **9 International Data Agreements**

Data agreements with foreign governments and international organizations should follow the procedures and be implemented in one of the forms described above. Negotiation of all international agreements should be coordinated with the NWS International Activities Office. Some data is obtained from other governments under arrangements established by the World Meteorological Organization (WMO). Most of this data is provided under “open and unrestricted” terms as described in this instruction; however, some WMO data (termed ‘additional data’) may be provided under restrictive terms. See: <http://www.nws.noaa.gov/tg/control.html>.

### **10 Records and Files**

Pursuant to NWSPD 1-12, the Assistant Chief Information Officer (ACIO) for Weather maintains an inventory of data agreements. The DAAO is responsible ensuring that information about each data agreement approved under his/her authority is entered into this system and kept up-to-date. Instructions for use of this system can be found at: [https://sites.google.com/a/noaa.gov/nws-best-practices/nws-hq/cio/data\\_agreements](https://sites.google.com/a/noaa.gov/nws-best-practices/nws-hq/cio/data_agreements). This responsibility may be delegated, for example to the DAO.

## **10.1 Official File**

The DAAO is responsible for maintaining the official file that should contain the original copy of the data agreement and any other related documents including documents that were used in determining whether to approve the agreement. This responsibility may be delegated, for example to the DAO.

## APPENDIX A - Worksheet

<b>Data Sharing Agreement Worksheet</b>		
<b>Issue/Task</b>	<b>Description</b>	<b>Date Done</b>
1. Data Acquisition Officer (DAO)	Determine which NWS office wants to obtain data from an external party and who in that office will negotiate and implement agreement. This person should be named as the DAO and he/she should use this worksheet.	
2. External Party	Identify the external party that will provide the data and the individual with the authority to sign the agreement. Does the data originate with the other party or is any of it being redistributed by the other party? Are there other sources for this same data?	
3. Description of data, information, or products to be obtained from or exchanged with an external party.	Describe the data/information/product, how it will be used by NWS, and who will use it. In describing how it will be used, be sure to note whether NWS intends to redistribute the data or if the data will be contained in an NWS product that will not allow the data to be readily retrieved.	
4. Data Agreement Approving Official (DAAO)	Determine who will approve/sign the agreement. Agreements placing restrictions on NWS use of data must be signed by the head of a FMC, the NWS Director or Deputy Director, or the ACIO. If the agreement does not place any restrictions on NWS use, the authority to approve it can be delegated. The DAAO must ensure that the agreement is analyzed for its: importance to the NWS mission; cost; terms of use and restrictions; and compatibility with NWS policy and systems.	
5. Restrictions on NWS use	Identify and describe any restrictions on NWS use imposed on the information to be provided. If the other party is redistributing data from another source, ascertain whether the originator of the data placed any restrictions on its use that will be need to be assumed by NWS.	
6. Importance to NWS mission	Determine and describe the importance of the data exchange to the NWS mission. Is this data important enough to the NWS mission that NOAA should consider establishing its own observing system? Is this data important enough to justify accepting the terms of use attached to it?	
7. Other terms of use	Identify the other terms of use and responsibilities of the parties not contained within the section on restrictions.	
8. Information systems and concurrence from system	Identify the NOAA information systems involved in the exchange and/or dissemination of the	

<b>Data Sharing Agreement Worksheet</b>		
<b>Issue/Task</b>	<b>Description</b>	<b>Date Done</b>
authorizing official(s)	information and ensure that NWS has the capacity to comply with the terms of use in the agreement. Identify the system authorizing official and obtain concurrence.	
9. Derivative products	The agreement should contain a definition of derivative products (products from which proprietary data cannot be readily retrieved) that makes it clear that restrictions on NWS use would not apply to such products.	
10. Exceptions to restrictions	Exceptions are negotiable, but every effort should be made to establish exceptions to restrictions on NWS use for the following situations:	
	a) Emergencies	
	b) With written permission from Party	
	c) Data is received from a third party without duty of confidentiality	
	d) Data has become public knowledge	
	e) Distribution to other NOAA Line Offices	
	f) Distribution to other federal agencies	
	g) Incidental use	
h) When required by law		
11. Expiration agreement and of restrictions	Determine date when agreement and restrictions expire. Restrictions and responsibility to protect confidentiality of information can extend beyond the life of the agreement, thus possibly increasing the cost to NWS.	
12. Cost	Describe any fees, administrative costs, or technology costs that NWS will incur in order to exchange the data. Assess whether increased costs are possible and justified in order to remove restrictions on NWS use.	
	Determine whether the benefit to the NWS mission justifies the cost of obtaining the data from an external party.	
13. Relevance of other policies	Identify any NWS or NOAA policies that may apply this agreement, such as NWSPD 1-10 regarding the dissemination of information to external parties.	
14. Agreement format	Identify what form the data agreement will take, e.g., contract, grant, MOU. Is an approved NWS template being used for the data sharing agreement? Is the other party's template being used?	
15. Assistant Chief Information Officer (ACIO)	Inform ACIO of the agreement and any restrictions on NWS use. ACIO concurrence is recommended.	

<b>Data Sharing Agreement Worksheet</b>		
<b>Issue/Task</b>	<b>Description</b>	<b>Date Done</b>
	The DAAO is required to provide a copy of the signed agreement to the ACIO for inclusion in the inventory of NWS data sharing agreements.	
16. NOAA General Counsel Weather, Satellites, and Research Section (GCWSR)	Inform GCWSR of the agreement and any restrictions on NWS use. GCWSR concurrence is required on agreements with restrictions on NWS use.	
17. Document analysis of agreement	Document the analysis of the agreement that was used by the DAAO in determining whether to approve the agreement. This documentation should be kept on file with the signed agreement.	
<b><u>Additional Issues/Tasks</u></b>		

## APPENDIX B - Data Agreement Template

**Data Sharing Agreement  
Between the  
National Weather Service,  
National Oceanic and Atmospheric Administration,  
United States Department of Commerce  
and  
[Name of Other Party]**

*[This template is based upon National Weather Service Policy Directive (NWSPD) 1-12 and Instruction (NWSI) 1-1201, "Obtaining Environmental Data from External Parties." Please consult the Directive and Instruction for additional information, as needed:  
<http://www.nws.noaa.gov/directives/sym/pd00112001curr.pdf>.]*

*[Bracketed text without italics calls for the specified text to be inserted and brackets removed. Instructions are in brackets with italics and should be deleted before finalizing document.]*

### I. The Parties

The Parties to this Data Sharing Agreement (Agreement) are:

A. National Weather Service (NWS), National Oceanic and Atmospheric Administration (NOAA): The National Weather Service (NWS) provides weather, hydrologic, and climate forecasts and warnings for the United States, its territories, adjacent waters and ocean areas, for the protection of life and property and the enhancement of the national economy. NWS data and products form a national information database and infrastructure which can be used by other governmental agencies, the private sector, the public, and the global community. [Add a brief description of the specific NWS mission that is related to the particular data/information/products NWS will obtain.]

B. [Name of Other Party]: [Brief description of Other Party.] *[Add additional paragraphs for additional Parties.]*

### II. Purpose of Agreement

A. In order to carry out its mission and programs, NOAA obtains access to many kinds of data, information, and products produced by other parties. It is NOAA policy to make these available to public and private sector users without restriction, to the extent practical and within resource constraints. NOAA recognizes that other parties may have legitimate proprietary interests (e.g., data developed at private expense that embody trade secrets, or that are commercial or financial and confidential or privileged) in the data, information, or products they share, exchange or transfer to NOAA. Other parties also may have proprietary interests that are not solely economic in nature (e.g., privacy or security concerns).

B. The purpose of this Agreement is to:

- [1. Identify the data, information, and products to be shared, exchanged or

- transferred;
- 2. Describe the purpose for the exchange or transfer of data, information, and products;
- 3. Define the terms of use for the data, information, and products shared, exchanged or transferred; and
- 4. Describe the responsibilities of the Parties.]

**III. Data, Information and/or Products to be Shared, Exchanged and/or Transferred**

A. [Description of specific data, information, and products to be shared.] *[Describe how these data/information/products will be used by NOAA and their importance to the NWS mission. Use a separate paragraph for each specific kind of data/information/product to be exchanged. It is envisioned that the Parties may exchange many different kinds of data and that some information may be proprietary while other data may be able to be used by NOAA without restriction. After describing the information to be shared and how NOAA will use it, describe any restrictions on the use of this data under the subsection, “Terms of Use.”]*

1. Terms of Use: [Description of any restrictions or limitations on NOAA’s use of the data/information/products, including the distribution of data.] *[If the data are considered “proprietary” state so here. Recognize that NOAA seeks to maximize the public value of environmental data obtained from external parties by negotiating the least restrictive terms of use possible. The “default” terms of use should be: “NWS shall have unrestricted use of these data, information and products.”]*

2. *[If there are restrictions on NOAA’s use of the data, add the following paragraph: “Expiration of Restrictions: NOAA will comply with the restrictions on its use of the data described above for a period of [number] year[s] after the receipt of such data, the termination of this Agreement notwithstanding.”]*

*[Note: If this Agreement is entered into as part of a contract or grant, the appropriate federal and NOAA regulations take precedence over this template.]*

[B. [Description of additional kinds of data/information/products]

- 1. Terms of Use: [Description]
- 2. Expiration of Restrictions: [Description]]

**IV. Exemptions to Restrictions and Limitations**

NOAA is exempt from the restrictions and limitations set forth above on the distribution and/or use of the data specified in this Agreement when:

A. NOAA products derived from the data it receives do not contain sufficient information to allow the original content of the data provided to be readily retrieved;

B. NOAA deems it appropriate to distribute the data, in raw form or otherwise, in order to protect life and property in situations that would constitute an emergency. In such cases, notification that the data has been redistributed will be made as soon as practical by NOAA to [Name of Other Party];

- C. Express written permission has been granted by [Name of Other Party];
- D. The data is received by NOAA from a third party without a duty of confidentiality, or is disclosed by [Name of Other Party] to a third party without a duty of confidentiality;
- E. The data has become a matter of public knowledge;
- F. The data is redistributed to other parts of NOAA or other federal agencies on occasions when access to the data is needed to fulfill their respective missions. In such cases, NWS will ensure that the recipients are aware of, and agree to abide by, the restrictions and limitations on the use applicable to this data. Notification that the data has been redistributed will be made as soon as practical by NWS to [Name of Other Party];
- G. The data is cited by NOAA incidentally in a NOAA product or publication; or
- H. When distribution is required by applicable laws, provided that prior written notice is given by NOAA to [Name of Other Party].

**V. Unlimited Rights Data**

Unless specified in this Agreement, NOAA shall have unrestricted use of data, information and products that are shared, exchanged, or transferred under this Agreement.

**VI. Security Controls**

- A. [Name of Other Party]:
  - 1. Will not publish or disclose in any manner, without NOAA's written consent, the details of any safeguards either designed or developed under this Agreement or otherwise provided by the Government;
  - 2. Will not deny reasonable access by the Government to its facilities, installations, technical capabilities, operations, documentation, records, and databases, to the extent required to carry out a program of inspection to safeguard against threats and hazards to the security, integrity, and confidentiality of Government data; and

- B. NWS and [Name of Other Party(s)]:

Shall immediately bring it to the attention of the other Party(s) if new or unanticipated threats or hazards are discovered by any Party, or if existing safeguards have ceased to function.

**VII. Endorsement**

Nothing in any of the Parties' programs, announcements, press releases or other written, verbal, or electronic communications may constitute an endorsement, expressed or implied, by NOAA of the other Party and/or any commercial products produced or promoted by the other Party.

**VIII. Attribution**

NOAA may freely describe its use of the other Party's data in derivative products, but is not required to do so.

**IX. Claims**

NOAA agrees to promptly consider and adjudicate any and all claims that may arise out of actions it takes pursuant to the provisions of this agreement, and to pay for any damage or injury as may be required by Federal law. Such adjudication will be pursued under the Federal Tort Claims Act, 28 U.S.C. §§ 2671-2680, or under such other legal authority as may be pertinent. NOAA also agrees to consider and adjudicate any claims for damage or injury sustained by NOAA personnel in the performance of their official duties. Such adjudication will be made pursuant to the Federal Employees Compensation Act, 5 U.S.C. §§ 8101-8193, or other such legal authority as may be pertinent.

**X. Non-Exclusivity**

The Parties recognize that this is a non-exclusive agreement and that either Party may enter into similar agreements with other entities without the consent or approval of the other Party. This Agreement does not affect the rights and obligations the Parties may have under any other agreement nor does it preclude other arrangements between the Parties. Nothing herein creates an obligation for NOAA to provide any additional information that would not be made available to any other user of NOAA products and services.

**XI. Assignment**

This Agreement may not be assigned by any Party unless prior written consent is obtained from the other Party(s).

**XII. Applicable Laws and Authorities**

This Agreement is governed by and construed under Federal law.

**XIII. Amendments**

This Agreement may be amended by written agreement signed by the authorized representatives of the Parties.

**XIV. Effective Date and Termination**

This Agreement will be in effect after signature by an authorized representative of each Party and will remain in effect until [Date]. If this Agreement serves as an appendix to a contract, grant or cooperative agreement between the Parties, it will remain in effect concurrently with such contract, grant or cooperative agreement unless terminated or extended by the Parties. This Agreement may be terminated at any time by any Party upon written notification to the other Party(s). Termination shall not affect NOAA's responsibilities regarding proprietary data as specified in Section III of this Agreement.

**XV. Execution**

This Agreement may be executed by facsimile and in counterparts, and each counterpart shall for all purposes be an original, and all such counterparts shall together constitute one and the same Agreement.

**XVI. Technical Points of Contact**

**NWS Data Acquisition Officer**

[Name]

[Office]

[Phone]

[Email]

**[Name of Other Party]**

[Name]

[Office]

[Phone]

[Email]

**IN WITNESS WHEREOF**, the Parties hereto execute this Data Sharing Agreement, which becomes effective on the date of the last signature affixed below:

**For the National Weather Service**

**For [Name of Other Party]**

\_\_\_\_\_  
[Name and Title]

\_\_\_\_\_  
[Name and Title]

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date