

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****15 CFR Part 960****[Docket No.: 050204028–6015–02]****Licensing of Private Land Remote-Sensing Space Systems****AGENCY:** National Oceanic and Atmospheric Administration, Commerce.**ACTION:** Final rule.

**SUMMARY:** The National Oceanic and Atmospheric Administration (NOAA) issues regulations revising the agency's requirements for the licensing, monitoring and compliance of operators of private Earth remote sensing space systems under Title II of the Land Remote Sensing Policy Act of 1992 (the Act). These regulations implement the provisions of the Act, as amended by the 1998 Commercial Space Act, and the 2003 U.S. Commercial Remote Sensing Policy. They are also derived from experience gained since August 2000 with respect to the licensing of commercial remote sensing space systems, and include improvements that take into account public comments received on the regulations. They are intended to facilitate the development of the U.S. commercial remote sensing industry and promote the collection and widespread availability of Earth remote sensing data, while preserving essential U.S. national security interests, foreign policy and international obligations.

**DATES:** This rule is effective May 25, 2006.

**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:** Title II of the Act, 15 U.S.C. 5601 *et seq.*, as amended by Public Law 105–303, authorizes the Secretary of Commerce (the Secretary) to issue licenses for the operation of private remote sensing space systems. The authority to issue licenses has been delegated from the Secretary to the Administrator of NOAA (the Administrator) and redelegated to the Assistant Administrator for Satellite and Information Services (the Assistant Administrator). On July 31, 2000, NOAA published in the **Federal Register** an interim final rule captioned Licensing of Private Land Remote-Sensing Space Systems; Interim Final

Rule (See 65 FR 46822). These regulations, which were effective on August 30, 2000, set forth the agency's requirements for the licensing, monitoring and compliance of operators of private Earth remote sensing space systems under the Act. Since the publication of the regulations: two new commercial remote sensing satellites have been successfully launched and are now operational; NOAA has issued ten new licenses for increasingly advanced remote sensing space systems, bringing the total to 23 licenses issued; and, in April 2003, the President announced a new policy on U.S. commercial remote sensing from space. On May 20, 2005, NOAA issued a proposed rule modifying the July 31, 2000 interim final rule to take into account these developments (See 70 FR 29380). Specifically, NOAA proposed amendments to update the regulations to reflect: (1) The new U.S. policy on commercial remote sensing from space; (2) experience gained since August 2000 with respect to the licensing of commercial remote sensing space systems; and (3) improvements that take into account public comments received on the interim final rule. The regulations published herein update the July 2000 interim final rule and address the public comments received in response to the proposed rule. These regulations apply to all existing licenses, as well as to all pending and future applications to operate a private remote sensing space system. They are intended to promote the development of the U.S. commercial remote sensing industry and promote the collection and widespread availability of earth remote sensing data while protecting U.S. national security concerns, foreign policy and international obligations of the United States may mandate that limitations be imposed on a system's operation.

**1. Major Substantive Issues Raised by Public Comment**

NOAA received six sets of comments regarding the May 20, 2005 proposed rule from a wide range of interests in industry, academia, and government. Most of the issues raised can be summarized as falling under one of the following categories:

- (1) Definitions;
- (2) License Term and;
- (3) License Conditions.

*Definitions*

One commenter recommended that the term "Adversary" be added as a defined term. The rationale for this recommendation was that the regulations should provide standards for when the U.S. Government will interrupt normal commercial operations. NOAA does not agree with this recommendation. Appendix 2 of these regulations addresses the procedures the U.S. Government will follow if it determines normal commercial operations must be interrupted due to the possibility that national security or international obligations and/or foreign policies may be compromised. The decision regarding under what circumstances normal commercial operations may be interrupted is addressed in national security strategy documents and is outside the scope of these regulations.

One commenter recommended to avoid confusion with the National Archive and Records Administration, NOAA should not refer to the National Satellite Land Remote Sensing Data Archive as the "Archive". NOAA agrees with this recommendation and will now make reference to National Satellite Land Remote Sensing Data Archive throughout the regulations.

One commenter noted that the definition of Data Protection Plans was overly vague, onerous, and unrealistic. NOAA has added the word "appropriate" to the definition to make it clear that Data Protection Plans will differ based on the design and capabilities of the licensed system. As NOAA licenses more advanced systems, greater emphasis has been placed on protection of the data. As a result, NOAA has provided, and will continue to provide, to each licensee a Data Protection Plan template and will continue to work closely with the licensees to develop plans which address the specific security issues of each licensee.

One commenter recommended the definition of license should make clear that a NOAA issued license cannot be used as collateral in a loan agreement, or used in any way that would, through a financial arrangement, place the license in jeopardy. NOAA agrees with this recommendation and has added a new condition in Section 960.11 providing that a license cannot be mortgaged, sold, or pledged as collateral. This does not limit the licensee's ability, however, to use tangible assets of the company as collateral. One of the requirements when issuing a NOAA license to operate a remote sensing space system is that

the Secretary of Commerce ensures the license holder will uphold the national security and foreign policy concerns of the United States. This assurance is made in part through the pre-licensing audit of the applicant. If a licensee were able to pledge the license as collateral to a third party the Secretary of Commerce would not be able to make such an assurance.

Multiple commenters recommended changing the definition of Significant or Substantial Foreign Agreement by increasing the percentage of foreign investment that would trigger the requirement to submit to NOAA for its review a foreign agreement. NOAA agrees with this recommendation and has raised the percentage of foreign investment that will trigger the requirement to submit a foreign agreement from 10% to 20% of the total value of the outstanding shares of the licensee. Foreign investment less than 20% of the total outstanding shares of the licensee's assets may still require an amendment request if it would result in a transfer of administrative control.

#### *License Term*

Multiple commenters expressed concern regarding NOAA's proposal to add language to Section 960.9 requiring licensees to show progress toward the development and launching of the satellite. These commenters thought that the new requirements were unrealistic and would have a substantial impact on the licensee's ability to raise capital. NOAA appreciates the complexity of raising the capital necessary to develop and launch a remote sensing satellite and will work with individual licensees in charting the progress of development of a licensed system. The proposed milestone approach is consistent with that of other government agencies, most notably the Federal Communications Commission for communications satellite systems. In addition, the requirement that licensees have five years to provide Preliminary and Critical Design Reviews is not retroactive to the date when the currently held licenses were issued. Instead, this five year requirement will begin on the effective date of the final rule.

#### *License Conditions*

One commenter recommended that language be added setting forth the circumstances under which licensees may deliver imagery to non-U.S. Government customers without a 24 hour delay on delivery. In addition, this commenter recommended language be added detailing how licensees may pre-qualify certain allies or other non-U.S.

Government customers to receive imagery without the 24 hour delay being applicable. Currently, there is a condition included in NOAA licensed systems with imaging capabilities better than 0.82 meter panchromatic ground sample distance (GSD) to withhold distribution of the imagery for 24 hours from the time of collection before releasing to a non-U.S. Government approved user. NOAA does not believe it is appropriate to place specific pre-qualification criteria in the regulations. This is because of the likelihood that the criteria will change over time. However, there presently is an interagency process in place for waivers of this license condition and NOAA has informed those licensees with this license condition of the process.

Another commenter recommended that language be added setting forth the circumstances under which licensees may deliver panchromatic data at a resolution better than 0.5 meter GSD to customers other than the U.S. Government. NOAA does not believe it is appropriate to include specific criteria in the regulations because of the likelihood that the criteria will change over time. The U.S. Government does periodically review license conditions to determine if circumstances warrant changes. When license conditions do change, NOAA provides notice to the affected licensees.

Finally, one commenter expressed concern that a 120-day approval period is unrealistic for license amendments and recommended it be reduced. Additionally, it was recommended that the 60-day advance notice requirement be changed so companies may enter into Significant or Substantial foreign agreements subject to subsequent approval by NOAA. NOAA does not agree with the recommended changes since these review periods are set by statute and cannot be altered by NOAA through this rule making process. NOAA and the reviewing agencies, however, have taken steps to decrease the amount of time it takes to review and issue decisions concerning the licensing matters addressed by these regulations. As a result of the steps taken, there has been a noticeable reduction in the average amount of time required to make a determination on a licensing action.

## **2. Organization**

Part 960 is organized into four (4) Subparts, discussed in greater detail below:

(a) Subpart A consists of general information about the regulations such as the purpose, scope and definitions;

(b) Subpart B addresses licensing procedures and conditions;

(c) Subpart C describes the prohibitions on operating a remote sensing space system under these regulations; and

(d) Subpart D sets forth the civil penalties available to the agency for noncompliance with these regulations and/or the terms of any license issued pursuant to these regulations.

## **3. Subpart A—General**

*Section 960.1. Purpose.* This section sets forth the purpose of the regulations regarding licensing and regulating the operation of private remote sensing space systems under Title II of the Act and reflects the President's new policy on commercial remote sensing issued on April 25, 2003.

*Section 960.2. Scope.* This section sets forth the legal parameters for application of the Act and these regulations. In addition, this Section makes the regulations applicable with respect to all existing and new licenses. Potential licensees may address questions regarding the applicability of the Act and these regulations to the Assistant Administrator.

Of particular interest is the fact that the Act and these regulations apply to any person subject to the jurisdiction or control of the United States who operates or proposes to operate a private remote sensing space system, either directly or through an affiliate or subsidiary. For the purposes of these regulations, a person is:

(1) An individual who is a United States citizen, or a foreign person subject to the jurisdiction and control of the United States;

(2) A corporation, partnership, association, or other entity organized or existing under the laws of any state, territory, or possession of the United States;

(3) A subsidiary (foreign or domestic) of a U.S. parent company;

(4) An affiliate (foreign or domestic) of a U.S. company; or

(5) Any other private remote sensing space system operator having substantial connections with the United States or deriving substantial benefits from the United States that support its international remote sensing operations sufficient to assert U.S. jurisdiction.

Relevant connections may include: using a U.S. launch vehicle and/or platform; operating a spacecraft command and/or data acquisition or ground remote station in the United States; and processing the data at and/or marketing it from facilities within the United States. Please note that these examples are merely illustrative of the

factors that may be examined in making a jurisdictional determination and are not intended to be all-encompassing.

*Section 960.3. Definitions.* This section defines terms used throughout these regulations, including the following terms:

- (1) Administrative control;
- (2) Significant and substantial foreign agreement;
- (3) Remote sensing space system and
- (4) Operational control.

#### 4. Subpart B—Licenses

License applicants are encouraged to contact the Assistant Administrator or his or her designee at the earliest possible planning stages. Such consultation may reveal design or data collection requirements that may be accommodated early, thereby avoiding changes to system design or data collection characteristics.

*Section 960.4. Application.* This section sets forth license application instructions. Further information regarding the content of the license application has been included in Appendix 1. The agency record will be opened upon the filing of the license application. In general, a license application should contain a complete description of the design of the sensor package. The potential licensee should note that subsequent changes to the design affecting those operational capabilities after a license is awarded may require a license amendment.

*Section 960.5. Confidentiality of information.* This section sets forth NOAA's obligation to keep confidential proprietary information submitted by licensees or potential licensees and imposes a requirement to provide a summary of such information that can be made public. The list of documents considered being business confidential or proprietary information includes foreign agreements and supporting documentation that are explicitly designated and marked as business confidential or proprietary by the submitter.

*Section 960.6. Review Procedures for license applications.* This section describes the application review process. NOAA has made minor modifications to section 960.6(a) to make the wording consistent throughout that section and thereby improve its clarity. In addition, in sections 960.6(b) and (c), NOAA has increased the period of time reviewing agencies have to conduct completeness reviews for license applications from 10 working days to 30 calendar days. The option to extend the completeness review for an additional 10 working days has been eliminated. In addition, as part of the

subsequent interagency review process, a reviewing agency will be required to notify NOAA before the expiration of the 30-day review period if it will be unable to complete its review on time. As is required by the 2000 regulations, an agency must also give a reason for its delay and an estimate of when its review will be completed. These changes reflect the experience of the interagency review process over the past four years. The extension of the initial completeness review period will allow the reviewing agencies additional time to more thoroughly review license applications and supporting documentation, which should reduce the number of follow-up questions to the applicant. These changes, however, will not impact the overall 120-day statutory review period. In addition, section 960.6(e)(2) has been modified to include the correct citation to section 960.6(b).

The February 2, 2000, interagency Memorandum of Understanding Concerning the Licensing of Private Remote Sensing Satellite Systems (MOU), included as Appendix 2 of the regulations, contains timelines concerning completeness reviews that differ from what is proposed above. NOAA, in consultation with the other signatory agencies to the MOU, has determined not to amend the MOU at this time. In those limited cases where the timelines contained in the regulations and MOU differ, the timelines contained in the regulations will govern.

*Section 960.7. Amendments to licenses.* This section enumerates some of the events or conditions which may trigger the requirement for a license amendment. An application for a license amendment must contain all relevant new information and must be filed with the Assistant Administrator. Amendment applications must be filed in accordance with the procedures specified in Section 960.4 and Appendix 1 for original license applications. In Section 960.7(a)(4), the citation to Appendix 1 has been corrected. In addition, consistent with the changes proposed for review of new applications, in sections 960.7(c), (d), and (e), NOAA has increased the period of time reviewing agencies have to conduct completeness reviews on license amendment requests from 10 working days to 30 calendar days.

Please note that for purposes of Section 960.7, the following transactions do not require an amendment to a license. However, they do require agency notification under its monitoring and compliance

requirements in the Annual Compliance Audit:

(1) An acquisition of voting securities pursuant to a stock split or pro rata stock dividend which does not involve a change in administrative control;

(2) An acquisition of convertible voting securities that does not involve acquisition of administrative control;

(3) A purchase of voting securities or comparable interests in a licensee solely for the purpose of investment if, as a result of the acquisition:

(A) When the acquisition is by a foreign person, the foreign person would hold ten percent or less of the outstanding voting securities of the licensee, regardless of the dollar value of the voting securities so acquired and held; or

(B) The purchase is made directly by a bank, trust company, insurance company, pension fund, employee benefit plan, mutual fund, finance company or brokerage company in the ordinary course of business for its own account, provided that a significant portion of that business does not involve the acquisition of entities.

(4) An acquisition of securities by a person acting as a securities underwriter, in the ordinary course of business, and in the process of underwriting;

(5) An acquisition pursuant to a condition in a contract of insurance relating to fidelity, surety, or casualty obligations if the contract was made by an insurer in the ordinary course of business;

(6) An acquisition of a security interest, but not control, in the voting securities or assets of a licensee at the time a loan or other financing is extended; or

(7) An acquisition of voting securities or assets of a U.S. person by a foreign person upon default or other condition, involving a loan or other financing, provided that the loan was made by a syndicate of banks in a loan participation where the foreign lender(s) is/are in the syndicate:

(A) Need(s) the majority consent of the U.S. participants in the syndicate to take action, and cannot on its own initiate any action vis-a-vis the debtor; or

(B) Do/does not have the lead role in the syndicate, and are/is subject to a provision in the loan or financing documents limiting its influence, ownership or administrative control of the debtor.

*Section 960.8. Notification of Foreign Agreements.* This section reflects the balance between promoting the commercial U.S. remote sensing industry and those requirements

imposed by national security concerns, foreign policy and international obligations of the U.S. Government. Specifically, this section establishes the procedures, timelines and criteria for review and approval of a licensee's significant and substantial foreign agreements.

**Section 960.9. License Term.** This section provides that the term of a license for operation of a remote sensing space system is the operational lifetime of the system as long as the system is operated in compliance with the terms and conditions of the license and in accordance with the Act and this Part. In particular, Section 201(b) of the Act authorizes the Secretary to grant licenses to operate a system, only upon a determination that the granting of such license and the operation of the system by the licensee would be consistent with the national security concerns, foreign policy and international obligations of the United States. The requirement set forth in Section 201(b) is an ongoing obligation of the Secretary, and as such, the Secretary must regularly monitor the operation of the system and the activities of the licensee to assure that the national security concerns, foreign policy and international obligations of the U.S. are being protected and that the licensee is in compliance with the requirements of this Act, any regulations issued pursuant to the Act, and the terms and conditions of its license. This section also authorizes the Assistant Administrator to terminate a license if sufficient progress is not being made toward the development and launch of the satellite.

**Section 960.10. Hearings and Appeals.** This section sets forth the administrative appeals mechanism with regard to licensing and enforcement actions.

**Section 960.11. Conditions for Operation.** This section sets forth the conditions for operation of all systems licensed under these regulations and includes NOAA's requirement to protect national security concerns, foreign policy and international obligations of the United States. In furtherance of these obligations, the license contains rigorous conditions on the operation of a system, including the requirement that the licensee maintain operational control of its system from a U.S. territory at all times and incorporate safeguards to ensure the integrity of system operations. In particular, it is important to note that the license requirement imposed on the licensee that it maintain "operational control," as the term is defined in Section 960.3, is an implementation of U.S. obligations

under the United Nations Outer Space Treaty of 1967. That treaty provides that the U.S. Government, as a State party, will be held strictly liable for any U.S. private or governmental entity's actions in outer-space. Consequently, NOAA requires that licensees under this part maintain ultimate control of their systems, in order to minimize the risk of such liability and assure that the national security concerns, foreign policy and international obligations of the United States are protected.

In determining what constitutes operational control, NOAA has moved away from a percentage formula of foreign ownership and has instead imposed a requirement that operational control of the system be based within the territorial jurisdiction of the United States including U.S. territories and protectorates. The Secretary may also examine the level of administrative control of a licensee exercised by foreign investors, including whether the respective controlling investment was a foreign merger, acquisition or takeover of a U.S. company that was reviewed by the Committee on Foreign Investment in the United States (CFIUS) under section 721 of the Defense Production Act.

In addition, Section 960.11 requires the licensee to maintain and make available to the U.S. Government, upon request, various records of operations for the previous year, and allow the Secretary of Commerce or his or her designee to inspect such records at all reasonable times, as described in the license.

As part of the reporting and recordkeeping requirements imposed by the license, the licensee is expected to provide various data as verification of compliance with the operating restrictions detailed in the operating license. In addition, monitoring and compliance requirements are imposed within the license such as quarterly reporting, on-site inspections and appropriate records review.

Section 960.11(b)(13) requires licensees to submit to NOAA a Data Protection Plan that provides information on how the licensee will protect data and information from tasking to dissemination. As NOAA licenses more advanced systems, greater emphasis has been placed on protection of the data.

The license sets forth reporting requirements for both publicly-traded and privately-held companies. Licensees that are registered pursuant to the Securities Exchange Act of 1934 (Exchange Act) may submit copies of their Securities and Exchange Commission (SEC) forms 10-K and 10-Q to fulfill this requirement. Licensees

that are not registered pursuant to the Exchange Act must include, in their quarterly and annual reports, applicable information listed in the SEC's 10K and 10Q forms.

Section 960.11(c) allows licensees to seek waivers of particular license conditions on a case-by-case basis, for good cause shown, and following consultations by NOAA with other interested agencies.

#### *Monitoring and Compliance Program*

Consistent with the requirements outlined in Section 960.11 and NOAA's monitoring and compliance program under these regulations, the following information shall be filed by the licensee, in order to evaluate its compliance with the provisions of its private remote sensing space system license. Data provided must be in sufficient detail to enable the Secretary to determine whether the licensee's actions meet the requirements of the Act, these regulations, and the license. Additional information may be required.

#### *Section I—Annual Compliance Audit*

An on-site audit shall be conducted at least annually, following the issuance of a license, to confirm the licensee's compliance with the national security, foreign policy, and international obligations of the United States and compliance with all other license conditions. This audit shall review, for example, any changes to corporate structure, board membership (including citizenship), ownership, and financial investments. The audit will also include Securities and Exchange Commission filings. In the event that the licensee is not a publicly-traded company, the licensee must provide applicable information required by the SEC in the 10K and 10Q forms. The Annual Compliance Audit will also review agreements which impact the national security, foreign policy and international obligations of the United States, and the concept of operations. Additional information may be required.

#### *Section II—Twelve Months Prior to Launch*

1. Submit plan for agency approval describing how licensee will comply with data collection restrictions, operational limitations, or any data protection plans, as required.

2. Submit operations plan for restricting collection and/or dissemination of imagery of Israeli territory to that which is no more detailed or precise than what will be available from non-U.S. commercial

sources during the time of the licensee's planned operations.

#### Section III—No Later Than Six Months Prior To Launch

1. Submit a data flow diagram which graphically represents the data flow from the sensor to the final product delivery locations.

2. Submit satellite sub-systems drawing showing the various sub-system locations on the satellite.

3. Submit a final imaging system specification document for each sensor. This must be coordinated with the imaging system contractor.

#### Section IV—When the Spacecraft is Declared Operational

Spacecraft designation number.

Orbital altitude.

Orbital inclination.

Spacecraft state of health.

Imaging system state of health.

Spatial Resolution.

Spectral Resolution.

On-orbit absolute geo-positioning accuracy.

Circular Error and Linear Error.

#### Section V—Quarterly Reporting

1. Date, description, and corrective action performed for any anomalies or events which have caused the system to operate outside of license parameters and what action, if any, was performed to return the system to licensed baseline status.

2. Estimated GSD of all images collected and disseminated on the State of Israel.

#### Section VI—Annual Operational Audit and Recordkeeping

In addition to the information required for the Annual Compliance Audit listed in Section I, all records and data from the previous twelve months pertaining to the following will be maintained by the licensee:

1. Spacecraft telemetry.

2. Imaging sensor(s) tasking and associated metadata to include date/time of collection, image number, imager used, image corner points in latitude/longitude, inertial position (x,y,z), scan duration, azimuth. In addition, radar systems will include tasking and assorted meta data for phase history, grazing angle and polarization information.

3. Imagery data purges and purge alerts provided to the National Satellite Land Remote Sensing Data Archive (NSLRSDA).

#### *Purge Notifications to the National Satellite Land Remote Sensing Data Archive*

A licensee is required to notify the NSLRSDA of any data in its possession from its licensed remote-sensing space system that it intends to discard so that the NSLRSDA may acquire such data at the cost of reproduction and delivery.

#### *Unenhanced Data*

When Congress removed the blanket nondiscriminatory data access requirement, it was careful to ensure that access to the unenhanced data would remain consistent with the United Nations' Principles on Remote Sensing, that the government of a sensed state should have timely access to all such data concerning its own territory. Section 202(b)(2) of the 1992 Act requires that all licenses include the condition that the licensee shall make available upon request to the government of any country, including the United States, unenhanced data collected by the system concerning the territory under the jurisdiction of such government on reasonable commercial terms and conditions as soon as such data are available; consistent with the national security concerns, foreign policy and international obligations of the U.S. The regulations incorporate this requirement and consistent with this requirement, NOAA interprets the terms and conditions that are "reasonable" in those cases where the data will not be made available on a nondiscriminatory basis. Making the data available to different classes of customers, e.g. non-commercial scientific and educational users, other public benefit users, commercial end users, and value-added re-distributors, at different prices is reasonable. If a licensee intends to provide its unenhanced data on a restricted or exclusive basis, it becomes more difficult to determine what is "reasonable" vis-a-vis a sensed state. The price of these data, if measured in terms of their value to a particular commercial customer, may be prohibitive to a small government that simply wishes to monitor its own natural resources or to use the data, for example, for purposes of land use planning or to mitigate the effects of a recent natural disaster. On the other hand, the same price may be reasonable if the sensed state intends to use the data for competitive purposes. The reasonable commercial terms and conditions will have to be considered on a case-by-case basis. In any event, the sensed state has the opportunity to demonstrate that the terms result in an undue hardship.

NOAA fully expects that a licensee's obligation to make unenhanced data available to the sensed state will in almost all instances be satisfied as a normal commercial transaction where the government of a sensed state is a regular customer. In those instances where the sensed state has not been able to satisfy its desire to acquire unenhanced data directly from the licensee, the sensed state shall make a formal written request to the Assistant Administrator including the specific information (i.e., geographic location, date) on the unenhanced data it desires to acquire.

#### *Licensing of New or Advanced Systems*

As a general matter, the NOAA license covers the end-to-end operational capability of a remote sensing space system's ability to quantify information that includes, but is not limited to spatial, spectral, temporal, coherence, and polarization properties of reflected, transmitted, or emitted electromagnetic radiation. In issuing licenses for new and advanced technologies that have not previously been licensed by NOAA, NOAA may apply new license conditions to address the unique characteristics and attributes of these systems. For example, NOAA may grant a "two-tiered" license, allowing the licensee to operate its system at one level, available to all users, while reserving the full operational capability of that system for USG or USG-approved customers only. In some cases, the system may have a USG partnership client.

NOAA has licensed synthetic aperture radar and hyperspectral systems. The conditions outlined in Section 960.11 apply to all systems, including licensed synthetic aperture radar and hyperspectral systems. However, in issuing licenses for synthetic aperture radar and hyperspectral systems, conditions or specific limitations may be placed, as necessary, on operational parameters, design characteristics, and data throughput due to national security, foreign policy and international obligations. For synthetic aperture radar systems these include, but are not limited to:

- (1) Resolution in terms of impulse response (IPR);
- (2) Grazing angles;
- (3) Geolocational accuracy;
- (4) Multiple polarization;
- (5) System throughput (i.e., measurement of time during data collection, ground processing, and dissemination);
- (6) Protection of phase history data;
- (7) Location and function of non-U.S. operations centers and stations; and

(8) Protection of all uplinks and downlinks.

For hyperspectral systems these include, but are not limited to:

(1) Spatial and spectral resolution;

(2) Co-registration of hyperspectral data with data provided by other on-board sensors;

(3) Operational wavelengths;

(4) System throughput (i.e., measurement of time during data collection, ground processing, and dissemination);

(5) Protection of remote sensing space system commanding, sensor tasking, and tasking information;

(6) Protection of raw data;

(7) Location and function of non-U.S. operations centers and stations; and

(8) Protection of all uplinks and downlinks.

#### *Reimbursements*

As allowed by Section 507(d) of the Act, if additional technical modifications are imposed on a system operated under a previously granted license, on the basis of national security, the licensee may be reimbursed for those technical modifications.

Generally, conditions in original licenses, previously-granted licenses or amendments that are the result of licensee initiated activities will not be considered for reimbursement. The Assistant Administrator, in consultation with the Secretary of Defense or other appropriate Federal agencies, will determine whether actual modification costs or past development costs (including the cost of capital) incurred by the licensee shall be reimbursed by the government agency or agencies which requested such technical modifications. The costs and terms associated with meeting this condition will be negotiated directly between the licensee and the agency or agencies requesting the technical modifications. The loss of anticipated profits and the cost of security measures imposed on all licensees are not reimbursable.

#### *Kyl-Bingaman Amendment*

Consistent with the requirement that licensees operate their systems in a manner that protects national security concerns, foreign policy and international obligations, Section 1064, Public Law No. 104-201, (the 1997 Defense Authorization Act), referred to as the Kyl-Bingaman Amendment, requires that “[a] department or agency of the United States may issue a license for the collection or dissemination by a non-Federal entity of satellite imagery with respect to Israel only if such imagery is no more detailed or precise than satellite imagery of Israel that is

available from commercial sources.” Pursuant to that law, the Department of Commerce will make a finding as to the level of detail or precision of satellite imagery of Israel available from commercial sources. Moreover, as the statutory limitation applies to U.S. licensees, the term “commercial sources” is interpreted for purposes of these regulations as referring to satellite imagery so readily and consistently available from non-U.S. commercial entities that the availability of additional imagery from U.S. commercial sources may be permitted.

To interpret the term “commercial availability” of imagery of Israel from non-U.S. sources, NOAA looks to regulations of the Commerce Department’s Bureau of Industry and Security, concerning findings on foreign availability for export control purposes, as a model (See 15 CFR 768). These regulations state that “foreign availability exists when the Secretary [of Commerce] determines that an item is comparable in quality to an item subject to U.S. national security export controls, and is available-in-fact to a country, from a non-U.S. source, in sufficient quantities to render the U.S. export control of that item or the denial of a license ineffective.” (See 15 CFR 768.2(a)).

Applying the above approach to implement the Kyl-Bingaman Amendment, the Department of Commerce will monitor the level of imagery resolution readily and consistently available in sufficient quantities from non-U.S. sources, to determine what imaging or data dissemination restrictions, if any, shall apply to licensees. A review of non-U.S. commercial availability will be conducted on an annual basis or more frequently if warranted. Input from licensees or from the general public is welcome to assist in this determination. Findings of this review will be published in the **Federal Register** and will constitute the data collection and/or dissemination restrictions with respect to imagery of Israel.

As part of its licensing process, NOAA will require an applicant to submit a plan explaining how its proposed system will be able to restrict the collection and/or dissemination of imagery of Israeli territory at a level of resolution determined by the Commerce Department. NOAA will review this plan to ensure compliance.

#### *Spacecraft Disposal and Orbital Debris Mitigation Plan*

As an additional licensing requirement, licensees shall, “upon termination of operations under the

license, make disposition of any satellites in space in a manner satisfactory to the President,” in accordance with Section 202(b)(4) of the Act. Under Section 960.11 and the terms and conditions of the license, NOAA has interpreted this requirement to mean that a licensee shall assess and minimize the amount of orbital debris released during the post-mission disposal of its satellite. Applicants are required to provide at the time of application a plan for post-mission disposition of remote sensing satellites.

The U.S. Government has developed orbital debris mitigation practices for use in government missions. These practices include control of orbital debris released during normal operations, minimization of debris generated by accidental explosions, selection of a safe flight profile and operational configuration, and post-mission disposal of space structures. NOAA will make available to applicants background information on three possible methods for post-mission disposal which are consistent with these practices: atmospheric re-entry, maneuvering to a storage orbit, or direct retrieval. NOAA will review an applicant’s plan for post-mission disposal on a case-by-case basis. NOAA will assess whether the plan, including satellite design and components, provide an acceptable post-mission disposal method to mitigate orbital debris and minimize any potential adverse effects. Applicants are specifically required to submit a casualty risk assessment if planned post-mission disposal involves atmospheric re-entry of the spacecraft.

*Section 960.12 Data Policy for Remote Sensing Space Systems.* This section describes various circumstances under which the licensee may be required, consistent with the terms of its license, to make available some or all of the unenhanced data from the system on a nondiscriminatory basis in accordance with Section 501 of the Act. For example, if the U.S. Government has (either directly or indirectly) funded some of the development, fabrication, launch, or operations costs of a licensed system, the Secretary of Commerce or his or her designee, in consultation with other appropriate U.S. agencies, must determine whether the interest of the United States, in promoting widespread availability of remote sensing data, requires that some or all of the unenhanced data from the system be made available on a nondiscriminatory basis in accordance with Section 501 of the Act. In addition, the license must specify any data subject to this requirement.

The Act requires that an operator of a system that can be characterized as essentially a Governmental system, such as the Landsat system and those systems that are substantially funded by the U.S. Government, make its unenhanced data available on a nondiscriminatory basis, but allows the operator of a non-governmental system to follow normal commercial practices unless U.S. interests dictate otherwise. (See Sections 201(e), 202(b)(3), and 501).

Section 960.12 of the regulations implements this provision consistent with the Act's overall objective of making data available to the widest possible spectrum of users, particularly for scientific purposes in support of the public benefit upon reasonable terms and conditions. This section addresses three categories of licensees. The first are those whose development, fabrication, launch, or operations costs have been funded, entirely or in substantial part, directly by the Government. As dictated by the Act, these operators must make their unenhanced data available on a nondiscriminatory basis. This requirement ensures that the data are broadly accessible and is consistent with the basic policy, codified in the Paperwork Reduction Act, 44 U.S.C. 3506 et seq. and included in Office of Management and Budget Circular A-130, that data paid for by the taxpayer is a public benefit to be made equally available to all members of the public. The second category of licensees are those that are fully commercial, i.e., not funded by the Government in whole or in part. These operators will be allowed to follow their preferred commercial data practices, subject to providing the unenhanced data to the governments of those states sensed and consistent with concerns regarding U.S. national security, foreign policy, and international obligations, as discussed below. These licensees will be encouraged to promote access to their data on as widespread a basis as possible and it is anticipated that, in most cases, there will be a commercial incentive to reach a broad customer base. It is recognized that in some cases, some of the data collected by such systems may not become generally accessible. However, NOAA believes that this loss will be outweighed by the substantially greater volume of data that will be collected by a vigorous commercial industry. It should be noted that limited purchases by the U.S. Government, as a normal customer of the licensee, would not constitute funding or support for purposes of this section.

The third category of licensees consists of those systems in which the U.S. Government provides some support. Here, the Government's interest is more significant, because of taxpayer investment and the possible precedential effect of permitting restricted access to the data through international data exchange involving government subsidized public-private ventures. The data policy applicable to these licensees will be determined on a case-by-case basis, balancing the effect on the licensee of limiting its commercial options against the potential benefits of providing widespread access of the data for non-commercial scientific, educational and other public benefit purposes. In evaluating the potential for data loss, NOAA will consider both the data to be gathered by the particular licensee as well as the possible implications for future intergovernmental data exchanges.

It is anticipated that the U.S. Government interest in making the data available can usually be addressed through terms and conditions in the license that do not require a full nondiscriminatory data access policy. For example, it may be possible to accommodate such interests by ensuring access for non-commercial scientific, educational, and other public good purposes, while protecting a licensee's commercial options.

#### 5. Subpart C—Prohibitions

*Section 960.13 Prohibitions.* This section sets forth the prohibitions under these regulations. Under this section, it is unlawful for any person who is subject to the jurisdiction or control of the United States, directly or through any subsidiary or affiliate to, among other things: (a) Operate a system without possession of a valid license issued under the Act and these regulations; (b) violate any provision of the Act, these regulations or any term, condition, or restriction of the license; (c) violate any order, directive, or other notice issued by the Secretary; and/or (d) interfere with the enforcement of this Part. It also requires licensees to update data provided to the Secretary in a timely manner.

#### 6. Subpart D—Enforcement Procedures

Section 960.14 states that any person found to be in violation of the Act, this part, or any license issued under this part, will be subject to the civil penalty provisions prescribed in the Act, these regulations and other applicable laws.

Section 960.15 sets forth detailed procedures to be followed by NOAA

when assessing civil penalties under the Act.

## 7. Appendices

*Appendix 1—Application Information.* This Appendix contains the information requirements of the license application as discussed in Section 960.4. Appendix 2—Fact Sheet Regarding the Memorandum of Understanding Concerning the Licensing of Private Remote Sensing Satellite Systems. The Departments of State, Defense, Interior, and Commerce, and the Intelligence Community, with the participation of OSTP and the NSC, concluded an interagency MOU concerning the Licensing of Private Remote Sensing Space Systems. On February 2, 2000, a Fact Sheet on the Interagency MOU was released. This Fact Sheet is included as Appendix 2.

### Classification

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

These regulations establish a process intended to promote the development of the remote sensing industry and to minimize any adverse impact on any entity, large or small, that may seek a license to operate a private remote sensing space system.

Accordingly, the Chief Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities. The basis for this certification was the fact that, given the extraordinary capitalization required to operate a commercial remote sensing space system, costs of development and launch still remain high. As such, small entities have yet to enter this field and appear highly unlikely to do so. No comments were received regarding this certification. As a result, no final regulatory flexibility analysis was prepared.

B. Paperwork Reduction Act of 1995 (35 U.S.C. 3500 et seq.)

This final rule contains a new collection-of-information requirement subject to the Paperwork Reduction Act (PRA) that will modify the existing collection-of-information requirement that was approved by OMB under control number 0648-0174. This new requirement has been submitted to OMB for approval. Public reporting burden for these requirements are estimated to average: 40 hours for the submission of a license application; 10 hours for the submission of a data protection plan; 5

hours for the submission of a plan describing how the licensee will comply with data collection restrictions; 3 hours for the submission of an operations plan for restricting collection or dissemination of imagery of Israeli territory; 3 hours for submission of a data flow diagram; 2 hours for the submission of satellite sub-systems drawings; 3 hours for the submission of a final imaging system specifications document; 2 hours for the submission of a public summary for a licensed system; 2 hours for the submission of a preliminary design review; 2 hours for the submission of a critical design review; 1 hour for notification of a binding launch services contract; 1 hour for notification of completion of pre-shipment review; 10 hours for the submission of a license amendment; 2 hours for the submission of a foreign agreement notification; 2 hours for the submission of spacecraft operational information submitted when a spacecraft becomes operational; 2 hours for notification of deviation in orbit or spacecraft disposition; 2 hours for notification of any operational deviation; 2 hours for notification of planned purges of information to the National Satellite Land Remote Sensing Data Archive; 3 hours for the submission of an operational quarterly report; 8 hours for an annual compliance audit; 10 hours for an annual operational audit; and 2 hours for notification of the demise of a system or a decision to discontinue system operations. No estimate is being given to provide imagery data to the National Satellite Land Remote Sensing Data Archive. An estimate will be developed at a later date.

The public burden for this collection of information includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Public comment is sought regarding:

Whether this collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspect of the collection of information to Mr. Douglas Brauer, NOAA/NESDIS International and Interagency Affairs Office, at the address noted above and

by e-mail to [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov), or fax to (202) 395-7285.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

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

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

#### D. Executive Order 12866, Regulatory Planning and Review

This rule has been determined to be significant for purposes of Executive Order 12866.

#### List of Subjects in 15 CFR Part 960

Administrative practice and procedure, confidential business information, Penalties, Reporting and record keeping requirements, Satellites, Scientific equipment, Space transportation and exploration.

Dated: April 18, 2006.

**Gregory W. Withee,**

*Assistant Administrator for Satellite and Information Services.*

■ Accordingly, for the reasons set forth above, part 960 of title 15 of the Code of Federal Regulations is revised to read as follows:

### PART 960—LICENSING OF PRIVATE REMOTE SENSING SYSTEMS

#### Subpart A—General

Sec.

960.1 Purpose.

960.2 Scope.

960.3 Definitions.

#### Subpart B—Licenses

960.4 Application.

960.5 Confidentiality of information.

960.6 Review procedures for license applications.

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960.10 Appeals/hearings.

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960.12 Data policy for remote sensing space systems.

#### Subpart C—Prohibitions

960.13 Prohibitions.

#### Subpart D—Enforcement Procedures

960.14 In general.

960.15 Penalties and sanctions.

#### Appendix 1 to Part 960—Filing Instructions and Information To Be Included in the Licensing Application

#### Appendix 2 to Part 960—Fact Sheet Regarding the Memorandum of Understanding Concerning the Licensing of Private Remote Sensing Satellite Systems Dated February 2, 2000

Authority: 15 U.S.C. 5624.

#### Subpart A—General

##### § 960.1 Purpose.

(a) The regulations in this part set forth the procedural and informational requirements for obtaining a license to operate a private remote sensing space system under Title II of the Land Remote Sensing Policy Act of 1992 (15 U.S.C. 5601 *et seq.*) (Public Law 102-555, 106 Stat. 4163) and applicable U.S. Policy, which addresses the U.S. commercial remote sensing satellite industry. (Available from NOAA, National Environmental Satellite Data and Information Service, 1335 East-West Highway, Room 7311, Silver Spring, MD 20910). In addition, this part describes NOAA's regulation of such systems, pursuant to the Act and applicable U.S. Policy. The regulations in this part are intended to:

(1) Preserve the national security of the United States;

(2) Observe the foreign policies and international obligations of the United States;

(3) Advance and protect U.S. national security and foreign policy interests by maintaining U.S. leadership in remote sensing space activities, and by sustaining and enhancing the U.S. remote sensing industry;

(4) Promote the broad use of remote sensing data, their information products and applications;

(5) Ensure that unenhanced data collected by licensed private remote sensing space systems concerning the territory of any country are made available to the government of that country upon its request, as soon as such data are available and on reasonable commercial terms and conditions as appropriate;

(6) Ensure that remotely sensed data are widely available for civil and scientific research, particularly environmental and global change research; and

(7) Maintain a permanent comprehensive U.S. government archive of global land remote sensing data for long-term monitoring and study of the changing global environment.

(b) In accordance with the Act and applicable U.S. Policy, decisions regarding the issuance of licenses and operational conditions (See Subpart B of



this part) will be made by the Secretary of Commerce or his/her designee. Determinations of conditions necessary to meet national security, foreign policy and international obligations are made by the Secretaries of Defense and State, respectively.

(c) In accordance with U.S. Policy, NOAA encourages U.S. companies to build and operate commercial remote sensing space systems whose operational capabilities, products, and services are superior to any current or planned foreign commercial systems. However, because of the potential value of its products to an adversary, the U.S. Government may restrict operations of the commercial systems in order to limit collection and/or dissemination of certain data and products to the U.S. Government or to U.S. Government-approved recipients.

#### § 960.2 Scope.

(a) The Act and the regulations in this part apply to any person subject to the jurisdiction or control of the United States who operates or proposes to operate a private remote sensing space system, either directly or through an affiliate or subsidiary, and/or establishes substantial connections with the United States regarding the operation of a private remote sensing system.

(b) In determining whether substantial connections exist with regard to a specific system, the factors NOAA may consider include, but are not limited to: the location of a system control center or operations centers and stations; the administrative control of the system; use of a U.S. launch vehicle; location or administrative control of ground receiving stations; the investment, ownership, or technology included in the system.

(c) The regulations in this part apply to any action taken on or after May 25, 2006 with respect to any license, and to pre-existing licenses.

(d) If any provision of the regulations in this part or the application thereof to any person or circumstance is held invalid, the validity of the remainder of the regulations in this part or the application of such provision to other persons and circumstances shall not be affected.

(e) Issuance of a license under the regulations in this part does not affect the authority of any Department or Agency of the U.S. Government including, but not limited to, the Federal Communications Commission under the Communications Act of 1934 (47 U.S.C. 151 et seq.), the Department of Transportation under the Commercial Space Launch Act of 1984 (49 U.S.C. app. 2601 et seq.), the Department of

Commerce under the Export Administration Regulations (15 CFR parts 730-774), or the Department of State under the Arms Export Control Act (22 U.S.C. 2778) and the International Traffic in Arms Regulations (22 CFR parts 120-130).

#### § 960.3 Definitions.

For purposes of the regulations in this part, the following terms have the following meanings:

*Act* means the Land Remote Sensing Policy Act of 1992 (Pub. L. 102-555, 106 Stat. 4163) as amended by the 1998 Commercial Space Act (Pub. L. 105-303, 112 Stat. 2846), 15 U.S.C. 5601 et seq.

*Administrative control* means the power or authority, direct or indirect, whether or not exercised through the legal or defacto ownership or possession thereof, ownership of voting securities of a licensee, or by proxy voting, contractual arrangements or other means, to determine, direct or decide matters affecting the operations of the system; specifically, to determine, direct, take, manage, administer, influence, reach, or cause decisions regarding the:

(1) Sale, lease, mortgage pledge, or other transfer of any or all of the system or system control assets of the licensee, whether in the ordinary course of business or not;

(2) Operation of the system(s), including but not limited to orbit maintenance and other housekeeping functions, tasking and tasking prioritization, data acquisition, data storage, data transmission, processing and dissemination;

(3) Dissolution of the licensee;

(4) Closing and/or relocation of the command and control center of the system;

(5) Execution, substantive modification and/or termination or non-fulfillment of any significant or substantial foreign agreement of the licensee regarding direct readout or tasking obligations; or

(6) Amendment of the Articles of Incorporation or constituent agreement of the licensee with respect to the matters described in paragraphs (1) through (4) of this definition.

*Administrator* means the Administrator of NOAA and Under Secretary of Commerce for Oceans and Atmosphere or his/her designee.

*Affiliate* means any person:

(1) Which owns or controls more than a 5% interest in the applicant or licensee; or

(2) Which is under common ownership or control with the applicant or licensee.

*Applicant* means a person who has submitted an application for a NOAA license to operate a remote sensing space system.

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

*Authorized Officer* means an individual designated by the Secretary of Commerce or his/her designee to enforce the regulations in this part.

*Basic data set* means those enhanced data generated by the Landsat system or by any remote sensing space system licensed under the Act that have been selected by the Secretary of the Interior to be maintained in the National Satellite Land Remote Sensing Data Archive, as described in Section 502(c) of the Act.

*Beneficial owner* means any person who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise, has or shares: The right to exercise administrative control over a licensee; and the power to dispose of or to direct the disposition of, any security interest in a license. All securities of the same class beneficially owned by a person, regardless of the form which such beneficial ownership takes, shall be aggregated in calculating the number of shares beneficially owned by such person. A person shall be deemed to be the beneficial owner of a security interest if that person has the right to acquire beneficial ownership, as defined in this definition, within sixty (60) days from acquiring that interest, including, but not limited to, any right to acquire beneficial ownership through: The exercise of any option, warrant or right; the conversion of a security; the power to revoke a trust, discretionary account, or similar arrangement; or the automatic termination of a trust, discretionary account or similar arrangement.

*Data Protection Plan* refers to the licensee's plan to protect data and information through the entire cycle of tasking, operations, processing, archiving and dissemination. At a minimum, this includes appropriate protection of communications links and/or delivery methods for tasking of the satellite, downlinking of data to a ground station (including relay stations), and delivery of data from the satellite to the licensee's central data storage facilities.

*License* means a grant of authority under the Act by the Administrator to a person to operate a private remote-sensing space system.

*Licensee* means a person who holds a NOAA license to operate a remote sensing space system.

*National Satellite Land Remote Sensing Data Archive* means the archive established by the Secretary of the Interior pursuant to the archival responsibilities defined in Section 502 of the Act.

*NOAA* means the National Oceanic and Atmospheric Administration.

*Operate* means to manage, run, authorize, control, or otherwise affect the functioning of a remote sensing space system, directly or through an affiliate or subsidiary. This includes:

- (1) Commanding, controlling, tasking, and navigation of the system; or
- (2) Data acquisition, storage, processing, and dissemination.

*Operational control* means the ability to operate the system or override commands issued by any operations center or station.

*Orbital debris* means all human-generated debris in Earth orbit. This includes, but is not limited to, payloads that can no longer perform their mission, rocket bodies and other hardware (e.g., bolt fragments and covers) left in orbit as a result of normal launch and operational activities, and fragmentation debris produced by failure or collision. Gases and liquids in free state are not considered orbital debris.

*Person* means any individual (whether or not a citizen of the United States) subject to U.S. jurisdiction; a corporation, partnership, association, or other entity organized or existing under the laws of the United States; a subsidiary (foreign or domestic) of a U.S. parent company; an affiliate (foreign or domestic) of a U.S. company; or any other private remote sensing space system operator having substantial connections with the United States or deriving substantial benefits from the United States that support its international remote sensing operations sufficient to assert U.S. jurisdiction as a matter of common law.

*Proprietary information* means any business or trade secrets or commercial or financial information explicitly designated as proprietary or confidential by the submitter, the public release of which would cause substantial harm to the competitive position of the submitter. Once the information is publicly-released by the submitter, it is no longer considered proprietary.

*Remote sensing space system, Licensed system, or System* means any device, instrument, or combination thereof, the space-borne platform upon which it is carried, and any related facilities capable of actively or passively sensing the Earth's surface, including bodies of water, from space by making use of the properties of the

electromagnetic waves emitted, reflected, or diffracted by the sensed objects. For purposes of the regulations in this part, a licensed system consists of a finite number of satellites and associated facilities, including those for tasking, receiving, and storing data, designated at the time of the license application. Small, hand-held cameras shall not be considered remote sensing space systems.

*Secretary* means the Secretary of Commerce.

*Security* means any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral trust certificate, pre-organization certificate or subscription, transferable share, investment contract, voting trust certificate, or certificate of deposit for a security; any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities (including any interest therein or based on the value thereof); any put, call, straddle, option, or privilege entered into a national securities exchange relating to foreign currency; any interest or instrument commonly known as a "security"; or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.

*Significant or Substantial foreign agreement* (also referred to in this part as foreign agreement or agreement) means an agreement with a foreign nation, entity, consortium, or person that provides for one or more of the following:

- (1) Administrative control which may include distributorship arrangements involving the routine receipt of high volumes of the system's unenhanced data;
- (2) Participation in the operations of the system; including direct access to the system's unenhanced data; or
- (3) An equity interest in the licensee held by a foreign nation and/or person, if such interest equals or exceeds or will equal or exceed twenty (20) percent of total outstanding shares, or entitles the foreign person to a position on the licensee's Board of Directors.

*Subsidiary* means a person over which the applicant or licensee may exercise administrative control.

*Tasking* means any action taken to command a remote sensing space system or its sensor to acquire data for transmission or storage on the satellite's recording subsystem. Such action can be in the form of commands sent to the system for execution or for storage in

the satellite's memory for execution at a specified time or location within a given orbit.

*Under Secretary* means the Under Secretary of Commerce for Oceans and Atmosphere and Administrator of NOAA or his/her designee.

*Unenhanced data* means remote sensing signals or imagery products that are unprocessed or subject only to data preprocessing. Data preprocessing may include rectification of system and sensor distortions in remote sensing data as it is received directly from the satellite; registration of such data with respect to features of the Earth; and calibration of spectral response with respect to such data. It does not include conclusions, manipulations, or calculations derived from such data, or a combination of such data with other data. It also excludes phase history data for synthetic aperture radar systems or other space-based radar systems.

*U.S. Policy* means the policy(ies) announced by the President that specifically address U.S. commercial remote sensing space capabilities.

## Subpart B—Licenses

### § 960.4 Application.

No person subject to the jurisdiction and/or control of the United States may operate a private remote sensing space system without a license issued pursuant to this part.

(a) Filing instructions, as well as a list of information to be included in the license application, are included in Appendix 1 of this part.

(b) If information in an application becomes inaccurate or incomplete prior to issuance of the license, the applicant must, within 14 days, file the new or corrected information with the Assistant Administrator. If new or revised information is filed during the application process, the Assistant Administrator shall, within fourteen (14) days, determine whether the deadline imposed by Section 201(c) of the Act and § 960.6(a) must be extended to allow adequate review of the revised application and, if so, for how long.

### § 960.5 Confidentiality of information.

(a) Any proprietary information related to a license application, application for amendment, foreign agreement, or any other supporting documentation submitted to NOAA will be treated as business confidential or proprietary information, if that information is explicitly designated and marked as such by the submitter. This does not preclude the United States Government from citing information in the public domain provided by the

licensee in another venue (e.g., the licensee's Web site or a press release).

(b) Within thirty (30) days of the issuance of a license to operate a remote sensing space system, the licensee shall provide the Assistant Administrator with a publicly-releasable summary of the licensed system. The summary must be submitted in a readily reproducible form accompanied by a copy on electronic media. This summary shall be available for public review at a location designated by the Assistant Administrator and shall include:

(1) The name, mailing address and telephone number of the licensee and any affiliates or subsidiaries;

(2) A general description of the system, its orbit(s) and the type of data to be acquired; and

(3) The name and address upon whom service of all documents may be made.

#### **§ 960.6 Review procedures for license applications.**

The following procedures are consistent and have been harmonized with those procedures, including time lines, described in the Fact Sheet, at Appendix 2 of this part, which governs in lieu of this section and §§ 960.7 and 960.8 with respect to the process for reaching determinations of conditions necessary to meet national security, international obligations and foreign policy and which is outside the scope of the regulations in this part.

(a) The Assistant Administrator shall, within three (3) working days of receipt of an application, forward a copy of the application to the Department of Defense, the Department of State, the Department of the Interior, and any other Federal agencies determined to have a substantial interest in the license application. The Assistant Administrator shall advise such agencies of the deadline prescribed by paragraph (b) of this section to require additional information from the applicant. The Assistant Administrator shall make a determination on the application, in accordance with the Act and section 960.1(b), within 120 days of its receipt. If a determination has not been made within 120 days, the Assistant Administrator shall inform the applicant of any pending issues and any action required to resolve them.

(b) The reviewing agencies have thirty (30) days from receipt of application to notify the Assistant Administrator in writing whether the application omits any of the information listed in Appendix 1 of this part or whether additional information may be necessary to complete the application. This notification shall state the specific reasons why the additional information

is sought. The Assistant Administrator shall then notify the applicant, in writing, what information is required to complete the license application. The 120-day review period prescribed in Section 201(c) of the Act will be stopped until the Assistant Administrator determines that the license application is complete.

(c) Within thirty (30) days of receipt of a complete application, as determined by the Assistant Administrator, each Federal agency consulted in paragraph (a) of this section shall recommend, in writing, to the Assistant Administrator approval or disapproval of the application in writing. If a reviewing agency is unable to complete its review in thirty (30) days, it is required to notify NOAA prior to the expiration of the interagency review period, in writing, of the reason for its delay and provide an estimate of additional time necessary to complete the review.

(d) If the license application is denied, the Assistant Administrator shall provide the applicant with written notification along with a concise statement of the facts in the record determined to support the denial. This denial will be considered final agency action twenty-one (21) days after the date the notice was mailed, unless the applicant files an appeal, as provided in § 960.10.

(e) The Assistant Administrator shall terminate the license application review process if:

(1) The application is withdrawn before the decision approving or denying it is issued; or

(2) The applicant, after receiving a request for additional information pursuant to paragraph (b) of this section, does not provide such information within the time stated in the request.

(f) No license shall be granted by the Secretary unless the Secretary determines, in writing, that the applicant will comply with the requirements of the Act, any regulations issued pursuant to the Act, and that the granting of such license and the operation of the license and system by the licensee would be consistent with the national security interest, foreign policy and international obligations of the United States.

#### **§ 960.7 Amendments to licenses.**

(a) Prior to taking any of the following actions a licensee must obtain an amendment to the license:

(1) Assignment of any interest in or transfer of the license from one entity to another, renaming, or any change in identity of the license holder;

(2) Change in or transfer of administrative control;

(3) Change of operational control; or

(4) Deviation from orbital characteristics, performance specifications, data collection and exploitation capabilities, operational characteristics identified under Appendix 1. of this part, or any other change in license parameters.

(b) Applications for an amendment to an existing license shall contain all relevant new information and shall be filed at the same address identified in Appendix 1 of this part. Amendment applications shall be filed in accordance with the procedures in § 960.4 and Appendix 1 of this part for original license applications.

(c) The Assistant Administrator shall, within three (3) working days of receipt of an application for amendment, forward a copy of the application to the Department of Defense, the Department of State, the Department of the Interior, and any other Federal agencies determined to have a substantial interest in the application. The Assistant Administrator shall advise such agencies of the deadline prescribed by paragraph (d) of this section to require additional information from the licensee. The Assistant Administrator shall make a determination on the application, in accordance with the Act and § 960.1(b), within 120 days of its receipt. If a determination has not been made within 120 days, the Assistant Administrator shall inform the licensee of any pending issues and any actions necessary to resolve them.

(d) The reviewing agencies have thirty (30) days from receipt of the application for amendment to notify the Assistant Administrator in writing whether the request omits any of the information listed in Appendix 1 of this part or whether additional information may be necessary to complete the request. This notification shall state the specific reasons why the additional information is sought. The Assistant Administrator shall then notify the licensee, in writing, what information is required to complete the application. The 120-day review period prescribed in Section 201(c) of the Act will be stopped until the Assistant Administrator determines that the application request is complete.

(e) Within thirty (30) days of receipt of a complete application for amendment, as determined by the Assistant Administrator, each Federal agency consulted in paragraph (c) of this section shall recommend, in writing, to the Assistant Administrator approval or disapproval of the application. If a reviewing agency is unable to complete its review in thirty (30) days, it is

required to notify NOAA prior to the expiration of the interagency review period, in writing, of the reason for its delay and provide an estimate of additional time necessary to complete the review.

(f)(1) When the licensee is seeking an amendment in order to transfer administrative control or change in the participation of the operations of the system to a foreign person or nation, pursuant to paragraph (a)(2) of this section, the licensee must provide the following information:

(i) The identity, residence and citizenship of the foreign person(s) or nation(s) who will acquire control;

(ii) The licensee's proposed plan to ensure that the licensee will protect the operational control of the licensed system from foreign influence and prevent technology transfer that would adversely impact national security, foreign policy or international obligations; and

(iii) Such additional information as the Assistant Administrator may prescribe as necessary or appropriate to protect the national security, foreign policy or international obligations of the United States.

(2) Such an application for amendment will be reviewed to determine whether the foreign person(s) or nation(s) that will exercise administrative control of the licensee will take no action that impairs the national security interests, foreign policy or international obligations of the United States.

(g) If the application for amendment is denied, the Assistant Administrator shall provide the licensee with written notification along with a concise statement of the facts in the record determined to support the denial. This denial will be considered final agency action twenty-one (21) days after the date the notice was mailed, unless the licensee files an appeal, as provided in § 960.10.

(h) The Assistant Administrator shall terminate the application for amendment review process if:

(1) The application is withdrawn before the decision approving or denying it is issued; or

(2) The licensee, after receiving a request for additional information pursuant to paragraph (d) of this section, does not provide such information within the time stated in the request.

#### § 960.8 Notification of foreign agreements.

Licensees must notify the Assistant Administrator of any significant or substantial agreement that they intend to enter into with any foreign nation,

entity, or consortium, not later than sixty (60) days prior to concluding the agreement.

(a) Upon notification by a licensee, pursuant to § 960.11(b)(5), the Assistant Administrator shall initiate review of the proposed agreement in light of the national security interests, foreign policy and international obligations of the U.S. Government.

(b) The Assistant Administrator shall, within three (3) working days of receipt of a proposed foreign agreement, forward a copy of the foreign agreement to the Department of Defense, the Department of State, the Department of the Interior, and any other Federal agencies determined to have a substantial interest in the foreign agreement. The Assistant Administrator, in consultation with other appropriate agencies, will review the proposed foreign agreement. As part of this review, the Assistant Administrator will ensure that the proposed foreign agreement contains the appropriate provisions to ensure compliance with all requirements concerning national security interests, foreign policy and international obligations under the Act or the licensee's ability to comply with the Act, these regulations and the terms of the license. These requirements include:

(1) The ability to implement, as appropriate, restrictions on the foreign party's acquisition and dissemination of imagery as imposed by the license or by the Secretary;

(2) The obligations of the licensee to provide access to data for the National Satellite Land Remote Sensing Data Archive; and

(3) The obligations of the licensee to convey to the foreign party the license's reporting and recordkeeping requirements and to facilitate any monitoring and compliance activities identified in the license.

(c) Within thirty (30) days of receipt of the proposed agreement, other agencies reviewing the agreement will notify the Assistant Administrator that the proposed agreement sufficiently addresses the requirements in paragraph (b) of this section or identify what changes will need to be made to the agreement to meet these requirements.

(d)(1) Within sixty (60) days of notification by the licensee, if the Assistant Administrator determines that a proposed agreement will impair his or her ability to enforce the Act, or the licensee's ability to comply with the Act, these regulations, or the terms or conditions of the license, the licensee will be notified which terms and conditions of the license are affected

and, specifically, how the agreement impairs their enforcement.

(2) The proposed agreement may not be implemented by the licensee until the licensee has been advised by the Assistant Administrator that the provisions of the proposed agreement are acceptable.

(e) The licensee is required to provide NOAA a signed copy of the foreign agreement within thirty (30) days of signature.

(f) Following approval of the agreement, if the factual circumstances surrounding this transaction change, the licensee must notify NOAA within twenty-one (21) days of the change. The licensee's failure to notify NOAA in a timely manner may result in penalties for noncompliance being levied, pursuant to Section 203(a)(3) of the Act.

(g) A licensee seeking to enter into a foreign agreement that would require the modification of the terms of an existing license shall also submit a license amendment request and the proposed foreign agreement shall be considered in the context of the amendment review process.

#### § 960.9 License term.

(a) Each license for operation of a system shall be valid for the operational lifetime of the system or until the Secretary determines that the licensee is not in compliance with the requirements of the Act, the regulations issued pursuant to the Act, the terms and conditions of the license, or that the licensee's activities or system operations are not consistent with the national security, foreign policy and international obligations of the United States.

(b) The licensee shall notify the Assistant Administrator within seven (7) days of financial insolvency, dissolution, the demise of its system or of its decision to discontinue system operation. Upon notification, the Assistant Administrator will terminate the license. However, termination will not affect the obligations of the licensee with regard to provisions in its license, requiring the licensee to:

(1) Provide data to the National Satellite Land Remote Sensing Data Archive for the basic data set;

(2) Make data available to the National Satellite Land Remote Sensing Data Archive that the licensee intends to purge from its holdings;

(3) Make data available to a sensed state; and

(4) Restrict acquisition and dissemination of imagery as imposed by the license or by the Secretary; and

(5) Manage the re-entry segment, including but not limited to, the disposal of the system.

(c) The licensee shall notify the Assistant Administrator that specific actions leading to the development and operation of the licensed remote sensing space system have been completed. If the Assistant Administrator determines that a licensee has not completed such actions with respect to a licensed system, he/she may terminate the license. The actions required to be taken and associated timelines are as follows:

(1) Presentation to NOAA of the following formal review materials within five (5) years of the license issuance:

- (i) Preliminary Design Review, and
- (ii) Critical Design Review.

(2) Licensee certification to NOAA of the following milestones within five (5) years of the Critical Design Review:

- (i) Execution of a binding contract for launch services, and
- (ii) Completion of the pre-ship review of the remote sensing payload.

(3) Remote sensing space systems currently licensed by NOAA will have five (5) years from the effective date of these regulations to meet the milestones in Section 960.9(c)(1).

#### § 960.10 Appeals/hearings.

(a) An applicant or licensee may submit a written appeal to the Administrator involving the granting, denial, or conditioning of a license; a license amendment; a foreign agreement; or enforcement action under this part. The appeal must state the action(s) appealed, must set forth a detailed explanation of the reasons for the appeal, and must be submitted within twenty-one (21) days of the action appealed. The appellant may request a hearing on the appeal before a designated hearing officer.

(b) The hearing shall be held no later than thirty (30) days after receipt of the appeal, unless the hearing officer extends the time. The appellant and other interested persons may appear personally or by counsel and submit information and present arguments, as determined appropriate by the hearing officer. Hearings may be closed to the public as necessary to protect classified or proprietary information. Hearings shall be transcribed, and transcripts made available to the public, as required by statute. Classified and proprietary information shall not be included in the public transcripts. Within thirty (30) days of the conclusion of the hearing, the hearing officer shall recommend a decision to the Administrator.

(c) The hearing requested under paragraph (a) of this section may be

granted unless the issues being appealed involve the conduct of military or foreign affairs functions. Determinations concerning limitations on data collection or distribution, license conditions, or enforcement actions necessary to meet national security concerns, foreign policies or international obligations are not subject to a hearing under this Section. A determination to deny an appeal/hearing on this basis shall constitute final agency action.

(d) The Administrator may adopt the hearing officer's recommended decision or may reject or modify it. The Administrator will notify the appellant of the decision, and the reason(s) therefore, in writing, within thirty (30) days of receipt of the hearing officer's recommended decision. The Administrator's action shall constitute final Agency action.

(e) Any time limit prescribed in this section may be extended for a period not to exceed thirty (30) days by the Administrator for good cause, upon his/her own motion or written request from the appellant.

(f) The licensee shall be entitled to an expedited hearing on the review of a foreign agreement if the request is filed with the Administrator within seven (7) days of the date of mailing of the Assistant Administrator's notice under § 960.8(d)(1). The request shall set forth the licensee's response to the determinations contained in the notice, and demonstrate that the time necessary to complete the normal hearing process will jeopardize the agreement.

(1) Expedited hearings shall commence within five (5) days after the filing of the request with the Administrator unless the Administrator or the hearing officer postpones the date of the hearing or the parties agree that it shall commence at a later time.

(2) Within five (5) days of the conclusion of the hearing, the hearing officer shall prepare findings and conclusions for consideration by the Administrator.

(3) Within fourteen (14) days after receipt of such material, the Administrator shall issue his/her findings and conclusions and a statement of the reasons on which they are based. This decision constitutes final agency action.

#### § 960.11 Conditions for operation.

(a) Each license issued for the operation of a system shall require the licensee to comply with the Act and the regulations in this part. The licensee shall ensure that its license information is kept current and accurate. A licensee's failure to notify NOAA in a

timely manner of any changes to that information on which the determination to issue the license or a subsequent licensing action was or will be made may result in penalties for noncompliance being levied, pursuant to Section 203(a)(3) of the Act

(b) The following conditions, as a minimum, shall be included in all licenses:

(1) The licensee shall operate its system in a manner that preserves the national security and observes the foreign policy and international obligations of the United States. Specific limitations on operational performance, including, but not limited to, limitations on data collection and dissemination, as appropriate, will be specified in each license.

(2) The licensee shall maintain operational control from a location within the United States at all times, including the ability to override all commands issued by any operations centers or stations.

(3) The licensee will maintain and make available to the Assistant Administrator records of system tasking, operations and other data as specified in the license for the purposes of monitoring and compliance. Periodic reporting and record keeping requirements will be specified in the license. The licensee shall allow the Assistant Administrator access, at all reasonable times, to all facilities which comprise the remote sensing space system for the purpose of conducting license monitoring and compliance inspections.

(4) The licensee may be required by the Secretary to limit data collection and/or distribution by the system as determined to be necessary to meet significant national security or significant foreign policy concerns, or international obligations of the United States, in accordance with the procedures set forth in the Interagency MOU Fact Sheet found in Appendix 2 of this part. During such limitations, the licensee shall, on request, provide unenhanced restricted images on a commercial basis exclusively to the U.S. Government using U.S. government-approved rekeyable encryption on the down-link and shall use a data down-link format that allows the U.S. Government access to these data during such periods.

(5) A licensee shall notify the Assistant Administrator of its intent to enter into any significant or substantial foreign agreement, and shall submit this agreement for review in accordance with § 960.8. The proposed agreement may not be implemented by the licensee until the licensee has been advised by

the Assistant Administrator that the document's provisions are acceptable.

(i) Notification of any agreement that provides for an on-going or a continuous relationship serves as notification of specific transactions carried out within the scope of that agreement for purposes of the regulations in this part and the Act. Such notification does not relieve a licensee of any obligation under any other laws including U.S. export laws or regulations to secure necessary U.S. Government authorizations and/or licenses, to provide notification, or to comply with other requirements.

(ii) A licensee seeking to enter a foreign agreement that would require the modification of the terms of an existing license shall submit a license amendment, as provided in § 960.7.

(6) In accordance with Section 201(e) of the Act and § 960.12, a licensee shall make available on reasonable commercial terms and conditions, in accordance with the Act and § 960.12, any unenhanced data designated by the Assistant Administrator.

(7) A licensee shall provide to the U.S. Government, upon request, a complete list of all archived, unenhanced data which has been generated by its licensed system which is not already maintained in a public catalog. Any information on this list which is deemed proprietary by the licensee should be so noted by the licensee when the list is provided to the U.S. Government.

(8) A licensee shall make available unenhanced data requested by the Department of the Interior on reasonable cost terms and conditions as agreed by the licensee and the Department of the Interior. After the expiration of any exclusive right to sell, or after an agreed amount of time, the Department of Interior shall make these data available to the public at the cost of fulfilling user requests.

(9) Before purging any licensed data in its possession, the licensee shall offer such data to the National Satellite Land Remote Sensing Data Archive at the cost of reproduction and transmission. The Department of the Interior shall make these data available immediately to the public at the cost of fulfilling user requests.

(10) A licensee shall make available to the government of any country (including the United States) upon request by that government, unenhanced data collected by its system concerning the territory under the jurisdiction of such government. The data shall be provided as soon as the licensee is able to distribute the data commercially or as soon as the licensee has processed them into a format that

the licensee uses for its own purposes, whichever occurs sooner, on reasonable terms and conditions. However, no data shall be provided to the sensed state if such release is contrary to U.S. national security concerns, foreign policy or international obligations or is otherwise prohibited by law, e.g. where transactions with the sensed state are prohibited by the laws of the United States. The U.S. Government may require, as a specific license condition, coordination with NOAA prior to fulfilling specific sensed state requests for unenhanced data.

(11) A licensee shall inform the Assistant Administrator immediately of any operational deviation or proposed deviation of the system which would violate the conditions of the license. If advance notice is not possible because of an emergency posing an imminent and substantial threat to human life, property, the environment or the system itself, the licensee shall notify the Assistant Administrator of the deviation as soon as circumstances permit.

(12) A licensee shall dispose of any satellites operated by the licensee upon termination of operations under the license in a manner satisfactory to the President. The licensee shall obtain approval from the Assistant Administrator of all plans and procedures for the disposition of satellites as part of the application process.

(13) The licensee shall submit a Data Protection Plan to the Assistant Administrator for review and approval. The licensee's Data Protection Plan shall contain the process to protect data and information throughout the entire cycle of tasking, operations, processing, archiving and dissemination.

(i) If the operating license restricts the distribution of certain data and imagery to the U.S. Government or U.S. Government-approved customers, including data whose public distribution is limited for 24 hours after collection, the Data Protection Plan should also provide for secure delivery of restricted data and imagery to U.S. Government-approved customer facilities.

(ii) Communications links that may require protection include, but are not limited to: Telemetry, tracking and commanding; narrowband and wideband data, including satellite platform and sensor data, imagery, and metadata; and terrestrial delivery methods including electronic and physical package delivery.

(iii) The licensee's Data Protection Plan must be approved by NOAA before the licensee's remote sensing space system may be launched. NOAA

encourages the licensee's early submission and review of the Data Protection Plan to avoid any negative impacts on its system's development and launch schedule.

(iv) The Assistant Administrator may require the licensee to revise its Data Protection Plan if the system is altered from what was originally licensed.

(14) A license is not an asset of the licensee and shall not be mortgaged, sold or pledged as collateral.

(c) The Assistant Administrator may waive any of the conditions in § 960.11(b) upon a showing of good cause and following consultations with the appropriate agencies.

#### **§ 960.12 Data policy for remote sensing space systems.**

(a) In accordance with the Act, if the U.S. Government has or will directly fund all or a substantial part of the development, fabrication, launch, or operation costs of a licensed system, the license shall require that all of the unenhanced data from the system be made available on a nondiscriminatory basis except on the basis of national security, foreign policy or international obligations.

(b) If the U.S. Government has not funded and will not fund, either directly or indirectly, any of the development, fabrication, launch, or operations costs of a licensed system, the licensee may provide access to its unenhanced data in accordance with reasonable commercial terms and conditions, subject to the requirement of providing data to the government of any sensed state, pursuant to § 960.11(b)(10).

(c) If the U.S. Government has (either directly or indirectly) funded some of the development, fabrication, launch, or operations costs of a licensed system, the Assistant Administrator, in consultation with other appropriate U.S. agencies, shall, subject to national security concerns, determine whether the interest of the United States in promoting widespread availability of remote sensing data on reasonable cost terms and conditions requires that some or all of the unenhanced data from the system be made available on a nondiscriminatory basis in accordance with the Act. The license shall specify any data subject to this requirement. In making this determination, the Assistant Administrator may consider:

(1) The extent and proportion of private and Federal funding of the system;

(2) The extent of the governmental versus the commercial market for the unenhanced data;

(3) The effect of a nondiscriminatory data access designation on the applicant's commercial activity;

(4) The extent to which the applicant's proposed commercial data policies would encourage foreign operators to limit access, particularly for research and public benefit purposes; or

(5) The extent to which the U.S. interest in promoting widespread data availability can be satisfied through license conditions that ensure access to the data for non-commercial scientific, educational, or other public benefit purposes.

### Subpart C—Prohibitions

#### § 960.13 Prohibitions.

It is unlawful for any person who is subject to the jurisdiction or control of the United States, directly or through any subsidiary or affiliate to:

(a) Operate a private remote sensing space system in such a manner as to jeopardize the national security or foreign policy and international obligations of the United States;

(b) Operate a private remote sensing space system without possession of a valid license issued under the Act and/or the regulations in this part;

(c) Operate a private remote sensing space system in violation of the terms and conditions of the license issued for such system under the Act and the regulations in this part;

(d) Violate any provision of the Act or the regulations in this part or any term, condition, or restriction of the license;

(e) Violate or fail to comply with any order, directive, or notice issued by the Secretary or his/her designee, pursuant to the Act and/or the regulations in this part, with regard to the operation of the licensed private remote sensing space system;

(f) Fail or refuse to provide to the Secretary or his/her designee in a timely manner, all reports and/or information required to be submitted to the Secretary under the Act or the regulations in this part;

(g) Fail to update in a timely manner, the information required to be submitted to the Secretary in the license application; or

(h) Interfere with the enforcement of this part by:

(1) Refusing to permit access by the Secretary or his/her designee to any facilities which comprise the remote sensing space system for the purposes of conducting any search or inspection in connection with the enforcement of the regulations in this part;

(2) Assaulting, resisting, opposing, impeding, intimidating, or interfering with any authorized officer in the

conduct of any search or inspection performed under the regulations in this part;

(3) Submitting false information to the Secretary, his/her designee or any authorized officer; or

(4) Assaulting, resisting, opposing, impeding, intimidating, harassing, bribing, or interfering with any person authorized by the Secretary or his/her designee to implement the provisions of the regulations in this part.

### Subpart D—Enforcement Procedures

#### § 960.14 In general.

(a) The Secretary shall conduct such enforcement activities as are necessary to carry out his/her obligations under the Act.

(b) Any person who is authorized to enforce the regulations in this part may:

(1) Enter, search and inspect any facility suspected of being used to violate the regulations in this part or any license issued pursuant to the regulations in this part and inspect and seize any equipment or records contained in such facility;

(2) Seize any data obtained in violation of the regulations in this part or any license issued pursuant to the regulations in this part;

(3) Seize any evidence of a violation of the regulations in this part or of any license issued pursuant to the regulations in this part;

(4) Execute any warrant or other process issued by any court of competent jurisdiction; and

(5) Exercise any other lawful authority.

#### § 960.15 Penalties and sanctions.

As authorized by Section 203(a) of the Act, if the Secretary or his/her designee determines that the licensee has substantially failed to comply with the Act, the regulations in this part, or any term, condition or restriction of the license, the Secretary or his/her designee may request the appropriate U.S. Attorney to seek an order of injunction or similar judicial determination from the U.S. District Court for the District of Columbia Circuit or a U.S. District Court within which the licensee resides or has its principal place of business, to terminate, modify, or suspend the license, and/or to terminate licensed operations on an immediate basis.

(a) In addition, any person who violates any provision of the Act, any license issued there under, or the regulations in this part may be assessed a civil penalty by the Secretary of not more than \$10,000 for each violation. Each day of operation in violation

constitutes a separate violation. Civil penalties will be assessed in accordance with the procedures contained in paragraphs (b) through (g) of this section.

(b) A notice of violation and assessment (NOVA) will be issued by NOAA and served personally or by registered or certified mail, return receipt requested, upon the licensee alleged to be subject to a civil penalty.

(1) The NOVA will contain:

(i) A concise statement of the facts believed to show a violation;

(ii) A specific reference to the provisions of the Act, regulation, license, agreement, or order allegedly violated;

(iii) The findings and conclusions upon which NOAA based the assessment;

(iv) The amount of the civil penalty assessed; and

(v) An explanation of the licensee's rights upon receipt of the NOVA.

(2) In assessing a civil penalty, NOAA will take into account information available to the Agency concerning any factor to be considered under the Act and implementing regulations, and any other information that justice or the purposes of the Act require.

(3) The NOVA may also contain a proposal for compromise or settlement of the case.

(4) The NOVA may also contain a request for the licensee to cease and desist operations which are in violation of the Act, regulations, license, agreement, or order. If the NOVA contains such a request, it will advise the licensee:

(i) Of the amount of time the licensee has to cease and desist the violation. The amount of time will be decided on a case-by-case basis at the sole discretion of the Agency.

(ii) If the licensee fails to respond or comply with NOAA's request, an injunction or other judicial relief may be sought.

(iii) Paragraph (c) of this section applies only to those parts of the NOVA assessing monetary penalties.

(c) The licensee has 14 days from receipt of the NOVA to respond. During this time:

(1) The licensee may accept the penalty or compromise penalty, if any, by taking the actions specified in the NOVA.

(2) The licensee may request a hearing under section 960.10.

(3) The licensee may request an extension of time to respond. NOAA may grant an extension of up to 14 days unless it is determined that the requester could, exercising reasonable diligence, respond within the 14-day

period. A telephonic response to the request is considered an effective response, and will be followed by written confirmation.

(4) The licensee may take no action, in which case the NOVA becomes final in accordance with paragraph (d) of this section.

(d) If no request for hearing is timely filed as provided in § 960.10, the NOVA becomes effective as the final administrative decision and order of NOAA on the 30th day after service of the NOVA or on the last day of any delay period granted. If a request for hearing is timely filed in accordance with § 960.10, the date of the final administrative decision is as provided in that section.

(e) The licensee must make full payment of the civil penalty assessed within 30 days of the date upon which the assessment becomes effective as the final administrative decision and order of NOAA under paragraph (d) of this section or § 960.10.

(1) Payment must be made by mailing or delivering to NOAA at the address specified in the NOVA a check or money order made payable in United States currency in the amount of the assessment to the "Treasurer of the United States," or as otherwise directed.

(2) Upon any failure to pay the civil penalty assessed, NOAA may request the Justice Department to recover the amount assessed in any appropriate district court of the United States, or may act under paragraph (f) of this section.

(f) NOAA, in its sole discretion, may compromise, modify, remit, or mitigate, with or without conditions, any civil penalty imposed.

(1) The compromise authority of NOAA under this section is in addition to any similar authority provided in any applicable statute or regulation, and may be exercised either upon the initiative of NOAA or in response to a request by the alleged violator or other interested person. Any such request should be sent to NOAA at the address specified in the NOVA.

(2) Neither the existence of the compromise authority of NOAA under this section nor NOAA's exercise thereof at any time changes the date upon which an assessment is final or payable.

(g) Factors to be taken into consideration when assessing a penalty may include the nature, circumstances, extent, and gravity of the alleged violation; the licensee's degree of culpability; any history of prior offenses; and such other matters as justice may require.

### Appendix 1 to Part 960—Filing Instructions and Information To Be Included in the Licensing Application

Prospective applicants are encouraged to contact NOAA for a non-binding preconsultation prior to filing an application or other licensing actions.

(a) *Where to file.* Applications and all related documents shall be filed with the Assistant Administrator, National Environmental Satellite, Data and Information Service (NESDIS), NOAA, Department of Commerce, 1335 East West Highway, Silver Spring, Maryland 20910.

(b) *Form.* No particular form is required but each application must be in writing, must include all of the information specified in this subpart, and must be signed by an authorized principal executive officer. In addition, applicants must submit a copy on electronic media using commonly-available commercial word processing software.

(c) *Number of copies.* One (1) copy of each application must be submitted in a readily reproducible form accompanied by a copy on electronic media.

(d) The following information shall be filed by the applicant in order to evaluate its suitability to hold a private remote sensing space system license. Data provided regarding the applicant's proposed remote sensing space system must be in sufficient detail to enable the Secretary to determine whether the proposal meets requirements of the Act.

#### Sec. I Corporate Information

(1) The name, street address and mailing address, telephone number and citizenship(s) of (as applicable):

(i) Applicant as well as any affiliates or subsidiaries;

(ii) Chief executive officer of the applicant and each director;

(iii) Each general corporation partner;

(iv) All executive personnel or senior management of a partnership;

(v) Any directors, partners, executive personnel or senior management who hold positions with or serve as consultants for any foreign nation or person;

(vi) Each domestic beneficial owner of an interest equal to or greater than 10 percent in the applicant;

(vii) Each foreign owner of an interest equal to or greater than 5 percent in the applicant;

(viii) Each foreign lender and amount of debt where foreign indebtedness exceeds 25 percent of an applicant's total indebtedness;

(ix) A person upon whose service of all documents may be made.

(2) A description of any significant or substantial agreements between the applicant, its affiliates and subsidiaries, with foreign nation or person, including copies if available;

(3) A copy of the charter or other authorizing instrument certified by the jurisdiction in which the applicant is incorporated or organized and authorized to do business.

#### Sec. II Launch Segment Information

Provide the characteristics of the launch segment to include:

- (1) Proposed launch schedule;
- (2) Proposed launch vehicle source;
- (3) Proposed launch site;
- (4) Anticipated operational date;
- (5) The range of orbits and altitudes (nominal apogee and perigee);
- (6) Inclination angle;
- (7) Orbital period.

#### Sec. III Space Segment

(1) The name of the system and the number of satellites which will compose this system;

(2) Technical space system information at the level of detail typical of a request for proposal specification (including sensor type; spatial and spectral resolution; pointing parameters, etc.);

(3) Anticipated best theoretical resolution (show calculation);

(4) Swath width of each sensor (typically at nadir);

(5) The various fields of view for each sensor (IFOV, in-track, cross-track);

(6) On-board storage capacity;

(7) Navigation capabilities—GPS, star tracker accuracies;

(8) Time-delayed integration with focal plane;

(9) Oversampling capability;

(10) Image motion parameters—linear motion, drift; aggregation modes;

(11) Anticipated system lifetime.

#### Sec. IV Ground Segment

(1) The system data collection and processing capabilities proposed including but not limited to: Tasking procedures; scheduling plans; data format (downlinked and distributed data); timeliness of delivery; ground segment information regarding the location of proposed operations centers and stations, and tasking, telemetry and control; data distribution and archiving plans;

(2) The command (uplink and downlink) and mission data (downlink) transmission frequencies and system transmission (uplink and downlink) footprint, the downlink data rate, any plans for communications crosslinks;

(3) The plans for protection of uplink, downlink and any data links;

(4) The methods applicant will use to ensure the integrity of its operations, including plans for: Positive control of the remote sensing space system and relevant operations centers and stations; denial of unauthorized access to data transmissions to or from the remote sensing space system; and restriction of collection and/or distribution of unenhanced data from specific areas at the request of the U.S. Government.

#### Sec. V Other Information

A. The applicant's plans for providing access to or distributing the unenhanced data generated by the system including:

(1) A description of the plan for the sale and distribution of such data;

(2) The method for making the data available to governments whose territories have been sensed;

(3) A description of the plans for making data requested and purchased by the Department of the Interior available to the National Satellite Land Remote Sensing Data Archive for inclusion in the basic data set; and



(4) The licensee's plans to make the data available for non-commercial scientific, educational, or other public benefit purposes, such as the study of the changing global environment.

B. If the applicant is proposing to follow a commercial data distribution and pricing policy as provided for by § 960.12, the application shall include the following additional financial information:

(1) The extent of the private investment in the system;

(2) The extent of any direct funding or other direct assistance which the applicant or its affiliates or subsidiaries have received or anticipate receiving from any agency of the U.S. Government for the development, fabrication, launch, or operation of the system including direct financial support, loan guarantees, or the use of U.S. Government equipment or services;

(3) Any existing or anticipated contract(s) between the applicant, affiliate, or subsidiary and U.S. Government agencies for the purchase of data, information, or services from the proposed system;

(4) Any other relationship between the applicant, affiliate, or subsidiary and the U.S. Government which has supported the development, fabrication, launch, or operation of the system; and

(5) Any plans to provide preferred or exclusive access to the unenhanced data to any particular user or class of users.

C. The applicant will submit a plan for post-mission disposition of any remote-sensing satellites owned or operated by the applicant. If the satellite disposition involves an atmospheric re-entry the applicant must provide an estimate of the total debris casualty area of the system's components and structure likely to survive re-entry.

## Appendix 2 to Part 960—Fact Sheet Regarding the Memorandum of Understanding Concerning the Licensing of Private Remote Sensing Satellite Systems Dated February 2, 2000

The White House, Office of Science and Technology Policy and National Security Council

February 2, 2000.

### FACT SHEET REGARDING THE MEMORANDUM OF UNDERSTANDING CONCERNING THE LICENSING OF PRIVATE REMOTE SENSING SATELLITE SYSTEMS

A Memorandum of Understanding (MOU) has been concluded between the Departments of Commerce, State, Defense, Interior and the Intelligence Community regarding interagency procedures on commercial remote sensing systems.

#### Background

The Secretary of Commerce, through the National Oceanic and Atmospheric Administration, is responsible for administering the licensing of private remote sensing satellite systems pursuant to the Land Remote Sensing Policy Act of 1992. The Act also grants to the Secretaries of State and Defense the authority to determine conditions necessary to protect international obligations, foreign policy concerns, and

national security concerns. The purpose of the MOU is to establish interagency procedures concerning the process for handling remote sensing licensing actions, and consultation regarding interruption of normal commercial operations consistent with the President's policy on remote sensing. In consultation with affected agencies, limitations on commercial remote sensing systems will be imposed by the Secretary of Commerce when necessary to meet international obligations and national security and foreign policy concerns and will be in accord with the determinations of the Secretary of Defense and the Secretary of State and with applicable law. Procedures for implementing this policy are set out below.

#### Procedures

##### A. Consultation During Review of Licensing Actions

Pursuant to section 5621(c) of the Land Remote Sensing Policy Act of 1992, the Secretary of Commerce shall review any application and make a determination thereon within 120 days of receipt of such application. If final action has not occurred within such time, then the Secretary shall inform the applicant of any pending issues and of actions required to resolve them. Copies of requests for licensing actions received by the Department of Commerce (DOC) will be provided by DOC to the Department of State (DOS), the Department of Defense (DOD), the Department of the Interior (DOI), and the Intelligence Community (IC) within 3 working days.

DOC will defer its decision on such licensing actions until the other Parties concerned have had a reasonable time to review them, as provided in this section.

(1) Within 10 working days of receipt, DOS, DOD, DOI, or IC shall notify the Department of Commerce, in writing, of any additional information it believes is necessary to properly evaluate the licensing action, or notify DOC in writing of the additional time, not to exceed 10 working days, necessary to complete the review. This notification shall state the specific reasons why the additional information is sought.

(2) After receiving a complete license package or the information requested in paragraph (1), DOS, DOD, DOI, and IC will complete their review of the license package within 30 days or notify DOC in writing of additional time necessary to complete the review. If DOS, DOD, or IC conclude that imposition of conditions on the actions being reviewed may be necessary to protect international obligations, foreign policy concerns, or national security concerns, the agency identifying the concern will promptly notify DOC in writing with a copy to other interested agencies. Such notification shall: (i) Describe the national security interests, or the international obligations or specific foreign policies at risk if the applicant's system is approved as proposed; (ii) set forth in detail the basis for the conclusion that operation of the applicant's system as proposed will not preserve the national security interests or the international obligations or specific foreign policies identified; and (iii) specify the additional conditions necessary to preserve the relevant

United States interests or set forth in detail why denial is required to preserve such interests.

(3) Within 10 days of sending this notification, representatives of DOS, DOD, DOC, DOI, and IC will meet to discuss and resolve any issues with regard to these proposed conditions.

(4) If, after such discussions, DOS or DOD conclude that such conditions are necessary but DOC does not concur, the Secretary of State or the Secretary of Defense may make such a determination of necessary conditions in writing. This function may not be delegated below the acting Secretary or the Deputy Secretary. Such determinations will be promptly forwarded to DOC and a copy will be provided to the Assistant to the President for National Security Affairs and the Assistant to the President for Science and Technology.

(5) Upon notification of such a determination, DOC will suspend any further action on the license that would be inconsistent with the DOS or DOD determination. If the Secretary of Commerce believes the limits defined by another Secretary or Deputy Secretary shall then consult with his or her counterpart in the relevant department within 10 days regarding any unresolved issues. If the relevant Secretaries are unable to resolve any issues, the Secretary of Commerce will so notify the Assistant to the President for National Security Affairs, who, in coordination with the Assistant to the President for Science and Technology, will seek to achieve a consensus within the interagency, or failing that, by referral to the President. All efforts will be taken to resolve the dispute within 3 weeks of its submission to the Assistant to the President for National Security Affairs and the Assistant to the President for Science and Technology.

##### B. Consultation Regarding Interruption of Normal Commercial Operations

(1) This section establishes the process for requiring the licensee to limit data collection and/or distribution by the system during periods when national security or international obligations and/or foreign policies may be compromised, as determined by the Secretary of Defense or the Secretary of State. DOC will provide to the other Parties copies of licensee correspondence and documents that describe how the licensee will comply with such interruptions of its commercial operations.

(2) Conditions should be imposed for the smallest area and for the shortest period necessary to protect the national security, international obligations, or foreign policy concerns at issue.

Alternatives to prohibitions on collection and/or distribution shall be considered such as delaying the transmission or distribution of data, restricting the field of view of the system, encryption of the data if available, or other means to control the use of the data.

(3) Except where urgency precludes it, DOS, DOD, DOC and IC will consult to attempt to come to an agreement concerning appropriate conditions, if any, to be imposed on the licensee in accordance with determinations made by DOS or DOD.

Consultations shall be constructed so that, in the event an agreement cannot be reached at the staff level, sufficient time will remain to allow the Secretary of Commerce to consult personally with the Secretary of State or the Secretary of Defense, as appropriate, prior to the issuance of a determination by the Secretary of State or the Secretary of Defense in accordance with (4) below. That function shall not be delegated below the acting Secretary.

(4) After such consultations, or when the Secretary of State or the Secretary of Defense specifically determines that urgency precludes consultation with the Secretary of Commerce, the Secretary of State or the Secretary of Defense, shall determine the conditions necessary to meet international obligations, significant foreign policy concerns, or significant national security concerns, especially where those interests identified in the National Security Strategy would be put at risk. This function shall not be delegated below the acting Secretary. The Secretary of State or the Secretary of Defense will provide to the Secretary of Commerce his or her determination regarding the conditions required to be imposed on the licensee. The determination will describe the international obligations, specific foreign

policy, or national security interest at risk. Upon receipt of the determination, DOC shall immediately notify the licensee of the imposition of limiting conditions on commercial operations. Copies of the determination and any implementing DOC action will be provided promptly to the Assistant to the President for National Security Affairs and the Assistant to the President for Science and Technology.

(5) If the Secretary of Commerce believes the conditions determined by another Secretary are inappropriate, he or she will, simultaneous with notification of, and imposition of such conditions on, the licensee, so notify the Secretary of Defense or the Secretary of State, as appropriate, the Assistant to the President for National Security Affairs, and the Assistant to the President for Science and Technology. The Assistant to the President for National Security Affairs, in coordination with the Assistant to the President for Science and Technology, will initiate as soon as possible a Principals-level consultative process to achieve a consensus within the interagency, or, failing that, refer the matter to the President for decision. All efforts will be taken to resolve the disagreement within 7 working days of its submission to the

Assistant to the President for National Security Affairs and the Assistant to the President for Science and Technology.

#### C. Coordination Before Release of Information Provided or Generated by Other Agencies

Before releasing any information provided or generated by another agency to a licensee or potential licensee, to the public, or to an administrative law judge, each agency agrees to consult with the agency that provided or generated the information. The purpose of such consultations will be to review the propriety of any proposed release of information that may be privileged because it is classified, pre-decisional, deliberative, contain proprietary information, or is protected for other reasons. No information shall be released without the approval of the agency that provided or generated it unless required by law.

D. No Legal Rights or Remedies, or Legally Enforceable Causes of Action, Are Created or Intended To Be Created by the MOU.

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