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Part II

Department of Commerce

**National Oceanic and Atmospheric
Administration**

**15 CFR Part 960
Licensing of Private Land Remote-Sensing
Space Systems; Proposed Rule**

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****15 CFR Part 960**

[Docket No.: 050204028–5028–01]

RIN: 0648–AT00

Licensing of Private Land Remote-Sensing Space Systems

AGENCY: National Oceanic and Atmospheric Administration.

ACTION: Proposed rule.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) proposes to amend its regulations governing the licensing of private Earth remote sensing space systems under Title II of the Land Remote Sensing Policy Act of 1992, 15 U.S.C. 5621 *et seq.* (the Act). The proposed amendments update the regulations to reflect: The new U.S. Commercial Remote Sensing Policy issued in April 2003, experience gained since August 2000 with respect to the licensing of commercial remote sensing space systems, and improvements that take into account public comments received on the regulations. The proposed amendments will allow NOAA to more effectively license Earth remote sensing space systems and help to ensure their compliance with the requirements of the Act.

DATES: Comments must be received by July 5, 2005.

ADDRESSES: Comments on these proposed changes to the regulations should be sent to Mr. Douglas Brauer, NOAA/NESDIS International and Interagency Affairs Office, 1335 East-West Highway, Room 7311, Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: Mr. Douglas Brauer at (301) 713–2024 x213 or Mr. Glenn Tallia at (301) 713–1221.

SUPPLEMENTARY INFORMATION: Title II of the Land Remote Sensing Policy Act of 1992 (the Act), 15 U.S.C. 5621 *et seq.*, authorizes the Secretary of Commerce (the Secretary) to issue licenses for the operation of private Earth remote sensing space systems. The authority to issue licenses and to monitor compliance therewith 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 minimum requirements for the licensing, monitoring and compliance of operators of private Earth remote sensing space systems under the Act, 15 CFR Part 960. The regulations were 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.

Since the publication of the regulations: Two new commercial remote sensing satellites have been successfully launched and are now operational; NOAA has issued eight new licenses for increasingly advanced remote sensing space systems, bringing the total to 21 licenses issued; and, in April 2003, the President announced a new policy on U.S. commercial remote sensing from space. NOAA is now proposing 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 proposed amendments will allow NOAA to more effectively license Earth remote sensing space systems and help to ensure their compliance with the requirements of the Act.

Proposed Amendments*1. Purpose*

In section 960.1(a), the reference to the President's March 1994 Policy on Foreign Access to Remote Sensing Space Capabilities has been removed. This policy was rescinded and superseded by the new U.S. Commercial Remote Sensing Policy issued on April 25, 2003. To avoid the need to update the regulations in the future to include citations to specific policies addressing commercial remote sensing, NOAA has included a more general reference to currently applicable U.S. Policy. In addition, the list of intended goals in the section has been modified to reflect the goals of the most current policy.

Section 960.1(b) has been modified to refer to currently applicable U.S. Policy on remote sensing, as opposed to any specific remote sensing policy. The addition of "necessary" corrects an omission in the 2000 regulations.

Section 960.1(c) has been added to emphasize the objective of the new U.S. policy to sustain, enhance and encourage U.S. firms to play a leadership role in the commercial remote sensing satellite industry.

2. Definitions

In section 960.3, the definition for the term the President's Policy has been removed. Instead, a more general definition for the term U.S. Policy has been added which is defined to include policy(ies) that address U.S. commercial remote sensing space capabilities. Also added are definitions for the terms Data Protection Plan and Orbital Debris. Finally, the definition of the term Significant or Substantial foreign agreement has been modified to improve its clarity.

3. Confidentiality of Information

In section 960.5(a), the list of documents considered to be business confidential or proprietary information has been expanded to include foreign agreements and supporting documentation submitted to NOAA that are explicitly designated and marked as business confidential or proprietary by the submitter.

In addition, section 960.5(b) has been modified to remove the requirement that a public summary of the proposed system be submitted at the same time as the license application. This is in recognition of the fact that the elements of the proposed system may differ from the licensed system. Instead, NOAA will require the public summary to be submitted within 30 days of license issuance. This public summary will be used by NOAA to provide information to the public concerning a licensed system. NOAA will no longer require summaries for amendment requests.

4. Review Procedures for License Applications

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.

5. Amendments to Licenses

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. 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 proposed license amendments 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. Finally, NOAA has added a new section 960.7(g) that sets forth the conditions under which the amendment request review process may be terminated.

6. Notification of Foreign Agreements

NOAA has made a minor editorial change to section 960.8(b) to remove redundant wording. This change should improve the clarity of section 960.8(b). NOAA has added a new section 960.8(e) to ensure that licensees provide to NOAA final documentation of their foreign agreements in a timely manner.

7. License Term

NOAA has added a new section 960.9(c) to reduce the administrative burden to the U.S. Government for licensed systems, which will not, in fact, be developed. This will allow NOAA to devote its time and resources to licensees whose systems are under actual development, or in ongoing operations. This section has two phases. In the first phase, the licensee has five years to conduct preliminary and critical design reviews for its proposed satellite system. Following the critical design review, the licensee will have an additional five years to execute a binding contract for launch services and complete the pre-ship review of the satellite. If these milestones are not met, the Assistant Administrator may terminate the license if he/she determines that sufficient progress is not being made toward the development and launch of the satellite. Companies that are currently licensed will have five years from the date of issuance of these regulations to conduct the preliminary and critical design reviews.

NOAA appreciates the complexity of raising the capital necessary to develop and launch a remote sensing satellite and will work with the individual licensee in charting the progress of development. The proposed milestone approach is consistent with that of other government agencies, most notably to the Federal Communications Commission for communications satellite systems. NOAA is interested in receiving comments on whether the time frames for the milestone approach proposed herein are suitable, and on alternative approaches to ensure that the licenses it issues will be acted upon.

8. Conditions for Operation

In sections 960.11(b)(8) and (9), NOAA has clarified the relationship of the Department of Interior to the National Land Remote Sensing Archive and the means by which licensees will offer data to the Archive. NOAA has also corrected language regarding the

cost of fulfilling user requests to match the language in the Act.

NOAA has added a new section 960.11(b)(13). In this section, NOAA has added a new operational condition requiring the licensee 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.

NOAA has added a new section 960.11(c), to allow licensees to seek waivers of particular license conditions. NOAA does not anticipate granting blanket waivers of conditions; instead it will grant waivers on a case-by-case basis, for good cause shown, and following consultations with other agencies.

9. Data Policy for Remote Sensing Space Systems

Sections 960.12(b) and (c)(5) have been modified to correct minor oversights from the 2000 regulations.

10. Prohibitions

In sections 960.13(f) and (g), NOAA has added the phrase "in a timely manner." This addition clarifies the importance of the licensee providing NOAA information while it is still relevant.

11. Enforcement Procedures

NOAA has added new sections 960.15(b) through (g) which set forth detailed procedures to be followed by NOAA when assessing civil penalties under the Act. The 2000 regulations, in section 960.15(a), included a general statement that all civil penalty procedures shall be in accordance with 15 CFR Part 904. Part 904 sets forth procedures to be followed by NOAA when assessing civil penalties under other statutes such as the Magnuson-Stevens Fishery Conservation Act and the Marine Mammal Protection Act. Upon additional review, it was determined that not all of the provisions of Part 904 would have application in the case of NOAA assessing a civil penalty against a NOAA licensee for violations of the Act, regulations or a license. Accordingly, it was decided that procedures specific to the assessment of civil penalties against a licensee for such violations should be included.

12. Filing Instructions and Information

Because NOAA will no longer require the public summary at the time a license application is filed, Appendix 1(c) has been modified to remove a public

summary from the list of information that must be submitted with a license application.

In addition, because numerous companies hold licenses for several systems, NOAA has modified Appendix 1(d) Sec. III to add the requirement to name each system. This will allow NOAA to better identify such systems. Finally, the requirement to submit technical information has been changed to require the submission of more specific and detailed technical information.

Classification

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

This proposed rule establishes a more effective process 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 Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. Given the extraordinary capitalization required to operate a commercial remote sensing space system, costs of development and launch are quite high. Depending on the complexity of a proposed commercial remote sensing space system, it can cost approximately \$250 to \$500 million to build, launch and operate such a system. As such, small entities have yet to enter this field and appear highly unlikely to do so.

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

This proposed 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-ship 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 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 proposed 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, 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 recordkeeping requirements, Satellites, Scientific equipment.

Dated: May 13, 2005.

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 proposed to be amended as follows:

PART 960—LICENSING OF PRIVATE REMOTE SENSING SYSTEMS

1. The authority citation for part 960 continues to read as follows:

Authority: 15 U.S.C. 5624.

2. Section 960.1 is revised to read as follows:

§ 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. 5621 *et seq.*) (Pub. L. 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.

3. Section 960.3 is amended by revising the definition for the term Significant or Substantial foreign agreement, by adding, in alphabetical order, definitions for the terms Data Protection Plan, U.S. Policy, and by removing the definition for the term President's Policy.

§ 960.3 Definitions.

* * * * *

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 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.

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 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 systems'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 ten (10) percent of total outstanding shares, or entitles the foreign person to a position on the licensee's Board of Directors.

* * * * *

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

4. Section 960.5 is revised to read as follows:

§ 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.*, a licensee's website or 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 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.

5. Section 960.6 is amended by revising paragraphs (a), (b), (c) and (e) to read as follows:

§ 960.6 Review procedures for license applications.

(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 being 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. 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 the additional time necessary to complete the review.

* * * * *

(e) The Assistant Administrator may 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.

* * * * *

6. Section 960.7 is amended by revising paragraphs (a)(4), (c), (d), and (e), and by redesignating existing paragraph (g) as paragraph (h) and adding a new paragraph (g) to read as follows:

§ 960.7 Amendments to licenses.

(a) * * *

(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.

* * * * *

(c) The Assistant Administrator, shall within three (3) working days of receipt of a request for amendment, forward a copy of the request 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 amendment request. 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 amendment request, 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 licensee of any pending issues and any actions necessary to resolve them.

(d) The reviewing agencies have thirty (30) days from receipt of the amendment request 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 being sought. The Assistant Administrator shall then notify the licensee, in writing, what information is required to complete the amendment request. The 120-day review period prescribed in Section 201(c) of the Act will be stopped until the Assistant Administrator determines that the amendment request is complete.

(e) Within thirty (30) days of receipt of a complete amendment application,

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 amendment 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 the additional time necessary to complete the review.

* * * * *

(g) The Assistant Administrator may terminate the amendment request review process if:

(1) The amendment request 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 (d) of this section, does not provide such information within the time stated in the request.

* * * * *

7. Section 960.8 is amended by revising paragraph (b), and redesignating existing paragraphs (e) and (f) as paragraphs (f) and (g) and adding new paragraph (e) to read as follows:

§ 960.8 Notification of foreign agreements.

* * * * *

(b) 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 of Commerce;

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

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

* * * * *

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

* * * * *

8. Section 960.9 is amended by adding a new paragraph (c) to read as follows:

§ 960.9 License term.

* * * * *

(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 date of issuance of these regulations to meet the milestones in § 960.9(c)(1).

9. Section 960.11 is amended by revising paragraphs (b)(8) and (b)(9) and adding new paragraphs (b)(13) and (c) to read as follows:

§ 960.11 Conditions for operation.

* * * * *

(b) * * *

(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 the 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 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.

* * * * *

(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. If the operating license restricts the distribution of certain data and imagery to the United States Government or United States 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 Government-approved customer facilities. 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. 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.

(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.

§ 10. Section 960.12 is amended by revising paragraphs (b) and (c)(5) to read as follows:

§ 960.12 Data policy for remote sensing space systems.

* * * * *

(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) * * *

(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.

11. Section 960.13 is amended by revising paragraphs (f) and (g) to read as follows:

§ 960.13 Prohibitions.

* * * * *

(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.

* * * * *

12. Section 960.15 is amended by revising paragraph (a), redesignating existing paragraph (b) as paragraph (h), and by adding a new paragraphs (b) through (g) to read as follows:

§ 960.15 Penalties and sanctions.

* * * * *

(a) In addition, any person who violates any provision of the Act, any license issued thereunder, 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.

* * * * *

13. Appendix 1 to part 960 is amended by revising paragraphs (c) and Sec. III of paragraph (d) to read as follows:

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

* * * * *

(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) * * *

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.

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