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

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

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

##### **Subchapter D - General Regulations of the Environmental Data Service**

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## **PART 960 - LICENSING OF PRIVATE REMOTE SENSING SPACE SYSTEMS**

**Authority:** 51 U.S.C. 60124.

**Source:** 85 FR 30806, May 20, 2020, unless otherwise noted.

### **Subpart A - General**

### § 960.1 Purpose.

- (a) The regulations in this part implement the Secretary's authority to license the operation of private remote sensing space systems under the Land Remote Sensing Policy Act of 1992, as amended, codified at 51 U.S.C. 60101 *et seq.*, and are intended to promote continued U.S. private sector innovation and leadership in the global remote sensing industry.
- (b) In carrying out this part, the Secretary takes into account the following considerations:
  - (1) Technological changes in remote sensing;
  - (2) Non-technological changes in the remote sensing space industry, such as to business models and practices;
  - (3) The relative burden to licensees and benefits to national security and international policies of license conditions;
  - (4) Changes in the methods to mitigate risks to national security and international policies;
  - (5) International obligations of the United States;
  - (6) The availability of data from sources in other nations;
  - (7) The remote sensing regulatory environment in other nations; and
  - (8) The potential for overlapping regulatory burdens imposed by other U.S. Government agencies.

### § 960.2 Jurisdiction.

- (a) The regulations in this part set forth the requirements for the operation of private remote sensing space systems within the United States or by a U.S. person.
- (b) Instruments used primarily for mission assurance or other technical purposes, including but not limited to navigation, attitude control, monitoring spacecraft health, separation events, or payload deployments, such as traditional star trackers, sun sensors, and horizon sensors, shall not be subject to this part.
- (c) In the case of a system that is used for remote sensing and other purposes, as determined by the Secretary, the scope of the license issued under this part will not extend to the operation of instruments that do not support remote sensing.
- (d) The Secretary does not authorize the use of spectrum for radio communications by a private remote sensing space system.

### § 960.3 Applicability to existing licenses.

- (a) After reviewing each license existing prior to July 20, 2020, on July 20, 2020, the Secretary will either:
  - (1) Replace the existing license with one developed in accordance with this part, retaining any applicable waivers and modifications; or
  - (2) If the Secretary determines that an existing licensee no longer requires a license under this part the Secretary will notify the existing licensee that the license is terminated.
- (b) The replacement license or termination determination will be effective 30 days after delivery by the Secretary to existing licensees. Existing licensees who object to their existing license being replaced or terminated must notify the Secretary in writing within those 30 days, and specify their objection in the notification.

### § 960.4 Definitions.

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

- Act** means the Land Remote Sensing Policy Act of 1992, as amended, codified at 51 U.S.C. 60101, *et seq.*
- Anomaly** means an unexpected event or abnormal characteristic affecting the operations of a system that could indicate a significant technical malfunction or security threat. Anomalies include any significant deviation from the orbit and data collection characteristics of the system.
- Appellant** means a person to whom the Secretary has certified an appeal request.
- Applicant** means a person who submits an application to operate a private remote sensing space system.

**Application** means a document submitted by a person to the Secretary that contains all the information described in appendix A of this part.

**Available** means readily and consistently obtainable by an entity or individual other than the U.S. Government or a foreign government.

**Ground sample distance or GSD** refers to the common measurement for describing the spatial resolution of unenhanced data created from most remote sensing instruments, typically measured in meters. A resolution "finer than" X meters GSD means the resolution is a number lower than X. For example, 5 meters GSD is finer than 10 meters GSD.

**In writing or written** means written communication, physically or electronically signed (if applicable), transmitted via email, forms submitted on the Secretary's website, or traditional mail.

**License** means a license granted by the Secretary under the Act.

**Licensee** means a person to whom the Secretary has granted a license under the Act.

**Material fact** means a fact an applicant provides in the application, or a fact in Parts C or D of a license.

**Memorandum of Understanding or MOU** means the April 25, 2017 version of the "Memorandum of Understanding Among the Departments of Commerce, State, Defense, and Interior, and the Office of the Director of National Intelligence, Concerning the Licensing and Operations of Private Remote Sensing Satellite Systems," which is included as appendix D of this part. In the event that any provisions of the MOU conflict with this part, this part shall govern.

**Modification** means any change in the text of a license after issuance.

**Operate** means to have decision-making authority over the functioning of a remote sensing instrument. If there are multiple entities involved, the entity with the ultimate ability to decide what unenhanced data to collect with the instrument and to execute that decision, directly or through a legal arrangement with a third party such as a ground station or platform owner, is considered to be operating that system.

**Person or private sector party** means any entity or individual other than agencies or instrumentalities of the U.S. Government.

**Private remote sensing space system or system** means an instrument that is capable of conducting remote sensing and which is not owned by an agency or instrumentality of the U.S. Government. A system must contain a remote sensing instrument and all additional components that support operating the remote sensing instrument, receipt of unenhanced data, and data preprocessing, regardless of whether the component is owned or managed by the applicant or licensee, or by a third party through a legal arrangement with the applicant or licensee.

**Remote sensing** means the collection of unenhanced data by an instrument in orbit of the Earth which can be processed into imagery of surface features of the Earth.

**Secretary** means the Secretary of Commerce, or his or her designee.

**Significant or substantial foreign agreement** means a contract or legal arrangement with a foreign national, entity, or consortium involving foreign nations or entities, only if executing such contract or arrangement would require a license modification under § 960.13.

**Subsidiary or affiliate** means a person who directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with, the applicant or licensee.

**Substantially the same** means that one item is a market substitute for another, taking into account all applicable factors. When comparing data, factors include but are not limited to the data's spatial resolution, spectral bandwidth, number of imaging bands, temporal resolution, persistence of imaging, local time of imaging, geographic or other restrictions imposed by foreign governments, and all applicable technical system factors listed in the application in appendix A of this part.

**Unenhanced data** means the output from a remote sensing instrument, including imagery products, which is either unprocessed or preprocessed. Preprocessing includes rectification of system and sensor distortions in data as it is received directly from the instrument in preparation for delivery to a user, registration of such data with respect to features of the Earth, and calibration of spectral response with respect to such data, but does not include conclusions, manipulations, or calculations derived from such data, or a combination of such data with other data.

**U.S. person** means:

- (1) Any individual who is a citizen or lawful permanent resident of the United States; and

- (2) Any corporation, partnership, joint venture, association, or other entity organized or existing under the laws of the United States or any State, the District of Columbia, Puerto Rico, American Samoa, the United States Virgin Islands, Guam, the Northern Mariana Islands, and any other commonwealth, territory, or possession of the United States.

**Waiver** means any change from the standard license text in § 960.8, § 960.9, or § 960.10, which change is included in a license upon license issuance, in response to a request by the applicant pursuant to § 960.12.

## Subpart B - License Application Submission and Categorization

### § 960.5 Application submission.

- (a) Before submitting an application, a person may consult informally with the Secretary to discuss matters under this part, including whether a license is likely to be required for a system.
- (b) A person may submit an application for a license in accordance with the specific instructions found in appendix B of this part. The application must contain fully accurate and responsive information, as described in appendix A of this part. Responses an applicant provides to each prompt in the application constitute material facts.
- (c) Within seven days of the submission, the Secretary shall determine, after consultation with the Secretaries of Defense and State, whether the submission is a complete application meeting the requirements of appendix A of this part. If the submission is a complete application, the Secretary shall immediately notify the applicant in writing. If the submission is not a complete application, the Secretary shall inform the applicant in writing of what additional information or clarification is required to complete the application.
- (d) If any information the applicant submitted becomes inaccurate or incomplete at any time after submission to the Secretary but before license grant or denial, the applicant must contact the Secretary and submit correct and updated information as instructed by the Secretary. The Secretary will determine whether the change is significant. If the Secretary determines that the change is significant, the Secretary will notify the applicant within seven days of receipt of the correct and updated information that the revision constitutes a new application submission under paragraph (b) of this section, and that the previous application is deemed to have been withdrawn.
- (e) Upon request by the applicant, the Secretary shall provide an update on the status of their application review.

### § 960.6 Application categorization.

- (a) Within seven days of the Secretary's notification to the applicant under § 960.5(c) that the application is complete, the Secretary shall determine, after consultation with the Secretaries of Defense and State as appropriate, the category for the system as follows:
- (1) If the application proposes a system with the capability to collect unenhanced data substantially the same as unenhanced data already available from entities or individuals not licensed under this part, such as foreign entities, the Secretary shall categorize the application as Tier 1;
- (2) If the application proposes a system with the capability to collect unenhanced data substantially the same as unenhanced data already available, but only from entities or individuals licensed under this part, the Secretary shall categorize the application as Tier 2; and
- (3) If the application proposes a system with the capability to collect unenhanced data not substantially the same as unenhanced data already available from any domestic or foreign entity or individual, the Secretary shall categorize the application as Tier 3.
- (b) If the Secretary of Defense or State disagrees with the Secretary's determination in paragraph (a) of this section, the Secretary of Defense or State may notify the Secretary and request the Secretary's reconsideration. Such a request for reconsideration may not be delegated below the Assistant Secretary level. If the Secretary of Defense or State disagrees with the Secretary's reconsideration decision, the Secretary of Defense or State may appeal that tier categorization pursuant to the interagency dispute resolution procedures in Section IV(B) of the MOU, but only at the Advisory Committee on Private Remote Sensing Space Systems level or higher. The Secretary shall categorize the system in accordance with the decision resulting from such MOU procedures.
- (c) The system shall remain in the tier assigned to it under paragraph (a) in this section until such time as the Secretary determines, after consultation with the Secretaries of Defense and State as appropriate, that the system belongs in a lower-numbered tier due to the advancement of non-U.S. commercial remote sensing capabilities or due to other facts, or until the Secretary grants the licensee's request for a license modification that results in re-categorization under § 960.13. When the Secretary determines that a lower-numbered tier is appropriate due to reasons other than a modification under §

960.13, the Secretary will notify the applicant or licensee in writing that the system falls under a lower-numbered tier than the one previously assigned under this section. Upon receiving that notification, the applicant or licensee will be responsible for complying only with the license conditions applicable to the new tier.

## Subpart C - Application Review and License Conditions

### § 960.7 License grant or denial.

- (a) Based on the Secretary's review of the application, the Secretary must determine whether the applicant will comply with the requirements of the Act, this part, and the license. The Secretary will presume that the applicant will comply, unless the Secretary has specific, credible evidence to the contrary. If the Secretary determines that the applicant will comply, the Secretary shall grant the license.
- (b) The Secretary shall make the determination in paragraph (a) of this section within 60 days of the notification under § 960.5(c), and shall notify the applicant in writing whether the license is granted or denied.
- (c) If the Secretary has not notified the applicant whether the license is granted or denied within 60 days, the applicant may submit a request that the license be granted. Within three days of this request, the Secretary shall grant the license, unless the Secretary determines with specific, credible evidence that the applicant will not comply with the requirements of the Act, this part, or the license, in which case the Secretary will deny the license, or the Secretary and the applicant mutually agree to extend this review period.

### § 960.8 Standard license conditions for all tiers.

All licenses granted under this part shall specify that the licensee shall:

- (a) Comply with the Act, this part, the license, applicable domestic legal obligations, and the international obligations of the United States;
- (b) Operate the system in such manner as to preserve the national security of the United States and to observe international obligations and policies, as articulated in the other conditions included in this license;
- (c) Upon request, offer 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 without delay and on reasonable terms and conditions, unless doing so would be prohibited by law or license conditions;
- (d) Upon termination of operations under the license, make disposition of any satellites in space in a manner satisfactory to the President;
- (e) Notify the Secretary in writing of each of the following events, no later than seven days after the event:
  - (1) The launch and deployment of each system component, to include confirmation that the component matches the orbital parameters and data collection characteristics of the system, as described in Part D of the license;
  - (2) Each disposal of an on-orbit component of the system;
  - (3) The detection of an anomaly; and
  - (4) The licensee's financial insolvency or dissolution;
- (f) Request and receive approval for a license modification before taking any action that would change a material fact in the license;
- (g) Certify that all material facts in the license remain accurate pursuant to the procedures in § 960.14 no later than October 15th of each year;
- (h) Cooperate with compliance, monitoring, and enforcement authorities described in the Act and this part, and permit the Secretary to access, at all reasonable times and with no shorter notice than 48 hours, any component of the system for the purpose of ensuring compliance with the Act, this part, and the license; and
- (i) Refrain from disseminating unenhanced data, or processed data or products derived from the licensee's system, of the State of Israel at a resolution finer than the resolution most recently specified by the Secretary in the FEDERAL REGISTER as being available from commercial sources.

### § 960.9 Additional standard license conditions for Tier 2 systems.

If the Secretary has categorized the system as Tier 2 under § 960.6, the license shall specify that the licensee shall comply with the conditions listed in § 960.8 and further shall comply with the following conditions until the Secretary notifies the licensee that the system belongs in a lower-numbered tier:

- (a) Comply with limited-operations directives issued by the Secretary, in accordance with a determination made by the Secretary of Defense or the Secretary of State pursuant to the procedures in Section IV(D) of the MOU, that require licensees to temporarily limit data collection and/or dissemination during periods of increased concerns for national security and where necessary to meet international obligation or foreign policy interests; and:
  - (1) Be able to comply with limited-operations directives at all times. This includes:
    - (i) The ability to implement National Institute of Standards and Technology-approved encryption, in accordance with the manufacturer's security policy, wherein the key length is at least 256 bits, for communications to and from the on-orbit components of the system related to tracking, telemetry, and control and for transmissions throughout the system of the data specified in the limited-operations directive; and
    - (ii) Implementing measures, consistent with industry best practice for entities of similar size and business operations, that prevent unauthorized access to the system and identify any unauthorized access in the event of a limited-operations directive;
  - (2) Provide and continually update the Secretary with a point of contact and an alternate point of contact for limited-operations directives; and
  - (3) During any such limited-operations directive, permit the Secretary to immediately access any component of the system for the purpose of ensuring compliance with the limited-operations directive, the Act, this part, and the license.
- (b) Conduct resolved imaging of other artificial resident space objects (ARSO) orbiting the Earth only with the written consent of the registered owner of the ARSO to be imaged and with notification to the Secretary at least five days prior to imaging. For purposes of this paragraph (b), "resolved imaging" means the imaging of another ARSO that results in data depicting the ARSO with a resolution of 3 x 3 pixels or greater.

### § 960.10 Additional standard and temporary license conditions for Tier 3 systems.

- (a) If the Secretary has categorized the system as Tier 3 under § 960.6, the license shall specify that the licensee shall comply with the conditions listed in § 960.8 and further shall comply with the following conditions until the Secretary notifies the licensee that the system belongs in a lower-numbered tier for which the following conditions are not required:
  - (1) Comply with limited-operations directives issued by the Secretary, in accordance with a determination made by the Secretary of Defense or the Secretary of State pursuant to the procedures in Section IV(D) of the MOU, that require licensees to temporarily limit data collection and/or dissemination during periods of increased concerns for national security and where necessary to meet international obligations or foreign policy interests; and:
    - (i) Be able to comply with limited-operations directives at all times. This includes:
      - (A) The ability to implement National Institute of Standards and Technology-approved encryption, in accordance with the manufacturer's security policy, wherein the key length is at least 256 bits, for communications to and from the on-orbit components of the system related to tracking, telemetry, and control and for transmissions throughout the system of the data specified in the limited-operations directive; and
      - (B) Implementing measures, consistent with industry best practice for entities of similar size and business operations, that prevent unauthorized access to the system and identify any unauthorized access in the event of a limited-operations directive;
    - (ii) Provide and continually update the Secretary with a point of contact and an alternate point of contact for limited-operations directives; and
    - (iii) During any such limited-operations directive, permit the Secretary to immediately access any component of the system for the purpose of ensuring compliance with the limited-operations directive, the Act, this part, and the license.
  - (2) Conduct resolved imaging of other artificial resident space objects (ARSO) orbiting the Earth only with the written consent of the registered owner of the ARSO to be imaged and with notification to the Secretary at least five days prior to imaging, or as may otherwise be provided in a temporary license condition developed under paragraphs (b) and (c) of this section. For purposes of this paragraph (a)(2), "resolved imaging" means the imaging of another ARSO that results in data depicting the ARSO with a resolution of 3 x 3 pixels or greater.

- (3) Comply with any temporary license conditions developed in accordance with paragraphs (b) and (c) of this section until their specified expiration date, including any extensions of the expiration date.
- (b) To determine whether additional temporary license conditions are necessary, the Secretary shall notify the Secretaries of Defense and State of any system categorized as Tier 3 under § 960.6. The Secretaries of Defense and State shall determine whether any temporary license conditions are necessary (in addition to the standard license conditions in § 960.8) to meet national security concerns or international obligations and policies of the United States regarding that system. Within 21 days of receiving the notification, the Secretary of Defense or State shall notify the Secretary of any such conditions and the length of time such conditions should remain in place, which shall not exceed one year from the earlier of either when the licensee first delivers unenhanced data suitable for evaluating the system's capabilities to the Secretary (under reasonable terms and conditions or other mutually agreed arrangement with the Secretary of Defense or State), or when the Secretary of Defense or State first obtains comparably suitable data from another source, unless the length of such condition is extended in accordance with paragraph (e) of this section.
- (c) The Secretary shall review the notification from the Secretary of Defense or State under paragraph (b) of this section and aim to craft the least restrictive temporary license condition(s) possible, before the expiration of the 60-day application review period under § 960.7(b). In crafting such conditions the Secretary shall consult, as appropriate, with the Secretaries of Defense and State and the applicant or licensee, to determine whether the proposed condition would be consistent with applicable laws. In making this determination, the Secretary shall consider whether:
- (1) The risk addressed by the proposed condition is specific and compelling;
  - (2) The proposed condition would be effective against the risk;
  - (3) The proposed condition addresses only the data proposed to be collected that are not available from any domestic or foreign source;
  - (4) The U.S. Government cannot currently mitigate the risk without the proposed condition;
  - (5) The U.S. Government cannot address the risk by some less restrictive means than the proposed condition; and
  - (6) The applicant or licensee can mitigate the risk by taking alternative action.
- (d) When considering the factors under paragraphs (c)(1) through (6) of this section, the Secretary shall accept as final the determinations made by the Secretary of Defense or State as appropriate, in such Secretary's notification to the Secretary of the need for such conditions. If the Secretary determines that a condition proposed by the Secretary of Defense or State would be consistent with applicable law, the Secretary shall include such condition in the license, absent any elevation of a dispute under paragraph (f) of this section.
- (e) The Secretary will notify the Secretaries of Defense and State 90 days before the expiration of a temporary condition imposed under this section. If, within 30 days after such notification, either the Secretary of Defense or State notifies the Secretary that an extension is needed, the Secretary shall consult with the Secretary of Defense or State about the ongoing need for the temporary condition. The Secretary may extend the expiration date of the temporary condition for a maximum of one year, and may extend the condition no more than two times unless requested by the Secretary of Defense or State. The authority to request such additional extensions shall not be delegated by the Secretary of Defense or State. Therefore, absent a request specifically from the Secretary of Defense or State, any temporary condition may exist for no more than a total of three years. The Secretary shall grant an extension if the Secretary determines that:
- (1) The Secretary requesting the extension has shown that the considerations in paragraph (c) of this section justify an extension; and
  - (2) The Secretary has notified the affected licensee no less than 60 days before the expiration of the temporary condition that an extension is being sought.
- (f) If, at any point during the procedures in this section, the Secretary, the Secretary of Defense, or the Secretary of State objects to any determination, they may elevate the objection pursuant to the interagency dispute resolution procedures in Section IV(B) of the MOU.

### **§ 960.11 No additional conditions.**

No other conditions shall be included in a license granted under this part, or imposed in such a license after the license has been issued, except in accordance with the provisions of § 960.13 or § 960.17.

### **§ 960.12 Applicant-requested waiver before license issuance.**

As part of the application, the applicant may request that any condition listed in § 960.8, § 960.9, or § 960.10 be waived or adjusted. The Secretary may approve the request to waive or adjust any such condition if the Secretary determines, after consultation with the Secretaries of Defense and State as appropriate, that the Secretary may waive or adjust the condition without violating the Act or other law, and:

- (a) The requirement is not applicable due to the nature of the applicant or the proposed system;
- (b) The applicant will achieve the goal in a different way; or
- (c) There is other good cause to waive or adjust the condition.

#### **§ 960.13 Licensee-requested modification after license issuance.**

- (a) The licensee may request in writing that the Secretary modify the license after the license is issued. Such requests should include the reason for the request and relevant supporting documentation.
- (b) If the Secretary determines that the requested modification of a license would result in its re-categorization from Tier 1 to Tier 2 under § 960.6, the Secretary shall notify the licensee that approval would require issuance of the conditions in § 960.9, and provide the licensee an opportunity to withdraw or revise the request.
- (c) If the Secretary determines that the requested modification of a license would result in its re-categorization from Tier 1 or 2 to Tier 3 under § 960.6, the Secretary shall consult with the Secretaries of Defense or State, as appropriate, to determine whether approval of the request would require additional temporary conditions in accordance with the procedures in § 960.10. If so, the Secretary shall notify the licensee that approval would require such additional temporary conditions, and provide the licensee an opportunity to withdraw or revise the request.
- (d) The Secretary shall approve or deny a modification request after consultation with the Secretaries of Defense and State as appropriate, and shall inform the licensee of the approval or denial within 60 days of the request, unless the Secretary and the applicant mutually agree to extend this review period.

#### **§ 960.14 Routine compliance and monitoring.**

- (a) Annually, by the date specified in the license, the licensee will certify in writing to the Secretary that each material fact in the license remains accurate.
- (b) If any material fact in the license is no longer accurate at the time the certification is due, the licensee must:
  - (1) Provide all accurate material facts;
  - (2) Explain the reason for any discrepancies between the terms in the license and the accurate material fact; and
  - (3) Seek guidance from the Secretary on how to correct any errors, which may include requesting a license modification.

#### **§ 960.15 Term of license.**

- (a) The license term begins when the Secretary transmits the signed license to the licensee, regardless of the operational status of the system.
- (b) The license is valid until the Secretary confirms in writing that the license is terminated, because the Secretary has determined that one of the following has occurred:
  - (1) The licensee has successfully disposed of, or has taken all actions necessary to successfully dispose of, all on-orbit components of the system, and is in compliance with all other requirements of the Act, this part, and the license;
  - (2) The licensee never had system components on orbit and has requested to end the license term;
  - (3) The license is terminated pursuant to § 960.17; or
  - (4) The licensee has executed one of the following transfers, subsequent to the Secretary's approval of such transfer:
    - (i) Ownership of the system, or the operations thereof, to an agency or instrumentality of the U.S. Government; or
    - (ii) Operations to a person who is not a U.S. person and who will not operate the system from the United States.



## Subpart D - Prohibitions and Enforcement

### § 960.16 Prohibitions.

Any person who operates a system from the United States and any person who is a U.S. person shall not, directly or through a subsidiary or affiliate:

- (a) Operate a system without a current, valid license for that system;
- (b) Violate the Act, this part, or any license condition;
- (c) Submit false information, interfere with, mislead, obstruct, or otherwise frustrate the Secretary's actions and responsibilities under this part in any form at any time, including in the application, during application review, during the license term, in any compliance and monitoring activities, or in enforcement activities; or
- (d) Fail to obtain approval for a license modification before taking any action that would change a material fact in the license.

### § 960.17 Investigations and enforcement.

- (a) The Secretary may investigate, provide penalties for noncompliance, and prevent future noncompliance, by using the authorities specified at 51 U.S.C. 60123(a).
- (b) When the Secretary undertakes administrative enforcement proceedings as authorized by 51 U.S.C. 60123(a)(3) and (4), the parties will follow the procedures provided at 15 CFR part 904.

## Subpart E - Appeals Regarding Licensing Decisions

### § 960.18 Grounds for adjudication by the Secretary.

- (a) In accordance with the procedures in this subpart, a person may appeal the following adverse actions for adjudication by the Secretary:
  - (1) The denial of a license;
  - (2) The categorization of a system in a tier;
  - (3) The failure to make a final determination on a license grant or denial or a licensee's modification request within the timelines provided in this part;
  - (4) The imposition of a license condition;
  - (5) The denial of a licensee-requested license modification; and
  - (6) The replacement of an existing license with a license granted under § 960.3(a)(1) or termination of an existing license under § 960.3(a)(2).
- (b) The only acceptable grounds for appeal of the actions in paragraph (a) of this section are as follows:
  - (1) The Secretary's action was arbitrary, capricious, or contrary to law; or
  - (2) The action was based on a clear factual error.
- (c) No appeal is allowed to the extent that there is involved the conduct of military or foreign affairs functions.

### § 960.19 Administrative appeal procedures.

- (a) A person wishing to appeal an action specified at § 960.18(a) may do so within 21 days of the action by submitting a written request to the Secretary.
- (b) The request must include a detailed explanation of the reasons for the appeal, citing one of the grounds specified in § 960.18(b).
- (c) Upon receipt of a request under paragraph (a) of this section, the Secretary shall review the request to certify that it meets the requirements of this subpart and chapter 7 of title 5 of the United States Code. If it does, the Secretary shall coordinate with the appellant to schedule a hearing before a hearing officer designated by the Secretary. If the Secretary does not

certify the request, the Secretary shall notify the person in writing that no appeal is allowed, and this notification shall constitute a final agency action.

- (d) The hearing shall be held in a timely manner. It shall provide the appellant and the Secretary an opportunity to present evidence and arguments.
- (e) Hearings may be closed to the public, and other actions taken as the Secretary deems necessary, to prevent the disclosure of any information required by law to be protected from disclosure.
- (f) At the close of the hearing, the hearing officer shall recommend a decision to the Secretary addressing all factual and legal arguments.
- (g) Based on the record of the hearing and the recommendation of the hearing officer, and after consultation, as appropriate, with the Secretaries of Defense and State in decisions implicating national security and international obligations and policy, respectively, the Secretary shall make a decision adopting, rejecting, or modifying the recommendation of the hearing officer. This decision constitutes a final agency action, and is subject to judicial review under chapter 7 of title 5 of the United States Code.

## Appendix A to Part 960 - Application Information Required

To apply for a license to operate a remote sensing space system under 51 U.S.C. 60101, *et seq.* and this part, you must provide:

1. Material Facts: Fully accurate and responsive information to the following prompts under "Description of Applicant (Operator)" and "Description of System." If a question is not applicable, write "N/A" and explain, if necessary.
2. Affirmation: Confirm by indicating below that there will be, at all times, measures in place to ensure positive control of any spacecraft in the system that have propulsion, if applicable to your system. Such measures include encryption of telemetry, command, and control communications or alternative measures consistent with industry best practice.
3. Your response to each prompt below constitutes a material fact. If any information you submit becomes inaccurate or incomplete before a license grant or denial, you must promptly contact the Secretary and submit correct and updated information as instructed by the Secretary.

### Part A: Description of Applicant (Operator)

1. General Applicant Information
  - a. Name of Applicant (entity or individual):
  - b. Location and address of Applicant:
  - c. Applicant contact information (for example, general corporate or university contact information):
  - d. Contact information for a specific individual to serve as the point of contact with Commerce:
  - e. Contact information for a specific individual to serve as the point of contact with Commerce for limited-operations directives, if different than main point of contact, in the event that the applicant will receive a license in Tier 2 or Tier 3:
  - f. Place of incorporation and, if incorporated outside the United States, an acknowledgement that you will operate your system within the United States and are therefore subject to the Secretary's jurisdiction under this part:
2. Ownership interests in the Applicant:
  - a. If there is majority U.S. ownership: Report any domestic entity or individual with an ownership interest in the Applicant totaling at least 50 percent:
  - b. If there is not majority U.S. ownership: Report all foreign entities or individuals whose ownership interest in the Applicant is at least 10 percent:
  - c. Report any ownership interest in the Applicant by any foreign entity or individual on the Department of Commerce's Bureau of Industry and Security's Denied Persons List or Entity List or on the Department of the Treasury's Office of Foreign Asset Control's Specially Designated Nationals and Blocked Person List:
3. Identity of any subsidiaries and affiliates playing a role in the operation of the System, including a brief description of that role:

### Part B: Description of System

1. General System Information
  - a. Name of system:
  - b. Brief mission description:
2. Remote Sensing Instrument(s) parameters
  - a. Sensor type (Electro Optical, Multi-Spectral (MSI), Hyperspectral (HSI), Synthetic Aperture Radar (SAR), Light Detection and Ranging (LIDAR), Thermal Infrared (TIR), etc.):
  - b. Imaging/frame rate in Hertz; pulse repetition frequency for SAR or LIDAR:
  - c. Spatial resolution in meters (show calculation for the anticipated finest ground spatial distance (GSD), impulse response (IPR), or other relevant appropriate unit of resolution):
  - d. Spectral range in nanometers:
  - e. Collection volume in area per unit time per spacecraft: Provide an estimate of the maximum number of square kilometers of which the system can provide data/imagery per hour or per minute. If this is a fast-framing system, consider each recorded frame as a separate image collected:
  - f. Ability of the remote sensing instrument to slew, point, or digitally look off-axis from the x, y, and z axes of travel:
3. If any entity or individual other than the Applicant will own, control, or manage any *remote sensing instrument* in the System:
  - a. Identity and contact information of that entity or individual:
  - b. Relationship to Applicant (*i.e.*, operating under Applicant's instructions under a contract):
4. Spacecraft Upon Which the Remote Sensing Instrument(s) is (are) Carried
  - a. Description:
  - b. Estimated launch date(s) in calendar quarter:
  - c. Number of spacecraft (system total and maximum in-orbit at one time):
  - d. For each spacecraft, provide the following (or if an entire constellation will have substantially the same orbital characteristics, provide these values for the entire constellation and note whether or not all spacecraft will be evenly spaced)
    - i. Altitude range in kilometers:
    - ii. Inclination range in degrees:
    - iii. Period (time of a single orbit):
    - iv. Longitude of the ascending node:
    - v. Eccentricity:
    - vi. Argument of perigee:
    - vii. Propulsion (yes/no). (If "yes," you must complete the affirmation in the beginning of this application):
    - viii. Ability of the spacecraft to slew, point, or digitally look off-axis from the x, y, and z axes of travel:
5. If any entity or individual other than the Applicant will own, control, or manage any *spacecraft* in the System
  - a. Identity and contact information of that entity or individual:
  - b. Whether that entity or individual is a U.S. person:
  - c. Relationship to Applicant (*i.e.*, operating under Applicant's instructions under a contract):
6. Ground Components
  - a. Location of Mission Control Center(s) with the ability to operate the system, including where commands are generated:

- b. Location of other Ground Station components of the system, meaning facilities that communicate commands to the instrument or receive unenhanced data from it, and facilities that conduct data preprocessing:
  - c. If any entity or individual other than the Applicant will own, control, or manage any *mission control center(s)* with the ability to operate the System
    - i. Identity and contact information of that entity or individual:
    - ii. Relationship to Applicant (*i.e.*, operating under Applicant's instructions under a contract):
7. Information Applicable to Multi-Spectral Imaging (MSI) and/or Hyper-Spectral Imaging (HSI). Applicants must complete this section only if the response in Part B section 2.a. is "MSI" and/or "HSI."
- a. Number of spectral bands:
  - b. Individual spectral bandwidths (to include range of the upper and lower ends of each spectral band in nanometers):
8. Noise Equivalent Target (NET). Applicants must complete this section only if the response in Part B 2.c. is 5 meters or less, and the answer in Part B section 2.a. is neither "SAR" nor "LIDAR." NET is the primary parameter used by the U.S. Government to describe an Electro Optical sensor's light sensitivity performance for a target at the same distance from the sensor as is specified as the minimum operating altitude in Part B section 4.d.i. If NET cannot be calculated, simply report the expected minimum detectable ground target radiance in watts:
9. Information Applicable to Light Detection and Ranging (LIDAR) if used for remote sensing. Responses should include the calculations used to derive the reported parameters. Applicants must complete this section only if the response in Part B section 2.a. is "LIDAR."
- a. Type (linear scanning or flash LIDAR (Geiger)):
  - b. Laser wavelength and pulse frequency:
  - c. Laser pulse width:
  - d. Spectral linewidth:
  - e. Z/Elevation accuracy in meters:
10. Information Applicable to Synthetic Aperture Radar (SAR). Applicants must complete this section only if the response in Part B section 2.a. is "SAR."
- a. Azimuth resolution (ground plane):
  - b. Range resolution (ground plane):
  - c. SAR Signal-To-Noise Ratio (SNR):
  - d. Polarization Capability (*i.e.* dual polarization, quad polarization):
  - e. Complex data: Preservation of phase history data in standard format? (yes/no):
  - f. Center frequency:
  - g. Squint and Graze angles (include maximum and minimum), or other parameters that determine the size and shape of the area of regard of the sensor collection footprint at the ground:
11. Information Applicable to Thermal Infrared (TIR). TIR is defined as collecting in the spectral range of 3.0-5.0 and/or 8.0-12.0-micrometers. Applicants must complete this section only if the response in Part B section 2.a. is "TIR."
- a. Estimated relative thermometric accuracy in degrees Kelvin ( $\pm \times$  degrees of actual):
  - b. Noise Equivalent Differential Temperature (NEDT), or if NEDT cannot be calculated, simply provide the expected temperature sensitivity in terms of minimum resolvable temperature difference in degrees<sup>[1]</sup>:

## Part C: Requests for Standard License Condition Waivers or Adjustments

Standard license conditions are listed at §§ 960.8, 960.9, and 960.10 for Tier 1, Tier 2, and Tier 3 systems, respectively. If requesting that any of these be waived or adjusted, please identify the specific standard license condition and explain why one of the following circumstances applies:

1. The requirement is not applicable due to the nature of the Applicant or the proposed system;
2. The Applicant will achieve the goal in a different way; or
3. There is other good cause to waive or adjust the condition.

**Optional:** You may submit evidence of the availability of unenhanced data that is substantially the same as unenhanced data you propose to produce with your system. The Secretary will take any such evidence into account, in addition to other evidence of availability, when determining the appropriate tier for your system under § 960.6.

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#### FOOTNOTES - APPENDIX A TO PART 960

<sup>[1]</sup> NEDT (noise equivalent differential temperature) is the key figure of merit which is used to qualify midwave (MWIR) and longwave (LWIR) infrared cameras. It is a signal-to-noise figure which represents *the temperature difference which would produce a signal equal to the camera's temporal noise*. It therefore represents approximately the minimum temperature difference which the camera can resolve. It is calculated by dividing the temporal noise by the response per degree (responsivity) and is usually expressed in units of milliKelvins. The value is a function of the camera's f/number, its integration time, and the temperature at which the measurement is made.

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### Appendix B to Part 960 - Application Submission Instructions

A person may apply to operate a private remote sensing space system by submitting the information to the Secretary as described in appendix A of this part. This information can be submitted in any one of the following three ways:

1. Complete the fillable form at the Secretary's designated website, presently at [www.nesdis.noaa.gov/crsra](http://www.nesdis.noaa.gov/crsra).
2. Respond to the prompts in appendix A of this part and email your responses to [crsra@noaa.gov](mailto:crsra@noaa.gov).
3. Respond to the prompts in appendix A of this part and mail your responses to: Commercial Remote Sensing Regulatory Affairs, 1335 East-West Highway SSMC-1/G-101, Silver Spring, MD 20910.

### Appendix C to Part 960 - License Template

#### Part A: Determination and License Grant

1. The Secretary determines that [licensee name], as described in Part C, will comply with the requirements of the Act, the regulations at this part, and the conditions in this license.
2. Accordingly, the Secretary hereby grants [licensee name] (hereinafter "Licensee"), as described in Part C, this license to operate [system name] (hereinafter "the System"), as described in Part D, subject to the terms and conditions of this license. This license is valid until its term ends in accordance with § 960.15. The Licensee must request and receive approval for a license modification before taking any action that would contradict a material fact listed in Part C or D of this license.
3. The Secretary makes this determination, and grants this license, under the Secretary's authority in 51 U.S.C. 60123 and regulations at this part. This license does not authorize the System's use of spectrum for radio communications or the conduct of any non-remote sensing operations that are proposed to be undertaken by the Licensee. This license is not alienable and creates no property right in the Licensee.

#### Part B: License Conditions

The Licensee (Operator) must, at all times:

[Depending upon the categorization of the application as Tier 1, 2, or 3, Commerce will insert the applicable standard license conditions, found at § 960.8, § 960.9, and/or § 960.10, and, for a Tier 3 license, any applicable temporary conditions resulting from the process in § 960.10, in this part of the license.]

## Part C: Description of Licensee

Every term below constitutes a material fact. You must request and receive approval of a license modification before taking any action that would contradict a material fact.

1. General Licensee Information
  - a. Name of Licensee (entity or individual):
  - b. Location and address of Licensee:
  - c. Licensee contact information (for example, general corporate or university contact information):
  - d. Contact information for a specific individual to serve as the point of contact with Commerce:
  - e. If Tier 2 or Tier 3, contact information for a specific individual to serve as the point of contact with Commerce for limited-operations directives, if different than main point of contact:
  - f. Place of incorporation and, if incorporated outside the United States, confirmation that the Licensee acknowledged as part of the application that the Licensee will operate its system within the United States and is therefore subject to the Secretary's jurisdiction under this part:
2. Identity of any subsidiaries and affiliates playing a role in the operation of the System, including a brief description of that role:

## Part D: Description of System

1. General System Information
  - a. Name of system:
  - b. Brief mission description:
2. Remote Sensing Instrument(s) parameters
  - a. Sensor type (Electro Optical, Multi-Spectral (MSI), Hyperspectral (HSI), Synthetic Aperture Radar (SAR), Light Detection and Ranging (LIDAR), Thermal Infrared (TIR), etc.):
  - b. Imaging/frame rate in Hertz; pulse repetition frequency for SAR; or number of looks for LIDAR:
  - c. Spatial resolution in meters:
  - d. Spectral range in nanometers:
  - e. Collection volume in area per unit time per spacecraft: An estimate of the maximum number of square kilometers of which the system can provide data/imagery per hour or per minute:
  - f. Ability of the remote sensing instrument to slew, point, or digitally look off-axis from the x, y, and z axes of travel:
3. If any entity or individual other than the Licensee will own, control, or manage any *remote sensing instrument* in the System:
  - a. Identity and contact information of that entity or individual:
  - b. Relationship to Licensee (*i.e.*, operating under Licensee's instructions under a contract):
4. Spacecraft Upon Which the Remote Sensing Instrument(s) is (are) Carried
  - a. Description:
  - b. Estimated launch date(s) in calendar quarter:
  - c. Number of spacecraft (system total and maximum in-orbit at one time):
  - d. For each spacecraft:
    - i. Altitude range in kilometers:
    - ii. Inclination range in degrees:

- iii. Period (time of a single orbit):
- iv. Longitude of the ascending node:
- v. Eccentricity:
- vi. Argument of perigee:
- vii. Propulsion (yes/no):
- viii. Ability of the spacecraft to slew, point, or digitally look off-axis from the x, y, and z axes of travel:

5. If any entity or individual other than the Licensee will own, control, or manage any *spacecraft* in the System

- a. Identity and contact information of that entity or individual:
- b. Whether that entity or individual is a U.S. person:
- c. Relationship to Licensee (*i.e.*, operating under Licensee's instructions under a contract):

6. Ground Components

- a. Location of Mission Control Center(s) with the ability to operate the system, including where commands are generated:
- b. Location of other Ground Station components of the system, meaning facilities that communicate commands to the instrument or receive unenhanced data from it, and facilities that conduct data preprocessing:
- c. If any entity or individual other than the Licensee will own, control, or manage any *mission control center(s)* with the ability to operate the System
  - i. Identity and contact information of that entity or individual:
  - ii. Relationship to Licensee (*i.e.*, operating under Licensee's instructions under a contract):

7. Information Applicable to Multi-Spectral Imaging (MSI) and/or Hyper-Spectral Imaging (HSI).

- a. Number of spectral bands:
- b. Individual spectral bandwidths (to include range of the upper and lower ends of each spectral band in nanometers):

## Appendix D to Part 960 - Memorandum of Understanding

Memorandum of Understanding Among the Departments of Commerce, State, Defense, and Interior, and the Office of the Director of National Intelligence, Concerning the Licensing and Operations of Private Remote Sensing Satellite Systems. April 25, 2017.

### I. Authorities and Roles

This Memorandum of Understanding (MOU) is undertaken pursuant to the National and Commercial Space Programs Act, 51 U.S.C. 60101 *et seq.* ("the Act"), 15 CFR part 960, National Security Presidential Directive 27 (NSPD-27), and Presidential Policy Directive-4 PPD-4 ("applicable directives"), or to any renewal of, or successor to, the Act and the applicable directives.

The principal Parties to this MOU are the Department of Commerce (DOC), Department of State (DOS), Department of Defense (DOD), and Department of the Interior (DOI). The Office of the Director of National Intelligence (ODNI) and the Joint Chiefs of Staff (JCS) provide supporting advice pertaining to their areas of expertise. The Secretary of commerce is responsible for administering the licensing of private remote sensing satellite systems pursuant to the Act and applicable directives, and fulfills this responsibility through the National Oceanic and Atmospheric Administration (NOAA). For remote sensing issues, the Act also grants the authority to the Secretary of State to determine conditions necessary to meet international obligations and foreign policies, and to the Secretary of Defense to determine conditions necessary to meet the national security concerns raised by any remote sensing license application submitted pursuant to the Act and applicable directives, or to any amendment, renewal, or successor thereto. In addition, pursuant to this MOU, NOAA shall also consult with the Director of National Intelligence (DNI) for the views of the Intelligence Community (IC) and with the Chairman of the Joint Chiefs of Staff for the views of the DOD joint operational community.

### II. Purpose

The purpose of this MOU is to establish the interagency consultation process for adjudicating remote sensing licensing actions, and the consultation process for the interruption of normal commercial operations pursuant to the Act and applicable directives.

### III. Policy

In consultation with affected departments and agencies, including the DNI and JCS, the Secretary of Commerce will impose constraints on private remote sensing systems when necessary to meet the international obligations, foreign policy concerns, and/or national security concerns of the United States, and shall accord with the determinations of the Secretary of State and the Secretary of Defense, and with applicable laws and directives. Procedures for implementing this policy are established below, with each Party to this MOU separately establishing and documenting its internal timelines and decision authorities below the Cabinet level.

## IV. Procedures for Department/Agency Review

### A. Consultation During Review of Licensing Actions

Pursuant to the Act and applicable directives, or to any renewal thereof or successor thereto, the Secretary of Commerce shall review any application and make a determination 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. The DOC will provide copies of requests for licensing actions to DOS, DOD, DOI, ODNI, and JCS within 3 working days. Each of these entities will inform DOC, through NOAA, of the office of primary responsibility, including primary and backup points of contact, for license action coordination.

- (1) DOC will defer its decision on licensing requests until the other reviewing agencies have had a reasonable time to review them, as provided in this section. Within 10 working days of receipt, if DOS, DOD, DOI, ODNI, or JCS wants more information or time to review, then it shall notify, in writing, DOC/NOAA
  - (a) of any additional information that it believes is necessary to properly evaluate the licensing action, or
  - (b) 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, or why more time is needed.
- (2) After receiving a complete license package, including any additional information that was requested as described above, DOS, DOD, DOI, ODNI and JCS will provide their final recommendations on the license package within 30 days, or otherwise may request from DOC/NOAA additional time necessary to provide a recommendation. If DOS determines that imposition of conditions on the actions being reviewed is necessary to meet the international obligations and foreign policies of the United States, or DOD determines that imposition of conditions are necessary to address the national security concerns of the United States, the MOU Party identifying the concern will promptly notify, in writing, DOC/NOAA and those departments and agencies responsible for the management of operational land imaging space capabilities of the United States. Such notification shall:
  - (a) Describe the specific national security interests, or the specific international obligations or foreign policies at risk, if the applicant's system is approved as proposed;
  - (b) set forth the specific basis for the conclusion that operation of the applicant's system as proposed will not preserve the identified national security interests or the identified international obligations or foreign policies; and
  - (c) either specify the additional conditions that will be necessary to preserve the relevant U.S. interests, or set forth in detail why denial is required to preserve such interests. All notifications under this paragraph must be in writing.

### B. Interagency Dispute Resolution for Licensing Actions

- (1) Committees. The following committees are established, described here from the lowest level to the highest, to adjudicate disagreements concerning proposed commercial remote sensing system licenses.
  - (a) Operating Committee on Private Remote Sensing Space Systems. An Operating Committee on Private Remote Sensing Space Systems (RSOC) is established. The Under Secretary of Commerce for Oceans and Atmosphere and NOAA Administrator shall appoint its Chair. Its other principal members shall be representatives of DOS, DOD, and DOI, or their subordinate agencies, who along with their subject matter



experts, can speak on behalf of their department or agency. Representatives of the ODNI and the JCS shall participate as supporting members to provide independent advice pertaining to their areas of expertise. The RSOC may invite representatives of United States Government departments or agencies that are not normally represented in the RSOC to participate in the activities of that Committee when matters of interest to such departments or agencies are under consideration.

- (b) Advisory Committee on Private Remote Sensing Space Systems. An Advisory Committee on Private Remote Sensing Space Systems (ACPRS) is established and shall have as its principal members the Assistant Secretary of Commerce for Environmental Observation and Prediction, who shall be Chair of the Committee, and Assistant Secretary representatives of DOS, DOD, and DOI. Appointed representatives of ODNI and JCS shall participate as supporting members to provide independent advice pertaining to their areas of expertise. Regardless of the department or agency representative's rank and position, such representative shall speak at the ACPRS on behalf of his/her department or agency. The ACPRS may invite Assistant Secretary level representation of United States Government departments or agencies that are not represented in the ACPRS to participate in the activities of that Committee when matters of interest to such departments or agencies are under consideration.
  - (c) Review Board for Private Remote Sensing Space Systems. The Board shall have, as its principal members, the Under Secretary of commerce for Oceans and Atmosphere, who shall be Chair of the Board, and Under Secretary or equivalent representatives of DOS, DOD, and DOI. The Director of National Intelligence and Chairman of the Joint Chiefs of Staff shall be represented at an appropriate level as supporting members to provide independent advice pertaining to their areas of expertise. The Board may invite the representatives of United States Government departments or agencies that are not represented on the Board, to participate in the activities of the Board when matters of interest to such departments or agencies are under consideration.
- (2) Resolution Procedures.
- (a) If, following the various intra-departmental review processes, the principal members of the RSOC do not agree on approving a license or on necessary conditions that would allow for its approval, then the RSOC shall meet to review the license application. The RSOC shall work to resolve differences in the recommendations with the goal of approving licenses with the least restrictive conditions needed to meet the international obligations, foreign policies, or national security concerns of the United States. If the issues cannot be resolved, then the Chair of the RSOC shall prepare a proposed license that reflects the Committee's views as closely as possible, and provide it to the principal members of the RSOC for approval. The proposed license prepared by the RSOC chair shall contain the conditions determined necessary by DOS or DOD. Principal members have 5 working days to object to the proposed license and seek a decision at a higher level. In the absence of a timely escalation, the license proposed by the RSOC Chair will be issued.
  - (b) If any of the principal Parties disagrees with the proposed license provided by the RSOC Chair, they may escalate the matter to the ACPRS for resolution, Principal Parties must escalate the matter within 5 working days of such a decision. Escalations must be in writing from the principal ACPRS member, and must cite the specific national security, foreign policy, or international obligation concern. Upon receipt of a request to escalate, DOC will suspend any further action on the license action until ACPRS resolution. The ACPRS shall meet to review all departments' information and recommendations, and shall work to resolve interagency disagreements. Following this meeting, the Chair of the ACPRS shall, within 11 working days from the date of receiving notice of escalation, provide the reviewing departments a proposed license that contains the conditions determined by DOS or DOD. Within 5 working days of receipt of the proposed license, an ACPRS principal member may object to the prepared license and seek to escalate the matter to the Review Board. In the absence of an escalation within 5 working days, the license prepared by the ACPRS Chair will be issued.
  - (c) If any of the principal Parties disagrees with the license prepared by the ACPRS Chair, it may escalate the matter to the Review Board for resolution. Principal Parties must escalate the matter within 5 working days of such a decision. Escalations must be in writing from the principal Review Board member, and must cite the specific national security, foreign policy, or international obligation concern. Upon receipt of a request to escalate, DOC will suspend any further action on the license action until Review Board resolution. The Review Board shall meet to review information and recommendations that are provided by the ACPRS, and such other private remote sensing matters as appropriate. The Chair of the Board shall provide reviewing departments and agencies a proposed license within 11 working days from the date of receiving notice of

escalation. The proposed license prepared by the Review Board chair shall contain the conditions determined necessary by DOS or DOD. If no principal Parties object to the proposed license within 5 working days, it will be issued.

- (d) If, within 5 working days of receipt of the draft license, a principal Party disagrees with any conditions imposed on the license, that Party's Secretary will promptly notify the Secretary of Commerce and the other principal Parties in writing of such disagreement and the reasons therefor, 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.
- (e) Upon notification of such a disagreement, DOC will suspend further action on the license that would be inconsistent with the Secretary of State or the Secretary of Defense determination. If the Secretary of Commerce believes the limits defined by another Secretary are inappropriate, then the Secretary of Commerce or Deputy Secretary shall consult with his or her counterpart in the relevant department within 10 working days regarding unresolved issues. If the relevant Secretaries are unable to resolve any issues, the Secretary of Commerce will 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 consensus among departments and agencies, 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.

### C. Interagency Dispute Resolution Concerning Other Commercial Remote Sensing Matters

Nothing in this MOU precludes any Party to this MOU from addressing through other appropriate channels, consistent with the Act and applicable directives, any matter regarding commercial remote sensing unrelated to (1) adjudicating remote sensing licensing actions, or (2) the interruption of normal commercial operations. Such matters may be raised using standard coordination processes, including by referral to 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 consensus among the departments and agencies, or failing that, by referral to the President, when appropriate.

### D. Consultation During Review of Interruption of Normal Commercial Operations

- (1) This section establishes the process to limit the licensee's data collection and/or distribution where necessary to meet international obligations or foreign policy interests, as determined by the Secretary of State, or during periods of increased concern for national security, as determined by the Secretary of Defense in consultation with the Director of National Intelligence and the Chairman of the Joint Chiefs of Staff. DOC will provide DOS, DOD, ODNI, and JCS 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 international obligations and foreign policies or national security concerns at issue. Alternatives to prohibitions on collection and/or distribution shall be considered as "modified operations," such as delaying or restricting the transmission or distribution of data, restricting disseminated data quality, restricting the field of view of the system, obfuscation, encryption of the data, or other means to control the use of the data, provided the licensee has provisions to implement such measures.
- (3) Except where urgency precludes it, DOS, DOD, DOC, ODNI and JCS will consult to attempt to come to an agreement concerning appropriate conditions to be imposed on the licensee in accordance with determinations made by DOS or DOD. Consultations shall be managed 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, the Secretary of Defense, the Director of National Intelligence, or the Chairman of the Joint Chiefs of Staff 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 Secretary or 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 shall determine the conditions necessary to meet international obligations and foreign policy concerns, and the Secretary of Defense shall determine the conditions necessary to meet national security concerns. This function shall not be delegated below the Secretary or acting Secretary.

- (5) The Secretary of State or the Secretary of Defense will provide to the Secretary of Commerce a determination regarding the conditions required to be imposed on the licensees. 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 licensees 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.
- (6) If the Secretary of Commerce believes the conditions determined by another Secretary are inappropriate, he or she will, simultaneous with notification to, and imposition of such conditions on, the licensee, so notify the Secretary of State or the Secretary of Defense, 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, may initiate as soon as possible a Principals-level consultative process to achieve a consensus or, failing that, refer the matter 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.

## **E. Coordination Before Release of Information Provided or Generated by Other United States Government Departments or Agencies**

Before releasing any information provided or generated by another department or agency to a licensee or potential licensee, to the public, or to an administrative law judge, the agency proposing the release must 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 or restricted because it is classified, pre-decisional, deliberative, proprietary, or protected for other reasons. No information shall be released without the approval of the department or agency that provided or generated it unless required by law.

## **F. No Legal Rights**

No legal rights or remedies, or legally enforceable causes of action, are created or intended to be created by this MOU.