

**(h) Alternative Methods of Compliance (AMOCs)**

(1) The Manager, Seattle ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (i)(1) of this AD. Information may be emailed to: [9-ANM-Seattle-ACO-AMOC-Requests@faa.gov](mailto:9-ANM-Seattle-ACO-AMOC-Requests@faa.gov).

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO Branch, FAA, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

**(i) Related Information**

(1) For more information about this AD, contact Christopher Baker, Aerospace Engineer, Propulsion Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206-231-3552; email: [christopher.r.baker@faa.gov](mailto:christopher.r.baker@faa.gov).

(2) For service information identified in this AD, contact Aviation Partners Boeing, 2811 S 102nd Street, Suite 200, Seattle, WA 98168; telephone 206-830-7699; internet <https://www.aviationpartnersboeing.com>. You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206-231-3195.

Issued in Des Moines, Washington, on May 3, 2019.

**Michael Kaszycki,**

*Acting Director, System Oversight Division,  
Aircraft Certification Service.*

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

[Docket No.: 100903432-9396-01]

RIN 0648-BA15

**Licensing of Private Remote Sensing Space Systems**

**AGENCY:** National Environmental Satellite, Data, and Information Service

(NESDIS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (Commerce).

**ACTION:** Proposed rule.

**SUMMARY:** The Department of Commerce (Commerce), through the National Oceanic and Atmospheric Administration (NOAA), licenses the operation of private remote sensing space systems under the Land Remote Sensing Policy Act of 1992. NOAA's existing regulations implementing the Act were last updated in 2006. Commerce is now proposing to rewrite those regulations, as described in detail below, to reflect significant changes in the space-based remote sensing industry since that time and to improve the regulatory approach overall. Commerce requests public comment on the new proposed regulations.

**DATES:** Comments must be received by July 15, 2019.

**ADDRESSES:** You may send comments by the following methods:

*Federal eRulemaking Portal:* Go to: [www.regulations.gov](http://www.regulations.gov) and search for the docket number NOAA-NESDIS-2018-0058. Click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.

*Mail:* NOAA Commercial Remote Sensing Regulatory Affairs, 1335 East-West Highway, G101, Silver Spring, Maryland 20910.

*Instructions:* The Department of Commerce and NOAA are not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. All submissions received must include the agency name and docket number or RIN for this rulemaking. All comments received will be posted without change to [www.regulations.gov](http://www.regulations.gov), including any personal or commercially proprietary information provided.

**FOR FURTHER INFORMATION CONTACT:** Tahara Dawkins, Commercial Remote Sensing Regulatory Affairs, at 301-713-3385, or Glenn Tallia, NOAA Office of General Counsel, at 301-628-1622.

**SUPPLEMENTARY INFORMATION:****Background**

Pursuant to Article VI of the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (Outer Space Treaty), activities of private U.S. entities in outer space require the "authorization and continuing supervision" of the United States Government. The Land Remote Sensing Policy Act of 1992, codified at 51 U.S.C.

60101 *et seq.* (Act), authorizes the Secretary of Commerce (Secretary) to fulfill this responsibility for operators of private remote sensing space systems, by authorizing the Secretary to issue and enforce licenses for the operation of such systems. The Secretary's authority under the Act is currently delegated to the NOAA Assistant Administrator for Satellite and Information Services. Under its regulations implementing the Act, found at 15 CFR part 960, NOAA has issued licenses for over 1,000 imaging satellites, helping to ensure that the United States remains the clear world leader in this industry.

Through the National Space Council, an interagency organization established by the President of the United States, chaired by the Vice President, and tasked with developing and monitoring the implementation of national space policy and strategy, this Administration has made clear that long-term U.S. interests are best served by ensuring that U.S. industry continues to lead the rapidly maturing and highly competitive private remote sensing space market. The Administration's goal is to advance and protect U.S. national security and foreign policy interests by maintaining the nation's leadership in remote sensing space activities, and by sustaining and enhancing the private U.S. remote sensing space industry. In short, the Administration aims to ensure that the United States remains the world leader in this strategic industry.

To that end, and in accordance with Space Policy Directive-2, Commerce began the process of reviewing its private remote sensing space system regulations by publishing an Advance Notice of Proposed Rulemaking (ANPRM) on June 29, 2018 (83 FR 30592). The ANPRM sought public comment on a variety of questions across five topics related to the Act, and Commerce received nine detailed responses. Commerce thanks all commenters for their thoughtful responses to its ANPRM. Commerce incorporated many principles and specific ideas from these comments into this proposed rule.

Based on the wide scope of this undertaking and substantive changes desired by the Administration and suggested by the public, Commerce is proposing to entirely rewrite the current regulations. Commerce started from a blank slate, then incorporated public input from the ANPRM and the results of several months' worth of interagency discussions. As described in detail below, this proposed rule implements the Administration's and the public's shared goals of increasing transparency, certainty, and reducing regulatory

burdens without impairing essential governmental interests, such as preserving U.S. national security and adhering to international obligations. The most fundamental changes Commerce proposes to meet these goals are, first, to create a two-category framework, where the license terms are commensurate with the risk posed by the remote sensing space system to the national security and international obligations of the United States, and, second, to conduct a full interagency review and consider custom license conditions only when a proposed system is novel and is in the higher risk category. Commerce believes this approach will be more efficient, more transparent, and less burdensome, and will provide more certainty to the remote sensing community, compared with the status quo.

Commerce invites public comment and requests suggestions for additional improvements to the rule in general. Of particular note, Commerce seeks feedback on the proposed rule's criteria used to distinguish between low- and high-risk systems, and the standard license conditions proposed for low- and high-risk systems, respectively (including cost of complying with such conditions and suggested alternative approaches).

### General Overview

Comments received in response to the ANPRM favored a less burdensome regulatory approach; categorizing systems and conditioning their operations proportionately, based on the risks they pose to U.S. national security and international obligations; and increasing transparency in the regulatory process, such as through notice-and-comment rulemaking. The proposed rule makes several changes based on specific concepts supported by the public comments to the ANPRM, including the following:

- Updates and clarifies the definition of "remote sensing," with the result that many cameras used today in space for technical purposes will not require a license;
- Establishes a review process and license conditions based on potential risk, separating "high-risk" systems from "low-risk" systems, with the result that, based on a review of past applications, approximately 40 percent of future systems would likely be considered "low-risk";
- Incorporates only those conditions specified in the rule in all licenses except for proposed systems that are novel and pose a high risk, estimated, based on a review of past applications, at under 20 percent of systems, thereby

eliminating the uncertainty, additional review time, and regulatory burden imposed by individualized interagency review for all non-novel applications;

- Requires the periodic update of the low-risk category criteria, standard license conditions, and interagency review processes via public notice-and-comment rulemaking, thereby increasing transparency and regulatory certainty;
- Reduces the application review time to 60 days for low-risk systems and 90 days for high-risk systems, and eliminates the current practice of "clock stoppages" for review of applications; and
- Reduces compliance burdens in several ways, such as:
  - Reducing the number and complexity of license conditions, including eliminating the requirement to offer unenhanced data to the U.S. Government before deleting (purging) data;
  - Significantly lessens paperwork burdens by reducing the information requested in the application and replacing audits with certifications; and
  - Incorporating all operating requirements into a single license document.

### Subpart-by-Subpart Overview

#### Subpart A: General

This subpart addresses the scope and applicability of the proposed rule, Commerce's jurisdiction, and definitions.

First, the scope of the Act and, therefore, the proposed rule, do not include systems owned or operated by U.S. Government agencies. The rule, therefore, has no bearing on U.S. Government remote sensing capabilities or the data policy regarding the availability of data or products therefrom, such as Landsat and NOAA's operational satellites. The proposed rule regulates private remote sensing space systems operated by all other entities, which may be commercial, non-profit, academic, or otherwise. If such entities are United States citizens, as defined in the proposed rule, or foreign entities that would operate a private remote sensing space system from the United States, they would fall within the Secretary's jurisdiction and require a license.

Second, the proposed rule's definition of "remote sensing space system" includes missions to conduct remote sensing from an orbit of any celestial body. When the current regulations were last updated, Commerce did not foresee that private entities would pursue remote sensing missions beyond

Earth's orbit; therefore, the current regulations limit their jurisdiction to systems in Earth orbit and those capable of sensing the Earth. However, as discussed below, the Act is not limited to Earth-focused missions. This revised definition better reflects the Act's scope and provides clarity for operators of remote sensing missions not in Earth orbit that were previously unable to identify a U.S. Government agency that was able to clearly and directly authorize their proposed mission. Commerce seeks public comment on this statutory interpretation.

Commerce received several comments questioning the statutory authority and policy rationale for regulating non-Earth imaging, especially where the operator has no intent to image the Earth. Commerce believes that the plain language of the Act requires a broader scope than simply intentional Earth imaging. In the Act (at 51 U.S.C. 60101(4)), Congress defined "land remote sensing" as the collection of imagery of the Earth's surface. However, when Congress created the authority for Commerce to issue licenses, it did not limit this authority to "land" remote sensing. Instead, it provided Commerce with a broader authority over all "private remote sensing space systems." 51 U.S.C. 60121(a)(1). The Act's legislative history reveals this to have been an intentional wording choice. By avoiding the word "land," which Congress used elsewhere in the Act, Congress made clear that Commerce's responsibility to regulate remote sensing was not limited to intentional Earth imaging.

Third, Commerce calls attention to the proposed rule's definition of "remote sensing." As drafted, the definition requires "transmission" of data that is collected in space, so instruments that collect data in space but never transmit the data (for example, traditional star trackers) would not meet the definition of "remote sensing" and would not need a license. However, Commerce cannot exempt systems with poor imaging resolution from the licensing requirement, as at least one commenter requested. The Act requires all operators of remote sensing space systems to obtain a license before operating, and the Act does not provide the authority for Commerce to exempt any system that performs "remote sensing" from the license requirement.

The definition of "remote sensing" also addresses a point raised by several commenters, who requested that Commerce either exempt cameras on launch vehicles from the licensing requirement, or create a special streamlined licensing category for them.

In the proposed rule, the definition of “remote sensing” excludes data from an instrument that is physically attached to the primary object being sensed, because this sensing is not “remote.” This updated definition has the result of excluding many cameras used today in space for technical purposes, including cameras attached to second-stage launch vehicles, where the camera primarily images the launch vehicle itself; and cameras primarily viewing a solar array deploying on a spacecraft. Therefore, any cameras falling under the exclusion in the revised definition would not need a license.

Fourth, the ANPRM asked how Commerce should decide which entity or entities must obtain a license if many entities are involved in a single system. All commenters that responded on this point requested that Commerce license only the one entity with the greatest control over the remote sensing operations of the system. Commerce agrees with this suggestion, and has implemented it by clarifying the definition of “operate.” Therefore, under the proposed rule, a single entity will be legally responsible for ensuring the compliance of the entire system. Commerce notes that the system, as defined, includes all space- and ground-based components that support remote sensing and data management, regardless of whether the licensee owns or manages it. For example, if Company A owns and controls a remote sensing instrument that is physically hosted on Company B’s spacecraft, it is likely that Company A is the correct party to apply for a license, and would be responsible for ensuring compliance with all license terms, even if they affect or rely on activities conducted by Company B.

Finally, some commenters suggested Commerce create a form of a general license for identical or similar systems. Commerce notes that the definition of “remote sensing space system” in the proposed rule makes clear that a license may authorize a system comprising one or more remote sensing instruments and spacecraft. By not limiting how many remote sensing instruments qualify as a system, the proposed rule permits an applicant to apply for a single license to operate a series or constellation of remote sensing instruments. So long as the characteristics and capabilities of the entire system are fully and accurately described in the application, a system comprising multiple instruments could potentially receive a single license.

#### *Subpart B: Risk Categories and General Interagency Consultation Processes*

This subpart addresses how Commerce will periodically consult with the other U.S. Government agencies with roles specified in the Act: The Departments of Defense and State. It also reflects one of the major changes in the proposed rule: The distinction between low- and high-risk systems. In the ANPRM, Commerce suggested the possibility of identifying applications posing a “de minimis” risk. All commenters reacted positively to this idea. After deliberation, Commerce opted to attempt to expand this category by including systems deemed to be low-risk, rather than the more conservative “de minimis” risk. Commerce hoped this would allow far more applicants into this streamlined and less burdensome category, which will receive the license conditions specified in Subpart D, rather than the more expansive conditions in Subpart E. Similarly, a few commenters suggested implementing a system akin to a “general license” or notification-based authorization to operate a “de minimis” risk system. The proposed rule, instead, streamlines the individual application and licensing processes for low-risk systems, which Commerce believes will benefit far more operators and will achieve the same policy goals as the commenters’ proposals.

Regarding the risk category criteria, Commerce sought to draft the categorization criteria to ensure that a substantial portion of licensees would be subject to the low-risk conditions. Under the criteria in the proposed rule, Commerce estimates that approximately 40 percent of existing licensees (primarily educational institutions) would have been categorized as low-risk.

Generally, systems that meet all criteria in this subpart will be categorized as low-risk, although the Secretary may categorize as low-risk some systems that meet less than all of the low-risk criteria after consultation with the Secretaries of Defense and State. Additionally, the Secretary may categorize as high-risk a system that meets all the low-risk criteria, but which poses a high and unforeseeable risk because it is novel in some way. Publishing the categorization criteria in the rule provides potential applicants with greater insight into what category they are likely to be assigned—and, therefore, what processes and license conditions they may be subject to.

Commerce seeks public comment on the criteria in section 960.6. Commerce requests feedback about whether these

criteria (as they interact with the corresponding standard license conditions in Subparts D and E) appropriately take into account the Administration’s goals, including the policy factors in 960.5. Commerce also specifically seeks comment on whether the terms used in the criteria factors reflect the remote sensing industry’s own technical parameters, such that the criteria can be clearly understood. For example, the criteria include whether a system is capable of imaging a center point more than once in 24 hours; Commerce welcomes comments on whether the remote sensing industry has a different, commonly used method to calculate revisit rate. Additionally, Commerce seeks comment on the thresholds adopted in the criteria. For example, with respect to resolution thresholds, the Administration opted to use the capabilities of the public Landsat system as a floor for the systems that would be deemed low-risk; that is to say, a system is necessarily low-risk if it is no more capable than Landsat. As a result, the thresholds for imaging resolution for low-risk systems are set at 15 meters panchromatic and 30 meters multispectral, respectively. Commerce seeks comment on these and other thresholds.

Commenters variously suggested updating these criteria every one to five years, depending on whether the commenters emphasized the need for adaptability or certainty. To balance these interests, Commerce proposes to review the criteria at least every two years. If Commerce believes changes are warranted, it will promulgate updates to the criteria through notice-and-comment rulemaking to ensure it is transparent and informed.

Subpart B also provides a process for reviewing and updating standard license conditions at least every two years. This process mirrors the one discussed above for updating categorization criteria, and will likewise promote transparency, certainty, public input, and adaptability.

Additionally, in all places in the proposed rule that include interagency consultation, the U.S. Government would be required to use the dispute resolution procedures in the 2017 Interagency Memorandum of Understanding (MOU). However, the definition of the MOU in the proposed rule makes clear that wherever the MOU (which implemented the existing regulations) conflicts with the proposed rule, the proposed rule will govern. Of particular note, Section IV(A) of the MOU conflicts in large part with the proposed rule’s interagency consultation process for the review of

applications and inclusion of license conditions described in subparts C, D, and E of the proposed rule; therefore, subparts C, D, and E of the proposed rule will govern. Furthermore, Section IV(B) refers to interagency dispute resolution for licensing actions, but the proposed rule uses the committees created in Section IV(B)(1) and escalation procedures in Section IV(B)(2) for resolving disputes about matters besides individual licensing actions. Therefore, when the proposed rule refers to “interagency dispute resolution procedures in Section IV(B) of the MOU,” the U.S. Government will treat the text of Section IV(B) as though it referred to adjudicating any disputes. Commerce anticipates that the MOU will help ensure that the procedures in the proposed rule work smoothly and quickly.

#### *Subpart C: License Application Submission and Categorization*

This subpart informs applicants of the review procedures that Commerce will follow in accepting and beginning review of all applications, including the process by which Commerce will categorize an application as low- or high-risk based on the criteria specified in Subpart B. It provides timelines for internal government procedures and for notifying applicants of their category.

One of the primary benefits to industry from the proposed rule is in curtailing the interagency application review process. Under the existing regulations, every applicant receives the same interagency review, with the potential for specialized license conditions of which the applicant had no prior notice. This interagency review process has sometimes resulted in prolonged delays to license issuance, and has imposed license conditions that the applicant could not have anticipated when developing their system.

Under the proposed rule, Commerce expects that the majority of applications would not be subjected to that individualized interagency review. Whether they are categorized as low- or high-risk, most applications would be subject only to a determination of whether the application is complete, its appropriate category, and whether the applicant will comply with the law. Only those applications that are novel (such that the standard license conditions do not adequately address their risks) will be subjected to open-ended interagency review and the possibility of specialized license conditions. Based on a review of four years of applications, Commerce estimates that over 80 percent of such applications would not have received

individualized review or specialized license conditions under the proposed rule. In summary, the proposed rule provides significantly expedited review and greater certainty for the majority of applications, whether categorized as low- or high-risk.

#### *Subpart D: Low-Risk Category*

This subpart exclusively addresses low-risk applications and licenses. It contains procedures for completing review of applications categorized as low-risk and for granting or denying those licenses. It also contains every condition that will be included in each low-risk license, and clarifies which conditions may be waived and how.

A key innovation of the proposed rule, requested by several commenters, is that applicants that are informed that their systems will be categorized as low-risk will know with certainty what their license conditions will be: Applications categorized as low-risk are never subject to individual interagency review, can never include specific conditions, and Commerce cannot require a modification once a license is granted (colloquially, if imprecisely, known as permanent “retroactive conditions”). Moreover, these standard license conditions are less burdensome than those typically included in licenses under the existing regulations. For example, low-risk licensees will not be required to encrypt data in transmission or at rest, nor must they be able to comply with limited operations orders (colloquially known as temporary “shutter control”).

The standard license conditions, for both low- and high-risk categories, are split into two subsections: Those that are eligible to be waived and those that are not. The rule specifies that Commerce will consider waiving a condition for good cause, including when the condition is inapplicable, or when the licensee can achieve the condition’s goal another way. Most conditions that are not eligible to be waived are specifically required either by the Act or by Section 1064, Public Law 104–201, (the 1997 Defense Authorization Act), referred to as the “Kyl-Bingaman Amendment.”

One notable condition relates to data protection. Commerce’s current regulations do not specify a clear data protection standard, instead requiring all licensees to develop, submit, obtain approval of, and follow, a “data protection plan.” The proposed rule provides greater certainty to applicants as to what data protection measures will be sufficient, while still retaining flexibility where appropriate. Regarding encryption, the standard license

conditions in the proposed rule require low-risk licensees to choose a National Institute of Standards and Technology (NIST)-approved encryption method to encrypt telemetry, tracking, and control (TT&C) only (see discussion of high-risk data protection conditions below in the Subpart E summary). The rule requires the licensee to implement additional measures, consistent with industry best practice, to prevent unauthorized system access. However, the “data protection plan” is no longer required.

Therefore, applicants will know in advance what encryption methods will be acceptable, and will not be required to develop or receive approval of a data protection plan. However, as with all waivable conditions, the applicant may request a waiver and propose an alternative means of protection. Commerce believes this strikes an appropriate balance between providing certainty and allowing flexibility. Commerce seeks feedback on this approach to data protection, and on the proposed requirement to implement NIST-approved encryption.

Turning to Commerce’s duty to implement the Kyl-Bingaman Amendment, the NPRM proposes a standard license condition consistent with the Kyl-Bingaman Amendment’s prohibition against issuing a license that permits imagery of Israel that is “more detailed or precise than . . . is available from commercial sources.” Commerce, interpreting this language, reasoned that imagery is “available from commercial sources” when imagery at a certain resolution is “readily and consistently available in sufficient quantities from non-U.S. sources” to render more stringent resolution restrictions on U.S. licensees ineffective (April 25, 2006, 71 FR 24473). Commerce modeled this interpretation on export control regulations issued by Commerce’s Bureau of Industry and Security, which address an analogous concern. Applying this standard, Commerce has most recently found that imagery of Israel is readily and consistently available at a two-meter resolution (October 15, 2018, 83 FR 51929). Commerce proposes to reevaluate the resolution determination every two years as a part of the routine review of standard license conditions described in Subpart B. Commerce seeks comment on the interpretation of the statute at 71 FR 24479, and on whether the spatial resolution Commerce identifies in the relevant standard conditions below is consistent with that interpretation (April 25, 2006, 71 FR 24473).

All commenters favored a presumption of approval for all applications. Commerce agrees. This

subpart implements a presumption of approval for low-risk applications, meaning that Commerce must grant the license application unless the Secretary has specific, credible evidence that the applicant will not comply with applicable legal requirements. This subpart also halves the time the Act allows for Commerce to review a low-risk application from 120 days to 60 days, as requested by a few commenters, and reduces the review period for a high-risk application to 90 days.

For all licensees, the proposed rule dramatically decreases paperwork and compliance burdens. The existing regulatory program requires the completion of lengthy baseline, quarterly, and annual audits, and pre-launch documentation, among other requirements. By contrast, the proposed rule replaces such requirements for low-risk systems with a single annual certification, as requested by several commenters. This certification merely requires the licensee to verify that all facts contained in the license are still true.

The ANPRM requested comments about whether Commerce should impose any insurance requirements to address potential liability to the United States Government, and to mitigate the risk of orbital debris. All commenters that responded on this point argued against imposing such a requirement. In lieu of imposing insurance requirements, Commerce is proposing a standard license condition (shown in Subparts D and E) requiring licensees to comply with the latest version of the Orbital Debris Mitigation Standard Practices (ODMSP) issued by the U.S. Government, as contemplated by Space Policy Directive-3, section 6(b)(ii). Commerce anticipates that this requirement will reduce the risk of on-orbit collisions and preserve the space environment for all users, while imposing minimal additional burdens on industry.

Commenters also requested greater clarity about license amendments and foreign agreements. Whereas the existing regulatory approach to these topics can require duplicative paperwork and review processes, such as requesting review of a proposed foreign agreement and license amendment for the same transaction, the proposed rule greatly simplifies the license amendment process and combines it with the foreign agreement process. It replaces both of these with a single “modification,” required only when a material fact listed in the license changes. For example, if the license specifies that there are no foreign ground stations, then a licensee would

need to obtain approval of a modification before adding a foreign ground station. Commerce would review the terms of the foreign agreement as part of its analysis about whether to grant the modification request, but the licensee would not need to obtain separate approval of the foreign agreement.

#### *Subpart E: High-Risk Category*

This subpart exclusively addresses high-risk applications and licenses. It contains procedures for completing review of applications categorized as high-risk and for granting or denying those licenses. Many of these processes are identical to or comparable to those included in Subpart D for low-risk applications and licenses, but the proposed rule separates them to assist applicants and licensees in understanding what terms apply to them.

There are two types of conditions contemplated in high-risk licenses: Standard conditions (which are included in all licenses and published in the rule), and specific conditions, which are generated on a case-by-case basis, if necessary (because the system is determined to be novel, as described in Subpart C), through consultation with other U.S. Government agencies. In the course of such interagency consultation, the rule commits Commerce to determine, in consultation with the Secretaries of Defense and State, whether proposed specific license conditions may be reasonably mitigated by U.S. Government action, and to follow the MOU escalation procedures in the event of any disagreements. It also enables Commerce to involve the applicant during the licensing process and consult regarding any proposed specific conditions, suggested by some commenters as a way to find creative, less-burdensome conditions that still address interagency concerns. These procedures are intended to create procedural safeguards against unduly burdensome conditions.

One important standard high-risk condition addresses data protection. As discussed previously, the existing regulations do not specify data protection criteria, instead requiring the licensee to develop, submit, obtain approval of, and then follow a data protection plan. By contrast, the proposed rule specifies data protection criteria to increase clarity: The standard license conditions in the proposed rule require high-risk licensees to choose a NIST-approved and validated encryption method with a key length of at least 256 bits for encrypting TT&C and all data transmissions, and to

implement additional measures, consistent with industry best practice, to prevent unauthorized system access.

Recognizing the increased risk posed by the data from high-risk systems, the proposed rule requires that high-risk licensees also maintain a document that describes the means by which the licensee will comply with the license’s data protection conditions. The proposed rule would require high-risk licensees to use the latest version of NIST’s Cybersecurity Framework in developing this document; Commerce seeks comment on this proposal and whether any alternatives are preferable. The licensee is not required to submit the document to Commerce, although Commerce may request it and may use it to assist in inspections.

High-risk applications, like low-risk applications described above, also benefit from the presumption of approval favored by all commenters. This means that Commerce generally must grant these licenses within the 90-day review timeline unless there is specific, credible evidence that the applicant will not comply with applicable legal requirements. The proposed rule eliminates “clock stoppages” and thereby increases transparency about the timeline.

As is true for low-risk licenses, the proposed rule combines “license amendments” and “foreign agreements” into a single “license modification” process, which is the same for high-risk licenses as for low-risk licenses as described above in the overview of Subpart D.

Unlike for low-risk licenses, the proposed rule permits Commerce to require license modifications after license issuance to high-risk systems that could require technical modifications to the system for national security reasons as determined by the Secretary of Defense. However, the proposed rule includes the Act’s procedure which provides that Commerce may require the U.S. Government to reimburse affected licensees for additional costs associated with such technical modifications.

Finally, the proposed rule dramatically reduces paperwork for high-risk licenses. Almost all compliance documents, such as routine audits, are replaced by a semi-annual certification.

#### *Subpart F: Prohibitions and Enforcement*

This subpart reduces the number of possible violations compared with the existing regulations. It also simplifies the regulatory language regarding the Secretary’s authorities to investigate,

penalize, and prevent violations of the law, often by referring directly to the statutory authorities.

#### *Subpart G: Appeals*

This subpart clarifies the actions subject to administrative and judicial appeal, and the appeal procedures.

#### *Appendices*

For transparency and certainty, the following are included as Appendices to the proposed rule: (1) Information required in an application, (2) application submission instructions, (3) information to be included in a license, and (4) the 2017 Interagency MOU. Because license modifications are required prior to taking any action that would result in the information included in the license becoming inaccurate, it is important to note what information Commerce proposes to include in the license (Appendix C).

#### **Classification**

Commerce seeks public comment on the below regulatory analyses, including the analysis of entities affected, estimated burdens to industry, and anticipated benefits to society. Commerce welcomes public input on the monetary and non-monetary burdens imposed under the existing regulations, as well as those estimated under the proposed rule. Commerce also welcomes information on regulatory alternatives consistent with the Act that better address the goals of this Administration and of the statutes and Executive Orders described below.

#### *Regulatory Planning and Review— Executive Orders 12866 and 13563*

E.O. 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) will review all significant rules. OIRA has determined that this rule is significant for purposes of E.O. 12866.

E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The E.O. directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open

exchange of ideas. Commerce has developed this rule in a manner consistent with these requirements. This proposed rule is consistent with E.O. 13563, and in particular with the requirement of retrospective analysis of existing rules, designed "to make the agency's regulatory program more effective or less burdensome in achieving the regulatory objectives," for the reasons given below. In addition, its requirement to make standard conditions to be included in licenses issued under the regulations subject to notice and comment rulemaking will greatly enhance transparency, predictability and certainty for potential market entrants.

Commerce believes that there is substantial information demonstrating the need for and consequences of the proposed action because it has engaged with the industry and the public in recent years, including through NOAA's Advisory Committee on Commercial Remote Sensing (ACCRES), to study changes in the industry. Through direct contact with the remote sensing space industry, ACCRES, and other fora, Commerce is well informed about the growth in the industry and the challenges imposed by the existing regulations. Commerce also seeks public input on this proposed rule to obtain even more information about the need for and consequences of its proposed course of action.

Commerce believes that the rule will reduce the monetary and non-monetary burdens imposed by the regulation of remote sensing, and seeks public comment on this issue. Moreover, Commerce believes that the potential benefits to society resulting from the proposed rule are large relative to any potential costs, primarily because it is the longstanding policy of the United States to endeavor to keep the United States as the world leader in the strategic remote sensing industry. In Commerce's view, the benefit to society of this regulatory program is primarily to better preserve U.S. national security, which is admittedly difficult to quantify. Due to the national security benefits accrued, it is critical that the most innovative and capable remote sensing systems be licensed to do business from within the United States. A regulatory approach that is less burdensome to industry and thereby encourages businesses not to leave the United States, therefore, is a benefit to U.S. national security.

Commerce believes that the proposed regulations will result in no incremental costs to society as compared with the status quo. Generally, the costs to society that might be expected from

regulations implementing the Act would be additional barriers to entry in the remote sensing field, and increased costs to operate in this industry. However, the proposed rule takes a significantly lighter regulatory approach than the existing regulations and increases certainty, transparency, and predictability, while still allowing Commerce to preserve U.S. national security and observe international obligations as required by the Act. For these reasons, Commerce believes that the benefits of the proposed rule vastly outweigh its costs, which are expected to be reduced by the proposed rule. Nevertheless, Commerce seeks public input on this issue, and welcomes any quantification of these costs and benefits that would help inform this analysis.

#### *Executive Order 13771*

This proposed rule is expected to be a deregulatory action under E.O. 13771. Commerce requests public comment on whether affected entities anticipate cost savings from the proposed rule, and in what amount.

#### *Regulatory Flexibility Act*

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), whenever a Federal agency is required to publish a notice of rulemaking for any proposed rule, it must prepare, and make available for public comment, an initial regulatory flexibility analysis (IRFA) that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). Accordingly, Commerce has prepared the below IRFA for this proposed rule, and seeks public comment on the regulatory burdens associated with the proposed rule.

This IRFA describes the economic impact this proposed rule, if adopted, would have on small entities in the space-based remote sensing industry (NAICS 336414, defined as having less than 1,250 employees). A description of the reasons for the action, the objectives of and legal basis for this action are contained in the Summary section of the preamble. The reporting, recordkeeping, and compliance requirements are described in the Paperwork Reduction Act analysis below and the Subpart-by-Subpart Overview. Commerce does not believe there are other relevant Federal rules that duplicate, overlap, or conflict with this proposed rule.

At the time of the last issuance of a final rule on this subject, Commerce found that the rule would not have a significant economic impact on a substantial number of small entities due to the "extraordinary capitalization

required” to develop, launch, and operate a private remote sensing space system. Since that time, significant technological developments have greatly reduced these costs: For example, such developments have resulted in reduced costs to launch partly due to greater competition, and small satellites have become cheaper to produce due to standardization. These changes and others have enabled small businesses, universities, secondary and elementary school classes, and other small entities to enter this field. Based on an analysis of the last decade’s license applications and an attempt to project those trends into the future, Commerce estimates that several dozen and up to a couple hundred small entities may be affected by this proposed rule in the years to come.

Commerce has attempted to minimize the economic impact to small businesses in its proposed rule. Most notably, Commerce has proposed a two-category framework that establishes less burdensome regulatory requirements on low-risk systems. Commerce anticipates that future small businesses would be likely to operate low-risk systems, especially because the rule requires Commerce to update the low-risk criteria at least every two years. The low-risk requirements involve significantly less burdensome and less frequent compliance reporting than the existing regulations. For example, low-risk systems are required only to submit an application and, after the grant of a license, an annual certification that all information remains true. This is significantly less than the existing paperwork burden, which includes quarterly and annual audits, and data protection plans.

However, even if small businesses operate “high-risk” systems under the proposed rule, the majority of them would nevertheless receive significant benefits compared to the status quo. Commerce has estimated that over 80 percent of all future applicants, whether low- or high-risk, would likely receive only the standard license conditions specified in the rule, and not be subject to individualized interagency review or specialized license conditions. This results in significantly increased transparency and certainty for small businesses, even if they are operating “high-risk” systems.

Commerce considered four alternatives to the proposed rule. The first alternative was to retain the status quo and not update the regulations. As stated above, however, the proposed rule was promulgated under the now-outdated assumption that small businesses, for financial reasons, would

not enter the space-based remote sensing industry. Experience has demonstrated that small businesses are now participating in this industry and they are required to comply with the existing regulations’ requirements. Commerce estimates that the proposed rule would result in significantly lower regulatory burdens on almost all of these businesses as compared with the existing regulations, as evidenced by the dramatically reduced paperwork burden discussed below in the Paperwork Reduction Act section. Therefore, Commerce does not believe that the status quo alternative would minimize any significant economic impact on small businesses.

The second alternative was to retain the simplified, non-differentiated structure of the status quo regulations, updating them only for technological developments. In other words, Commerce could have retained the bulk of the existing regulations and edited them in minor ways only to account for technological changes since 2006. For the same reasons as those given above, Commerce believes that this alternative would not have minimized any significant economic impact on small businesses. As stated above, the proposed rule will result in significantly less paperwork for all licensees, and in dramatically increased certainty and transparency for the vast majority of licensees, which will provide small businesses in this industry with a much lighter regulatory approach that is not available under the existing regulations’ framework.

The third alternative was to repeal the status quo regulations and not replace them, instead relying solely on the terms of the Act. The Act gives the Secretary the authority to issue regulations and requires the Secretary to publish a complete list of information required to apply for a license in the **Federal Register**, but regulations are not required. Commerce believes this alternative, however, would result in too little transparency, predictability, and certainty for businesses, particularly small businesses that lack the resources to invest in designing a potential system without any prior insight into the process for application review or expected license conditions. Therefore, this alternative is likely to result in fewer small businesses entering the remote sensing market.

Additionally, without processes and standards for Commerce’s decisions set in regulations, Commerce’s actions towards individual applicants and licensees might have the appearance of being arbitrary and capricious.

The fourth alternative was to update the status quo regulations to provide an expanded role for the Departments of Defense and State, and the Office of the Director of National Intelligence, in recognition of the threat to national security posed by some of the latest technological developments. This alternative would provide more certainty to the U.S. Government in its ability to completely address national security concerns arising from particular systems. However, Commerce believes the resulting harm to industry from the reduced certainty, increased delays and increased cost in some cases would frustrate the policy for the U.S. remote sensing industry to maintain its world leadership role and would particularly affect small businesses in that regard.

#### *Paperwork Reduction Act*

This proposed rule contains a revised collection-of-information requirement subject to the Paperwork Reduction Act (PRA, 44 U.S.C. 3501 *et seq.*) that will modify the existing collection-of-information requirement that was approved by OMB under control number 0648–0174 in January, 2017. This revised requirement will be submitted to OMB for approval along with the proposed rule.

Public reporting burden for this requirement is estimated to average: 20 hours for the submission of a license application; 10 hours for the completion of a Cybersecurity Framework (high-risk systems only); 1 hour for the submission of a notification of each deployment to orbit; 1 hour for the submission of notification of a system anomaly or disposal; 1 hour for notification of financial insolvency; 1 hour for a license modification request (if the licensee desires one); 10 hours for completion of an Orbital Debris Mitigation Standard Practices (ODMSP) plan, and 2 hours for an annual compliance certification (low- and high-risk systems), plus 2 additional hours for a semiannual compliance certification (high-risk systems only). Commerce estimates that this burden is less than half of the existing paperwork burden (an estimated 48 hours compared with 110). Commerce invites public comment on the accuracy of the existing burdens and our estimates of the burdens under the proposed rule.

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. Regardless of 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. For ease of comparison between the existing and proposed revised

paperwork burdens, Commerce provides the following table:

TABLE 1

| Document   | Existing burden (hrs)                      | Proposed burden (hrs) |
|--|--|-----------------------|
| Application .....  | 40 .....                                   | 20                    |
| Data Protection Plan (including data flow diagram, plans to comply with Kyl-Bingaman and data collection restrictions) ..... | 23 .....                                   | n/a                   |
| Cybersecurity Framework (high-risk only) .....   | n/a .....                                  | 10                    |
| License amendment (Modification) .....   | 10 .....                                   | 1                     |
| Public summary .....   | 2 .....                                    | n/a                   |
| Foreign agreements notifications .....   | 2 .....                                    | n/a                   |
| Completion of Pre-Ship Review .....  | 1 .....                                    | n/a                   |
| Information when Spacecraft Becomes Operational .....  | 2 .....                                    | 1                     |
| Demise of System or Discontinuation of Operations .....  | 2 .....                                    | n/a                   |
| Orbital Debris Mitigation Standard Practices Plan .....  | Comparable to existing part of application | 10                    |
| Operational Deviation .....  | 4 .....                                    | 1                     |
| Financial Insolvency .....   | n/a .....                                  | 1                     |
| Planned Information Purge .....  | 2 .....                                    | n/a                   |
| Operational Quarterly Report .....   | 3 .....                                    | n/a                   |
| Semiannual Compliance Certification (high-risk only) .....   | n/a .....                                  | 2                     |
| Annual Compliance Audit (Certification) .....  | 8 .....                                    | 2                     |
| Annual Operational Audit .....   | 10 .....                                   | n/a                   |
| Total .....  | 110 .....                                  | 48                    |

*National Environmental Policy Act*

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

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

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

Dated: April 29, 2019.

**Stephen Volz,**

*Assistant Administrator for Satellite and Information Services, National Oceanic and Atmospheric Administration, Department of Commerce.*

For the reasons set forth above, 15 CFR part 960 is proposed to be revised as follows:

**PART 960—LICENSING OF PRIVATE REMOTE SENSING SPACE SYSTEMS**

**Subpart A—General**

- Sec.
- 960.1 Purpose.
- 960.2 Jurisdiction.
- 960.3 Applicability to existing licenses.
- 960.4 Definitions.

**Subpart B—Risk Categories and General Interagency Consultation Processes**

- 960.5 Risk categories generally.
- 960.6 Low-risk category criteria.

960.7 Process for revising low-risk category criteria.

960.8 Process for revising standard license conditions.

**Subpart C—License Application Submission and Categorization**

- 960.9 Application submission.
- 960.10 Application categorization.

**Subpart D—Low-Risk Category**

- 960.11 General.
- 960.12 License grant or denial.
- 960.13 Standard license conditions.
- 960.14 Licensee-requested modifications.
- 960.15 Routine compliance and monitoring.
- 960.16 Term of license.

**Subpart E—High-Risk Category**

- 960.17 General.
- 960.18 Specific license conditions.
- 960.19 License grant or denial.
- 960.20 Standard license conditions.
- 960.21 United States Government-required license modification; reimbursement.
- 960.22 Licensee-requested modifications.
- 960.23 Routine compliance and monitoring.
- 960.24 Term of license.

**Subpart F—Prohibitions and Enforcement**

- 960.25 Prohibitions.
- 960.26 Investigations and enforcement.

**Subpart G—Appeals Regarding Licensing Decisions**

- 960.27 Grounds for adjudication by the Secretary.
- 960.28 Administrative appeal procedures.

**Appendix A to Part 960—Application Information Required**

**Appendix B to Part 960—Application Submission Instructions**

**Appendix C to Part 960—License Template**

**Appendix D to Part 960—Memorandum of Understanding**

Authority: 51 U.S.C. 60124.

**15 CFR Part 960**

**Subpart A—General**

**§ 960.1 Purpose.**

These regulations 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.*

**§ 960.2 Jurisdiction.**

These regulations set forth the requirements for the operation of private remote sensing space systems within the United States or by a United States citizen. The Secretary does not authorize the use of spectrum for radio communications by a private remote sensing space system, and 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.



**§ 960.3 Applicability to existing licenses.**

Licensees that have obtained license(s) under the procedures established in 15 CFR part 960 (2006) may request, in writing to the Secretary, that such license(s) be replaced with one developed in accordance with this part. Such requests would be processed, in the sole discretion of the Secretary, in accordance with the procedures for new applications in Subparts C, D, and E, as appropriate. During this process, the licensee's existing license(s) would remain valid.

**§ 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 that could indicate a technical malfunction or security threat.

*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.

*Data* means the output from a remote sensing instrument, regardless of level of processing.

*Days* means working days if referring to a number equal to or less than ten, and calendar days if greater than ten.

*Ground sample distance* or *GSD* refers to the common measurement for describing the spatial resolution of data created from most remote sensing instruments, typically measured in meters.

*In writing* or *written* means written communication transmitted via email, forms submitted on the Secretary's website, and 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 any fact an applicant provides in the application (apart from its ODMSP plan), or any fact in Parts C or D of a license derived from information an applicant or licensee provides to the Secretary. Material facts include, but are not limited to, the description of all components of the system and the identity and description of the person.

*Memorandum of Understanding* or *MOU* means 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," dated April 25, 2017, which remains in effect and is included in 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, whether requested by the licensee or required by the Secretary in accordance with the procedures in this part.

*Operate* means to control the functioning of a remote sensing space system. If multiple persons manage various components of a remote sensing space system, the person with primary control over the functioning of the remote sensing instrument shall be deemed to operate the remote sensing space 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 a remote sensing space system in which the remote sensing instrument is not owned by an agency or instrumentality of the U.S. Government.

*Remote sensing* means the collection and transmission of data about a sensed object by making use of the electromagnetic waves emitted, reflected, or diffracted by the sensed object. Sensing shall not be considered remote if the sensing instrument is physically attached to the primary sensed object and cannot be maneuvered to effectively sense any other object.

*Remote sensing instrument* means a device that can perform remote sensing.

*Remote sensing space system* means all components that support remote sensing to be or being conducted from an orbit of the Earth or another celestial body, including the remote sensing instrument(s), the (one or more) spacecraft upon which the remote sensing instrument(s) is (are) carried, facilities wherever located, and any other items that support remote sensing and data management, regardless of whether the component is owned or managed by the applicant or licensee.

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

*Significant or substantial foreign agreement* means any contract or legal arrangement with any foreign national, entity, or consortium involving foreign nations or entities, the execution of

which will require the prior approval of a license modification.

*Subsidiary or affiliate* means a person that is related to the applicant or licensee by shareholdings or other means of control.

*Unenhanced data* means remote sensing signals or imagery products that are unprocessed or preprocessed.

*United States citizen* means:

- (1) Any individual who is a citizen 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.

**Subpart B—Risk Categories and General Interagency Consultation Processes****§ 960.5 Risk categories generally.**

(a) To promote the swift processing of applications and the appropriate level of continuing supervision, the Secretary, after consultation with appropriate agencies and subject to the interagency dispute resolution procedures in Section IV(B) of the MOU, shall group applications into categories. These categories shall reflect the relative risks to national security and international obligations and policies presented by the proposed operation of the system. Applications will be categorized as either low-risk or high-risk based on the Secretary's evaluation of the criteria in § 960.6. The Secretary will follow the procedures in this subpart to revise these criteria.

(b) Licenses will contain different conditions based on their categorization. The standard license conditions for low- and high-risk applications are found in subparts D and E, respectively. The Secretary will follow the procedures given in this subpart to revise the standard license conditions.

(c) In carrying out this part, the Secretary and any agency with a role under this part shall take into consideration the following, among other appropriate considerations:

- (1) Technological changes in remote sensing;
- (2) Non-technological changes in the remote sensing space industry, such as to business practices;
- (3) Changes in the national security and international obligation and policy environment which affects the risks posed by such systems;
- (4) The relative costs to licensees and benefits to national security and international obligations and policies of license conditions;
- (5) Changes in the methods available to mitigate risks to national security and international obligations and policies;

(6) The prevalence and capabilities of systems in other nations;

(7) The remote sensing regulatory environment in other nations;

(8) The potential for overlapping regulatory burdens imposed by other U.S. Government agencies; and

(9) The commercial availability of comparable data from other space-based and non-space-based sources.

#### § 960.6 Low-risk category criteria.

When determining whether a system, as proposed in the license application, should be categorized as low-risk under the procedures at § 960.10, the Secretary shall use the following criteria. The system must:

(a) Be capable of operating only in one or both of the following electro-optical spectral ranges:

(1) In a panchromatic band in the spectral range between 370–900 nanometers, and with a maximum resolution of 15 meters GSD;

(2) In no more than four multispectral bands in the spectral range between 370–1100 nanometers, and with a maximum resolution of 30 meters GSD;

(b) Be capable of operating only using the following spectral bandwidths for multispectral systems:

(1) Any bandwidth if the resolution is coarser than or equal to 30 meters GSD;

(2) Individual minimum spectral bandwidth(s) wider than 99 nanometers if the resolution is finer than 30 meters GSD;

(c) Encrypt tracking, telemetry, and control transmissions where the key length is at least 128 bits, if the system has propulsion;

(d) Be incapable of imaging the same center point of an image on Earth more than once in 24 hours from one or more satellites in a constellation, including by slewing or redirecting the satellite or remote sensing instrument;

(e) Be incapable of capturing video, defined as:

(1) Imaging more than one frame every 10 seconds if the remote sensing instrument's resolution is finer than 30 meters GSD; or

(2) Imaging more than 30 frames per second if the remote sensing instrument's resolution is coarser than or equal to 30 meters GSD;

(f) Contain no more than three operational spacecraft;

(g) Not, as described in its mission profile, disseminate data to the public within 12 hours of collection;

(h) Not have any foreign involvement, meaning that:

(1) No foreign nationals or entities have any ownership interest in the licensee; and

(2) No foreign nationals or entities manage any components of the system;

(i) Not, as described in its mission profile, perform night-time imaging, defined as imaging an area of the Earth's surface when the sun elevation is six degrees or more below the Earth's horizon relative to the imaged area with a resolution finer than 30 meters GSD;

(j) Not, as described in its mission profile, perform non-Earth imaging, defined as conducting remote sensing of an artificial object in space.

#### § 960.7 Process for revising low-risk category criteria.

(a) At least every two years, the Secretary will consider, in consultation with the Secretaries of Defense and State, and determine whether to revise the criteria listed in § 960.6.

(b) When the Secretary determines that it is prudent to revise the criteria, the Secretary shall consult with the Secretaries of Defense and State on all matters affecting national security and international obligations and policies, and other U.S. Government agencies as deemed appropriate by the Secretary.

(c) If the Secretary determines that the criteria listed in § 960.6 require revision, the Secretary shall promulgate revisions to those criteria following public notice and comment in the **Federal Register**.

(d) If, at any point during the procedures in this section, any of the Secretaries objects to any determination, they may elevate the objection pursuant to the interagency dispute resolution procedures in Section IV(B) of the MOU.

#### § 960.8 Process for revising standard license conditions.

(a) At least every two years, the Secretary will consider, in consultation with the Secretaries of Defense and State, and determine whether to revise the standard license conditions provided in subparts D and E of this part for low- and high-risk systems, respectively.

(b) When the Secretary determines that it is prudent to revise the standard license conditions, the Secretary shall consult with the Secretaries of Defense and State on all matters affecting national security and international obligations and policies, and other U.S. Government agencies as the Secretary deems appropriate.

(c) The Secretaries of Defense and State will determine the standard license conditions necessary for low- and high-risk systems, consistent with the Act, to meet national security concerns and international obligations and policies of the United States, respectively. The Secretaries of Defense and State will notify the Secretary of such conditions.

(d) The Secretary shall review the determinations under paragraph (c) of

this section and, in consultation with the Secretaries of Defense and State, determine whether the concerns addressed therein cannot reasonably be mitigated by the United States.

(e) If the Secretary determines that the standard license conditions in subparts D and E of this part require revision, the Secretary shall promulgate revisions to those conditions following public notice and comment in the **Federal Register**.

(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.

(g) As the Secretary deems necessary, the Secretary may consult with the Secretary of the Interior to inform the Secretary's determination of whether to designate unenhanced data that the licensee must provide.

(h) If the Secretary promulgates revised standard license conditions, those revised standard license conditions will not automatically apply to existing licenses. The Secretary shall notify licensees of any changes to standard license conditions resulting from the above procedures, and remind licensees that they may request that the Secretary approve a modification to their license if they would like an updated standard license condition to apply to them.

### Subpart C—License Application Submission and Categorization

#### § 960.9 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.

(c) Within five days of the submission, the Secretary, after consultation with the Secretaries of Defense and State and subject to the interagency dispute resolution procedures in Section IV(B) of the MOU, shall determine 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 makes that determination, the Secretary will notify the applicant that the revision constitutes a new application, 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.

#### **§ 960.10 Application categorization.**

(a) Within five days of the Secretary's notification to the applicant under § 960.9(c) that the application is complete, the Secretary shall make an initial determination of the appropriate category as follows:

(1) If the Secretary determines that the application meets all the criteria in § 960.6, the Secretary:

(i) Shall categorize the application as low-risk; or

(ii) May, in exceptional circumstances, if the Secretary determines the application presents a novel or not previously licensed capability with unforeseen risk to national security or compliance with international obligations or policies, categorize the application as high-risk.

(2) If the Secretary determines that the application does not meet all the criteria in § 960.6, the Secretary:

(i) Shall categorize the application as high-risk; or

(ii) May, if the Secretary determines the application presents a low risk to national security and international obligations and policies, categorize the application as low-risk.

(b) If the Secretary makes an initial determination that an application is high-risk, the Secretary shall also make an initial determination of whether the application should be subject to specific license conditions under § 960.18. The Secretary shall presume that the standard license conditions are sufficient, unless the application presents a novel or not previously licensed capability with unforeseen risk to national security or compliance with international obligations and policies.

(c) The Secretary shall notify the Secretaries of Defense and State of the Secretary's initial determinations under

paragraphs (a) and (b) of this section as applicable.

(d) If the Secretary of Defense or the Secretary of State objects to the Secretary's initial determinations in paragraph (a) or (b) of this section within 10 days, and the Secretary disagrees with the grounds given for the objection, the Secretary shall immediately elevate the objection pursuant to the interagency dispute resolution procedures in Section IV(B) of the MOU.

(e) Within 25 days of the Secretary's notification to the applicant under § 960.9(c), the Secretary shall notify the applicant in writing of the category determination unless the category determination is subject to interagency dispute resolution in accordance with paragraph (d) of this section. This notification shall not be a final agency action.

(f) If at any time during the review of the application the Secretary determines, in consultation with the Secretaries of Defense and State, that it is prudent to change the category determination of the application, the Secretary may do so, and shall notify the applicant. If the Secretary of Defense or the Secretary of State objects to the Secretary's decision to change the category determination, and the Secretary disagrees with the grounds given for the objection, the Secretary shall immediately elevate the objection pursuant to the interagency dispute resolution procedures in Section IV(B) of the MOU.

#### **Subpart D—Low-Risk Category**

##### **§ 960.11 General.**

This subpart provides the procedures that the Secretary will follow when considering applications the Secretary determines to be low-risk and, if a license is granted, the license conditions and other terms that will be included in such licenses.

##### **§ 960.12 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 § 960.9(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, or the Secretary and the applicant mutually agree to extend this review period.

##### **§ 960.13 Standard license conditions.**

(a) All licenses granted under this subpart shall contain the following standard conditions, which cannot be waived. Each license shall specify that the licensee shall:

(1) Comply with the Act, this part, the license, applicable domestic legal obligations, and the international obligations of the United States;

(2) 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;

(3) Upon request, make available 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 as soon as such data are available and on reasonable terms and conditions, unless doing so would be prohibited by law or license conditions;

(4) Make the following unenhanced data available in accordance with 51 U.S.C. 60141: None;

(5) In order to make disposition of any satellites in space in a manner satisfactory to the President upon termination of operations under the license:

(i) Comply with the latest version of the Orbital Debris Mitigation Standard Practices (ODMSP) issued by the U.S. Government; and

(ii) Maintain at all times an up-to-date document that explains how the licensee will comply with the ODMSP;

(6) Notify the Secretary in writing:

(i) Of 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, no later than five days after that event; and

(ii) Of any deviation of an on-orbit component of the system from the orbital parameters and data collection characteristics of the system, as

described in Part D of the license, no later than five days after that event; and

(7) Request and receive approval for a license modification before taking any action that would contradict a material fact in the license, including executing any significant or substantial foreign agreement.

(b) All licenses granted under this subpart shall also contain the following standard conditions, which may be waived or adjusted following the procedures in paragraph (c) of this section. Each license shall specify, absent an approved request to waive or adjust any of the conditions in paragraphs (b)(1) through (7) of this section, that the licensee shall:

(1) Refrain from disseminating data of the State of Israel (SOI) area at a resolution more detailed than two meters GSD. The SOI area includes the SOI and those territories occupied by the SOI in June 1967 (the Gaza Strip, the Golan Heights, and the West Bank);

(2) Certify that all material facts in the license remain accurate pursuant to the procedures in § 960.15 no later than October 15th of each year;

(3) Cooperate with compliance, monitoring, and enforcement authorities described in the Act and this part, and permit the Secretary to access, at all reasonable times, any component of the system for the purpose of ensuring compliance with the Act, the regulations, and the license;

(4) Notify the Secretary in writing no later than five days after each disposal of an on-orbit component of the system;

(5) Notify the Secretary in writing no later than five days after detection of an anomaly affecting the system, including, but not limited to, an anomaly resulting in loss of ability to operate an on-orbit component of the system;

(6) Notify the Secretary in writing no later than five days after the licensee's financial insolvency or dissolution; and

(7) Protect the system and data therefrom by:

(i) Implementing appropriate National Institute of Standards and Technology (NIST)-approved encryption, in accordance with the manufacturer's security policy, and wherein the key length is at least 128 bits, for communications to and from the on-orbit components of the system related to tracking, telemetry, and control; and

(ii) Implementing measures, consistent with industry best practice, that prevent unauthorized access to the system and identify any unauthorized access.

(c) As part of the application, the applicant may request that any license condition listed in paragraph (b) of this section be waived or adjusted. The

Secretary may approve the request to waive or adjust any such condition if, after consultation with the Secretaries of Defense and State as appropriate and subject to the interagency dispute resolution procedures in Section IV(B) of the MOU, the Secretary determines that:

(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.

(d) No other conditions shall be included in a license granted under this subpart, or imposed in such a license after the license has been issued except in accordance with the provisions of § 960.14 or § 960.26.

#### **§ 960.14 Licensee-requested modifications.**

(a) The licensee may request in writing that the Secretary modify the license. Such requests should include the reason for the request and relevant supporting documentation.

(b) If the Secretary believes that license conditions might be available that are less burdensome than those currently in a license, the Secretary shall notify the licensee and invite the licensee to request a modification.

(c) The Secretary may approve or deny a modification request after consultation with the Secretaries of Defense and State as appropriate.

(d) If the Secretary determines, after consultation with the Secretaries of Defense and State as appropriate, that the requested modification of a license would result in its re-categorization from low-risk to high-risk, the Secretary shall consult with the Secretaries of Defense or State, as appropriate, to determine whether approval of the request may require additional conditions. If so, the Secretary may also approve the modification request subject to additional conditions after notifying the licensee that approval would require such additional conditions, and giving the licensee an opportunity to withdraw or revise the request.

(e) If, at any point during the procedures in paragraph (d) of 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.

(f) The Secretary shall inform the licensee of the decision under paragraph (c) of this section or a determination under paragraph (d) of this section

within 30 days of the request, unless elevation is ongoing under paragraph (e) of this section.

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

(a) 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.

#### **§ 960.16 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 in accordance with applicable license conditions, 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 § 960.26; 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;

(ii) Operations to a person who:

(A) Will not operate the system from the United States, or

(B) Is not a United States citizen.

#### **Subpart E—High-Risk Category**

##### **§ 960.17 General.**

This subpart provides the procedures that the Secretary will follow when considering applications the Secretary determines to be high-risk and, if a license is granted, the standard license conditions and other terms that will be included in such licenses, and the

process for determining any specific license conditions, if necessary.

**§ 960.18 Specific license conditions.**

(a) If, based on the determination in § 960.10, the Secretary concludes that specific license conditions may be necessary, the following process will apply.

(b) The Secretaries of Defense and State, after consulting with any other U.S. Government agencies they deem appropriate, will determine whether any specific license conditions are necessary (in addition to the standard license conditions in § 960.20) to meet national security concerns and international obligations and policies of the United States regarding that application. The Secretaries of Defense and State will notify the Secretary of any such conditions.

(c) The Secretary shall review the notifications under paragraph (b) of this section and aim to craft the least burdensome specific license conditions possible by:

(1) Determining, in consultation with the Secretaries of Defense and State as appropriate, whether the concerns addressed therein can reasonably be mitigated by the U.S. Government; and

(2) Determining, in consultation with the applicant, whether the concerns addressed therein can reasonably be mitigated by the applicant.

(d) If, at any point during the above procedures, 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.

**§ 960.19 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 above determination within 90 days of the notification under § 960.9(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 90 days, the applicant may submit a request that the license be granted. Within 10 days of this request, the Secretary shall either:

(1) Grant the license unless the Secretary can determine, with specific credible evidence, that the applicant will not comply with the requirements of the Act, this part, or the license; or

(2) Notify the applicant in writing of any pending issues and of specific actions required to resolve them, and grant or deny the application within 60 days of that notification, unless the Secretary and the applicant mutually agree to extend this review period.

**§ 960.20 Standard license conditions.**

(a) Any license granted under this subpart shall contain the conditions determined through the process in § 960.18, if applicable, as well as the standard conditions in this section.

(b) All licenses granted under this subpart shall contain the following standard conditions, which cannot be waived. Each license shall specify that the licensee shall:

(1) Comply with the Act, this part, and the license, applicable domestic legal obligations, and the international obligations of the United States;

(2) 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;

(3) Upon request, make available 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 as soon as such data are available and on reasonable terms and conditions, unless doing so would be prohibited by law or license conditions;

(4) Make the following unenhanced data available in accordance with 51 U.S.C. 60141: None;

(5) In order to make disposition of any satellites in space in a manner satisfactory to the President upon termination of operations under the license:

(i) Comply with the latest version of the Orbital Debris Mitigation Standard Practices (ODMSP) issued by the U.S. Government; and

(ii) Maintain at all times an up-to-date document that explains how the licensee will comply with the ODMSP;

(6) Notify the Secretary in writing:

(i) Of 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 subpart D of this part of the license, no later than five days after that event; and

(ii) Of any deviation of an on-orbit component of the system from the

orbital parameters and data collection characteristics of the system, as described in subpart D of this part of the license, no later than five days after that event; and

(7) Request and receive approval for a license modification before taking any action that would contradict a material fact in the license, including executing any significant or substantial foreign agreement.

(c) All licenses granted under this subpart shall also contain the following standard conditions, which may be waived or adjusted following the procedures in paragraph (d) of this section. Each license shall specify, absent an approved request to waive or adjust any of the conditions in paragraphs (c)(1) through (12) of this section, that the licensee shall:

(1) Refrain from disseminating data of the State of Israel (SOI) area at a resolution more detailed than two meters GSD. The SOI area includes the SOI and those territories occupied by the SOI in June 1967 (the Gaza Strip, the Golan Heights, and the West Bank);

(2) Certify that all material facts in the license remain accurate pursuant to the procedures in § 960.23 no later than April 15th and October 15th of each year;

(3) Cooperate with compliance, monitoring, and enforcement authorities described in the Act and this part, and permit the Secretary to access, at all reasonable times, any component of the system for the purpose of ensuring compliance with the Act, the regulations, and the license;

(4) Notify the Secretary in writing no later than five days after each disposal of an on-orbit component of the system;

(5) Notify the Secretary in writing no later than five days after detection of an anomaly affecting the system, including, but not limited to, an anomaly resulting in loss of ability to operate an on-orbit component of the system;

(6) Notify the Secretary in writing no later than five days after the licensee's financial insolvency or dissolution;

(7) Protect the system and data therefrom by:

(i) Implementing appropriate National Institute of Standards and Technology (NIST)-approved and validated encryption, in accordance with the manufacturer's security policy, and 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 data transmissions throughout the system;

(ii) Implementing measures, consistent with industry best practice, that prevent unauthorized access to the

system and identify any unauthorized access; and

(iii) Maintaining a document which describes the means by which the licensee will comply with the conditions in paragraphs (c)(7)(i) and (ii) of this section, using the latest version of the NIST Cybersecurity Framework;

(8) Comply with limited operations directives issued by the Secretary, in accordance with a request issued 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 distribution in exceptional circumstances to meet significant concerns about national security and international policy; and

(i) Be able to comply with limited operations directives at all times;

(ii) Provide and continually update the Secretary with a point of contact and an alternate point of contact for limited operations directives;

(9) If the licensee conducts remote sensing of an artificial object in space (“collects NEI data”), the licensee shall:

(i) Use only the 370–900 nanometers portion of the electromagnetic spectrum while collecting NEI data;

(ii) If the licensee has received written permission to collect NEI data from the operator of the sensed object, the licensee shall request approval from the Secretary to collect that NEI data at least 30 days prior to the planned collection and shall conduct the remote sensing only if the Secretary approves the request. The request shall include an identification of the object; confirmation that the owner and operator have notified applicable manufacturer(s); the orbital location of the object; the licensee’s proposed orbital maneuver plan during the remote sensing of the object; dates of the remote sensing; and the distance between the remote sensing instrument and the object.

(iii) If the licensee has not received permission to collect NEI data from the operator of the sensed object, the licensee shall not disseminate or retain in an archive:

(A) NEI data at a resolution finer than 0.5 meters;

(B) NEI data in which the object fills more than 3x3 pixels of the remote sensing instrument’s focal plane in two orthogonal axes simultaneously;

(C) Metadata associated with such NEI data, such as time, position, and altitude of the licensee’s remote sensing instrument; or

(D) NEI data of an artificial object in space that has not been successfully correlated with the space tracking catalog found at *space-track.org*.

(10) If the licensee collects night-time imaging data (“NTI data”), meaning data of an area of the Earth’s surface when the sun’s elevation is six degrees or more below the Earth’s horizon relative to that area using any remote sensing technique other than synthetic aperture radar, the licensee shall:

(i) Use only the 370–1,100 nanometers portion of the electromagnetic spectrum while collecting NTI data;

(ii) Not disseminate NTI data at a resolution finer than 30 meters GSD;

(iii) Not disseminate or retain in an archive, at any resolution, NTI data of the sites identified in the most recent list of NTI Geographic Exclusion Areas provided by the Secretary; and

(iv) Not disseminate the list of NTI Geographic Exclusion Areas or the information contained therein (by restating, paraphrasing, or incorporating it in a new form) to any person except its employees and contractors to carry out their job-related duties.

(11) If the licensee collects data using the shortwave infrared (1,200–3,000 nanometers) portion of the electromagnetic spectrum (“SWIR data”), the licensee shall not:

(i) Disseminate SWIR data at a resolution finer than 3.7 meters GSD;

(ii) Disseminate or retain in an archive, at any resolution, SWIR data of the sites identified in the most recent list of SWIR Geographic Exclusion Areas provided by the Secretary; or

(iii) Disseminate the list of SWIR Geographic Exclusion Areas or the information contained therein (by restating, paraphrasing, or incorporating it in a new form) to any person except its employees and contractors to carry out their job-related duties.

(12) If the licensee collects data using a synthetic aperture radar (“SAR data”), the licensee shall not:

(i) Disseminate SAR data, associated single-loop complex data, or any complex valued products, at a resolution finer than 0.25 meters impulse response ground plane quality;

(ii) Disseminate SAR phase history data, at any resolution;

(iii) Transmit SAR data to any ground station located outside the United States;

(iv) Utilize any SAR technology, data processing algorithms, or radar signatures developed by the licensee for the U.S. Government, in whole or in part, without the prior written approval of the responsible U.S. Government agency; or

(v) Receive SAR radar pulses from remote sensing instruments not listed in this license.

(d) As part of the application, the applicant may request that any license

condition listed in paragraph (c) of this section be waived or adjusted. The Secretary may approve the request to waive or adjust any such condition if, after consultation with the Secretaries of Defense and State as appropriate and subject to the interagency dispute resolution procedures in Section IV(B) of the MOU, the Secretary determines that:

(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.

**§ 960.21 United States Government-required license modification; reimbursement.**

If, after a license is granted under this subpart, the Secretary of Defense determines that a technical modification to a licensed system is necessary to meet a national security concern, the following procedure will apply:

(a) The Secretary of Defense will notify the Secretary of the determination. This determination shall not be delegated below the Secretary of Defense or acting Secretary.

(b) The Secretary will consult with the licensee and with other U.S. Government agencies as appropriate to determine whether the technical modifications will cause the licensee to incur additional costs, or to be unable to recover past development costs (including the cost of capital, but not including anticipated profits nor costs ordinarily associated with doing business abroad).

(c) If the Secretary determines that the licensee will incur additional costs under paragraph (b) of this section, the Secretary may require the U.S. Government agency or agencies who determined these national security concerns to reimburse the licensee for those additional or unrecoverable costs.

(d) The Secretary shall modify the license to reflect the necessary technical modifications and coordinate reimbursement, if applicable.

(e) If, at any point during the above procedures, 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.

**§ 960.22 Licensee-requested modifications.**

(a) The licensee may request in writing that the Secretary modify the license. Such requests should include the reason for the request and relevant supporting documentation.

(b) If the Secretary believes that license conditions might be available that are less burdensome than those currently in a license, the Secretary shall notify the licensee and invite the licensee to request a modification.

(c) The Secretary may approve or deny the modification request after consultation with the Secretaries of Defense and State as appropriate, or consult as appropriate with the Secretaries of Defense or State to determine whether approval of the request may require additional conditions. If so, the Secretary may approve the modification request subject to additional conditions after notifying the licensee that approval would require such additional conditions, and giving the licensee an opportunity to withdraw or revise the request.

(d) If, at any point during the procedures in paragraph (c) of 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.

(e) The Secretary shall inform the licensee of the decision under paragraph (c) of this section within 30 days of the request, unless elevation is ongoing under paragraph (d) of this section.

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

(a) By the date(s) 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 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.

#### **§ 960.24 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 in

accordance with applicable license conditions, 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 § 960.26; 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;

(ii) Operations to a person who:

(A) Will not operate the system from the United States, or

(B) Is not a United States citizen.

### **Subpart F—Prohibitions and Enforcement**

#### **§ 960.25 Prohibitions.**

Any person who operates a system from the United States and any person who is a United States citizen 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 contradict a material fact in the license.

#### **§ 960.26 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 G—Appeals Regarding Licensing Decisions**

#### **§ 960.27 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 Secretary's failure to make a determination on a license grant or denial within the timelines provided in this part;

(3) The imposition of a license condition; and

(4) The denial of a requested license modification.

(b) The only acceptable grounds for appeal of the above actions 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 available to the extent that there is involved the conduct of military or foreign affairs functions.

#### **§ 960.28 Administrative appeal procedures.**

(a) A person wishing to appeal an action specified at § 960.27(a) may do so within 14 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, including any claims of factual or legal error.

(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 available, 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, 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 15 CFR part 960, you must provide:

1. Material Facts: Fully accurate and responsive information to the following prompts under “Description of Licensee” and “Description of System.” If a question is not applicable, write “N/A” and explain, if necessary; and
2. Orbital Debris Mitigation Standard Practices (ODMSP) Plan: A document that explains how you will comply with the latest version of the ODMSP issued by the U.S. Government.
3. Your response to each prompt below constitutes material facts. If any information you submit later 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. Please see 15 CFR part 960 subpart C for additional details.

### Description of Licensee

1. General Licensee Information
  - a. Name:
  - 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. Place of incorporation, if outside the United States:
2. Ownership interests
  - a. Domestic entities or individuals with an ownership interest in the Licensee totaling more than 50 percent:
  - b. Foreign entities or individuals with any ownership interest in the Licensee:
3. Identity of any subsidiaries and affiliates playing a role in the operation of the System, including a brief description of that role:
4. Any foreign nations who may license the system:

### Description of System

1. General System Information
  - a. Name of system:
  - b. Brief mission description:
2. Remote Sensing Instrument(s):
  - a. Type(s) of sensor(s), including the spectral range(s) in nanometers in which the sensor is capable of operating (*i.e.*, 370–800; Optical, Radar, Lidar, X-Ray, Multispectral, Hyperspectral, combination of these, Other):
  - b. Spectral bandwidth capability or capabilities in nanometers (*i.e.*, 400 nanometer-wide band; four 20-nanometer-wide bands; etc.):
  - c. If sensor is multispectral, number of spectral bands:
  - d. Spatial resolution (GSD, Impulse Response, Other):
  - e. Number of sensors per satellite:
  - f. Whether the mission profile involves performing night-time imaging, defined as imaging an area of the Earth’s surface when the sun’s elevation is six degrees or more below the Earth’s horizon relative to the imaged area with a resolution finer than 30 meters GSD:

g. Whether the mission profile involves performing non-Earth imaging, defined as conducting remote sensing of an artificial object in space:

- h. Whether the system is capable of capturing video, defined as either:
  - A. Imaging at least one frame every 10 seconds if the remote sensing instrument’s resolution is finer than 30 meters GSD; or
  - B. Imaging at least 30 frames per second if the remote sensing instrument’s resolution is coarser than or equal to 30 meters GSD.

i. Minimum time between capability of imaging the same center point of an image on Earth more than once, from one or more satellites in a constellation:

j. Minimum and average time between when data are collected and disseminated to the public:

k. If any entity or individual other than the Licensee will own or control 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):

3. Spacecraft Upon Which the Remote Sensing Instrument(s) is (are) Carried

a. Description

A. Estimated launch date(s) in calendar quarter:

B. Number of spacecraft (system total and maximum in-orbit at one time):

b. Altitude range in kilometers:

c. Inclination range in degrees:

d. Propulsion (yes/no):

e. 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. citizen:

C. Relationship to Licensee (*i.e.*, operating under Licensee’s instructions under a contract):

4. Ground Components

a. Location of Mission Control Center(s):

b. Location of Ground Stations (without transmission access), wherever located:

c. Location of Ground Access Facilities (with direct downlink or transmission access), wherever located:

d. Data Storage and Archive Locations (including description and physical location of physical servers, cloud storage, etc.):

e. Description of encryption for telemetry tracking and control and data transmissions, if any (noting the applicable data protection standard license conditions for low- and high-risk systems):

f. If any entity or individual other than the Licensee will own, control, or manage any ground components of the System:

A. Identity and contact information of that entity or individual:

B. Whether that entity or individual is a U.S. citizen:

C. Relationship to Licensee (*i.e.*, operating under Licensee’s instructions under a contract):

### Requests for Standard License Condition Waivers or Adjustments

Standard license conditions are listed at 15 CFR 960.13 and 960.20 for low- and high-risk

systems, respectively. If requesting that any of these be waived or adjusted, please identify the specific standard license condition and explain why:

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.

## 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 one of three ways:

1. Complete the fillable form 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 15 CFR part 960, 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 15 CFR [960.16 or 960.24]. 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 15 CFR part 960. 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 must, at all times:

[Depending upon the categorization of the application as low- or high-risk, Commerce will insert the applicable standard license conditions, found either at §§ 960.13 or 960.20, and for a high-risk application, any applicable specific conditions resulting from the process in § 960.18, here.]

### 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:
  - 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. Place of incorporation, if outside the United States:
2. Ownership Interests
  - a. Domestic entities or individuals with an ownership interest in the Licensee totaling more than 50 percent:
  - b. Foreign entities or individuals with any ownership interest in the Licensee:
3. Identity of any subsidiaries and affiliates playing a role in the operation of the System, including a brief description of that role:
4. Point of contact for limited operations directives, if other than the point of contact listed above [note: do not include in low-risk licenses]:
5. Any foreign nations who may license the system:

#### Part D: Description of System

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 System Information
  - a. Name of system:
  - b. Brief mission description:
2. Remote Sensing Instrument(s)
  - a. Type(s) of sensor(s), including the spectral range(s) in nanometers in which the sensor is capable of operating (*i.e.*, 370–800; Optical, Radar, Lidar, X-Ray, Hyperspectral, Video, combination of these, other):
  - b. Spectral bandwidth capability or capabilities in nanometers:
  - c. If sensor is multispectral, number of spectral bands:
  - d. Spatial resolution (GSD, Impulse Response, Other):
  - e. Number of sensors per satellite:
  - f. Whether the mission profile involves performing night-time imaging, defined as imaging an area of the Earth's surface when the sun's elevation is six degrees or more below the Earth's horizon relative to the imaged area with a resolution finer than 30 meters GSD:
  - g. Whether the mission profile involves performing non-Earth imaging, defined as conducting remote sensing of an artificial object in space:
  - h. Whether the system is capable of capturing video, defined as either:
    - A. Imaging at least one frame every 10 seconds if the remote sensing instrument's resolution is finer than 30 meters GSD; or
    - B. Imaging at least 30 frames per second if the remote sensing instrument's resolution is coarser than or equal to 30 meters GSD:
      - i. Minimum time between capability of imaging the same center point of an image on Earth more than once, from one or more satellites in a constellation:
      - j. Minimum and average time between when data are collected and disseminated to the public:
      - k. If any entity or individual other than the Licensee will own or control 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):
3. Spacecraft Upon Which Remote Sensing Instrument(s) is (are) Carried
  - a. Description
    - A. Estimated launch date(s) in calendar quarter:
    - B. Number of spacecraft (system total and maximum in-orbit at one time):
    - C. Altitude range in kilometers:
    - D. Inclination range in degrees:
    - E. Propulsion (yes/no):
    - F. If any entity or individual other than the Licensee will own or control 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. citizen:
      - C. Relationship to Licensee (*i.e.*, operating under Licensee's instructions under a contract):
  4. Ground Components
    - a. Location of Mission Control Center(s):
    - b. Location of Ground Stations (without transmission access), wherever located:
    - c. Location of Ground Access Facilities (with direct downlink or transmission access), wherever located:
    - d. Data Storage and Archive Locations (including description and physical location of physical servers, cloud storage, *etc.*):
    - e. Description of encryption for telemetry tracking and control and data transmissions, if any (noting the applicable data protection standard license conditions for low- and high-risk systems):
    - f. If any entity or individual other than the Licensee will own or control any ground components of the System:
      - A. Identity and contact information of that entity or individual:
      - B. Whether that entity or individual is a U.S. citizen:
      - C. Relationship to Licensee (*i.e.*, operating under Licensee's instructions under a contract):

#### 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 filing 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 filing 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.

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**DEPARTMENT OF LABOR**

**Wage and Hour Division**

**29 CFR Parts 548 and 778**

**RIN 1235-AA24**

**Regular Rate Under the Fair Labor Standards Act**

**AGENCY:** Wage and Hour Division, Department of Labor.

**ACTION:** Proposed rule; extension of comment period.

**SUMMARY:** This document extends the period for submitting written comments on the Notice of Proposed Rulemaking (NPRM) entitled "Regular Rate Under the Fair Labor Standards Act." The comment period now ends on June 12, 2019. The Department of Labor (Department) is taking this action to provide interested parties additional time to submit comments in response to requests for extension.

**DATES:** The comment period for the proposed rule published March 29, 2019, at 84 FR 11888, is extended. The period for public comments, which was set to close on May 28, 2019, is extended to June 12, 2019. Comments must be received by 11:59 p.m. on June 12, 2019.

**ADDRESSES:** To facilitate the receipt and processing of written comments on this NPRM, the Department encourages interested persons to submit their comments electronically. You may submit comments, identified by Regulatory Information Number (RIN) 1235-AA24, by either one of the following methods:

*Electronic comments:* Follow the instructions for submitting comments on the Federal eRulemaking Portal <http://www.regulations.gov>.

*Mail:* Address written submissions to Amy DeBisschop, Acting Director of the Division of Regulations, Legislation, and Interpretation, Wage and Hour Division, U.S. Department of Labor, Room S-3502, 200 Constitution Avenue NW, Washington, DC 20210.

*Instructions:* This NPRM is available through the **Federal Register** and the <http://www.regulations.gov> website. You may also access this document via