

Subpart C—Prohibitions

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APPENDIX 1 TO PART 960—FILING INSTRUCTIONS AND INFORMATION TO BE INCLUDED IN THE LICENSING APPLICATION

APPENDIX 2 TO PART 960—FACT SHEET REGARDING THE MEMORANDUM OF UNDERSTANDING CONCERNING THE LICENSING OF PRIVATE REMOTE SENSING SATELLITE SYSTEMS DATED FEBRUARY 2, 2000

AUTHORITY: 15 U.S.C. 5624.

SOURCE: 65 FR 46829, July 31, 2000, unless otherwise noted.

Subpart A—General

§ 960.1 Purpose.

(a) The regulations in this part set forth the procedural and informational requirements for obtaining a license to operate a private remote sensing space system under Title II of the Land Remote Sensing Policy Act of 1992 (15 U.S.C. 5601 *et seq.*) (Public Law 102–555, 106 Stat. 4163) and the President’s Policy announced on March 10, 1994, entitled, “U.S. Policy on Foreign Access to Remote Sensing Space Capabilities” (PDD 23) (Available from NOAA, National Environmental Satellite Data and Information Service, 1335 East-West Highway, Room 7311, Silver Spring, MD 20910). In addition, this part describes NOAA’s regulation of such systems, pursuant to the Act and PDD 23. The regulations in this part are intended to:

(1) Facilitate development of the commercial space remote sensing industry in the United States and promote the broad use of remote sensing data;

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

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

(4) Ensure that unenhanced data collected by licensed private remote sensing space systems concerning the territory of any country are made available to the government of that country upon its request, as soon as such data are available and on reasonable com-

mercial terms and conditions as appropriate;

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

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

(b) In accordance with the Act and the PDD 23, decisions regarding the issuance of licenses and operational conditions (*See* subpart B of this part) will be made by the Secretary of Commerce, or his/her designee. Determinations of conditions to meet national security, foreign policy and international obligations are made by the Secretaries of Defense and State respectively. Determinations will be made in accordance with the process described in the Interagency MOU Fact Sheet contained in Appendix 2 of this part.

§ 960.2 Scope.

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

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

(c) The regulations in this part apply to any action taken on or after August 30, 2000 with respect to any license, and to pre-existing licenses.

(d) If any provision of the regulations in this part or the application thereof to any person or circumstance is held invalid, the validity of the remainder

of the regulations in this part or the application of such provision to other persons and circumstances shall not be affected.

(e) Issuance of a license under the regulations in this part does not affect the authority of any Department or Agency of the U.S. Government including, but not limited to, the Federal Communications Commission under the Communications Act of 1934 (47 U.S.C. 151 *et seq.*), the Department of Transportation under the Commercial Space Launch Act of 1984 (49 U.S.C. app.2601 *et seq.*), the Department of Commerce under the Export Administration Regulations (15 CFR parts 730-774), or the Department of State under the Arms Export Control Act (22 U.S.C. 2778) and the International Traffic in Arms Regulations (22 CFR parts 120-130).

§ 960.3 Definitions.

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

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

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

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

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

(3) Dissolution of the licensee;

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

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

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

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

Affiliate means any person: (1) Which owns or controls more than a 5% interest in the applicant or licensee; or (2) Which is under common ownership or control with the applicant or licensee.

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

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

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

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

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

Beneficial owner means any person who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise, has or shares: the right to exercise administrative control over a licensee; and the power to dispose of, or to direct the disposition of, any security interest in a license. All securities of the