

## 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 depart-

ments or agencies that are not represented in the ACPRS to participate in the activities of that Committee when matters of interest to such departments or agencies are under consideration.

(c) Review Board for Private Remote Sensing Space Systems. The Board shall have, as its principal members, the Under Secretary of Commerce for Oceans and Atmosphere, who shall be Chair of the Board, and Under Secretary or equivalent representatives of DOS, DOD, and DOI. The Director of National Intelligence and Chairman of the Joint Chiefs of Staff shall be represented at an appropriate level as supporting members to provide independent advice pertaining to their areas of expertise. The Board may invite the representatives of United States Government departments or agencies that are not represented on the Board, to participate in the activities of the Board when matters of interest to such departments or agencies are under consideration.

(2) Resolution Procedures.

(a) If, following the various intra-departmental review processes, the principal members of the RSOC do not agree on approving a license or on necessary conditions that would allow for its approval, then the RSOC shall meet to review the license application. The RSOC shall work to resolve differences in the recommendations with the goal of approving licenses with the least restrictive conditions needed to meet the international obligations, foreign policies, or national security concerns of the United States. If the issues cannot be resolved, then the Chair of the RSOC shall prepare a proposed license that reflects the Committee's views as closely as possible, and provide it to the principal members of the RSOC for approval. The proposed license prepared by the RSOC chair shall contain the conditions determined necessary by DOS or DOD. Principal members have 5 working days to object to the proposed license and seek a decision at a higher level. In the absence of a timely escalation, the license proposed by the RSOC Chair will be issued.

(b) If any of the principal Parties disagrees with the proposed license provided by the RSOC Chair, they may escalate the matter to the ACPRS for resolution. Principal Parties must escalate the matter within 5 working days of such a decision. Escalations must be in writing from the principal ACPRS member, and must cite the specific national security, foreign policy, or international obligation concern. Upon receipt of a request to escalate, DOC will suspend any further action on the license action until ACPRS resolution. The ACPRS shall meet to review all departments' information and recommendations, and shall work to resolve interagency disagreements. Following this meeting, the Chair of the ACPRS shall, within 11 working

days from the date of receiving notice of escalation, provide the reviewing departments a proposed license that contains the conditions determined by DOS or DOD. Within 5 working days of receipt of the proposed license, an ACPRS principal member may object to the prepared license and seek to escalate the matter to the Review Board. In the absence of an escalation within 5 working days, the license prepared by the ACPRS Chair will be issued.

(c) If any of the principal Parties disagrees with the license prepared by the ACPRS Chair, it may escalate the matter to the Review Board for resolution. Principal Parties must escalate the matter within 5 working days of such a decision. Escalations must be in writing from the principal Review Board member, and must cite the specific national security, foreign policy, or international obligation concern. Upon receipt of a request to escalate, DOC will suspend any further action on the license action until Review Board resolution. The Review Board shall meet to review information and recommendations that are provided by the ACPRS, and such other private remote sensing matters as appropriate. The Chair of the Board shall provide reviewing departments and agencies a proposed license within 11 working days from the date of receiving notice of escalation. The proposed license prepared by the Review Board chair shall contain the conditions determined necessary by DOS or DOD. If no principal Parties object to the proposed license within 5 working days, it will be issued.

(d) If, within 5 working days of receipt of the draft license, a principal Party disagrees with any conditions imposed on the license, that Party's Secretary will promptly notify the Secretary of Commerce and the other principal Parties in writing of such disagreement and the reasons therefor, and a copy will be provided to the Assistant to the President for National Security Affairs and the Assistant to the President for Science and Technology.

(e) Upon notification of such a disagreement, DOC will suspend further action on the license that would be inconsistent with the Secretary of State or the Secretary of Defense determination. If the Secretary of Commerce believes the limits defined by another Secretary are inappropriate, then the Secretary of Commerce or Deputy Secretary shall consult with his or her counterpart in the relevant department within 10 working days regarding unresolved issues. If the relevant Secretaries are unable to resolve any issues, the Secretary of Commerce will notify the Assistant to the President for National Security Affairs, who, in coordination with the Assistant to the President for Science and Technology, will seek to achieve consensus among departments and agencies, or failing that, by referral to the President.

All efforts will be taken to resolve the dispute within 3 weeks of its submission to the Assistant to the President for National Security Affairs and the Assistant to the President for Science and Technology.

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

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

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

(1) This section establishes the process to limit the licensee's data collection and/or distribution where necessary to meet international obligations or foreign policy interests, as determined by the Secretary of State, or during periods of increased concern for national security, as determined by the Secretary of Defense in consultation with the Director of National Intelligence and the Chairman of the Joint Chiefs of Staff. DOC will provide DOS, DOD, ODNI, and JCS copies of licensee correspondence and documents that describe how the licensee will comply with such interruptions of its commercial operations.

(2) Conditions should be imposed for the smallest area and for the shortest period necessary to protect the international obligations and foreign policies or national security concerns at issue. Alternatives to prohibitions on collection and/or distribution shall be considered as "modified operations," such as delaying or restricting the transmission or distribution of data, restricting disseminated data quality, restricting the field of view of the system, obfuscation, encryption of the data, or other means to control the use of the data, provided the licensee has provisions to implement such measures.

(3) Except where urgency precludes it, DOS, DOD, DOC, ODNI and JCS will consult to attempt to come to an agreement concerning appropriate conditions to be imposed on the licensee in accordance with determinations made by DOS or DOD. Consultations shall be managed so that, in the event an agreement cannot be reached at the staff

level, sufficient time will remain to allow the Secretary of Commerce to consult personally with the Secretary of State, the Secretary of Defense, the Director of National Intelligence, or the Chairman of the Joint Chiefs of Staff as appropriate, prior to the issuance of a determination by the Secretary of State, or the Secretary of Defense, in accordance with (4) below. That function shall not be delegated below the Secretary or acting Secretary.

(4) After such consultations, or when the Secretary of State or the Secretary of Defense, specifically determines that urgency precludes consultation with the Secretary of Commerce, the Secretary of State shall determine the conditions necessary to meet international obligations and foreign policy concerns, and the Secretary of Defense shall determine the conditions necessary to meet national security concerns. This function shall not be delegated below the Secretary or acting Secretary.

(5) The Secretary of State or the Secretary of Defense will provide to the Secretary of Commerce a determination regarding the conditions required to be imposed on the licensees. The determination will describe the international obligations, specific foreign policy, or national security interest at risk. Upon receipt of the determination, DOC shall immediately notify the licensees of the imposition of limiting conditions on commercial operations. Copies of the determination and any implementing DOC action will be provided promptly to the Assistant to the President for National Security Affairs and the Assistant to the President for Science and Technology.

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

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

Before releasing any information provided or generated by another department or agen-

cy 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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