competitive position of other airlines. The rules provide important protection to smaller airlines. For example, by prohibiting systems from ranking and editing displays of airline services on the basis of carrier identity, they limit the ability of each system to bias its displays in favor of its owner airlines and against other airlines. The rules also prohibit charging participating airlines discriminatory fees. The rules, on the other hand, impose no significant costs on smaller airlines.

The CARS rules affect the operations of smaller travel agencies, primarily by prohibiting certain CARS practices that could unreasonably restrict the travel agencies' ability to use more than one system or to switch systems. The rules prohibit CARS contracts that have a term longer than five years, give travel agencies the right to use third-party hardware and software, and prohibit certain types of contract clauses, such as minimum use and parity clauses, that restrict an agency's ability to use multiple systems. By prohibiting display bias based on carrier identity, the rules also enable travel agencies to obtain more useful displays of airline services.

The Regulatory Flexibility Act also requires each agency to periodically review rules which have a significant economic impact upon a substantial number of small entities. 5 U.S.C. 610. Our rulemaking reexamining the need for the CARS rules and their effectiveness will constitute the required review of those rules.

Our proposed rule contains no direct reporting, recordkeeping, or other compliance requirements that would affect small entities. There are no other federal rules that duplicate, overlap, or conflict with our proposed rules.

Interested persons may address our tentative conclusions under the Regulatory Flexibility Act in their comments submitted in response to this notice of proposed rulemaking.

The Department certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. *et seq.*) that this regulation will not have a significant economic impact on a substantial number of small entities.

### Paperwork Reduction Act

This proposal contains no collection-of-information requirements subject to the Paperwork Reduction Act, Pub. L. No. 96–511, 44 U.S.C. Chapter 35.

### Federalism Implications

The rule proposed by this notice will have no substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12812, we have determined that the proposed rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

### List of Subjects for 14 CFR Part 255

Air carriers, Antitrust, Consumer protection, Reporting and recordkeeping requirements, Travel agents.

Accordingly, the Department of Transportation proposes to amend 14 CFR Part 255, Carrier-owned Computer Reservations Systems, as follows:

## PART 255—[AMENDED]

1. The authority citation for Part 255 continues to read as follows:

**Authority:** 49 U.S.C. 1301, 1302, 1324, 1381, 1502.

2. Section 255.12 is amended to read as follows:

**§ 255.12. Termination.**

Unless extended, these rules shall terminate on March 31, 1999.

Issued in Washington, D.C. on October 27, 1997.

**Rodney E. Slater,**

*Secretary of Transportation.*

[FR Doc. 97–29001 Filed 10–31–97; 8:45 am]

BILLING CODE 4910–62–P

## DEPARTMENT OF COMMERCE
## National Oceanic and Atmospheric Administration

## 15 CFR Part 960

**[Docket No. 951031259–7103–02]**

## Licensing of Private Land Remote-Sensing Space Systems

**AGENCY:** National Oceanic and Atmospheric Administration, Commerce.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The National Oceanic and Atmospheric Administration (NOAA) proposes regulations revising its regime for the licensing of private Earth remote-sensing space systems under Title II of the Land Remote Sensing Policy Act of 1992, 15 U.S.C. 5601 *et seq.* (1992 Act). These proposed regulations implement the licensing provisions of the 1992 Act and the Presidential Policy announced March 10, 1994. They are intended to facilitate the development of the U.S. commercial remote-sensing industry and thus promote the collection and widespread availability of Earth remote sensing data while preserving essential U.S. national security, international obligations and foreign policy interests. A fundamental principle is that restrictions imposed on a licensee must appropriately balance promoting competitive capabilities of U.S. commercial firms and the protection of national security, international obligations and foreign policy. The proposed regulations also describe when a system, though privately owned, has received sufficient financial or other support from the U.S. Government that the operator may have to comply with a nondiscriminatory data access policy that applies to all Government systems. These regulations reflect that policy.

**DATES:** Comments must be received by January 2, 1998.

**ADDRESSES:** Comments should be sent to, Charles Wooldridge, NOAA, National Environmental Satellite, Data, and Information Service, 1315 East-West Highway, Room 3620, Silver Spring, MD 20910–3282.

**FOR FURTHER INFORMATION CONTACT:** Charles Wooldridge at (301) 713–2024, ext. 107 or Kira Alvarez, NOAA, Office of General Counsel at (301) 713–1217.

**SUPPLEMENTARY INFORMATION:** Tile II of the 1992 Act authorizes the Secretary of Commerce (Secretary) to issue licenses for operation of private remote sensing space systems. The authority to issue licenses has been delegated to the Administrator of NOAA and redelegated to the Assistant Administrator for Satellite and Information Services.

On July 10, 1987, NOAA published final regulations (1987 Regulations) implementing Title IV of the Land Remote Sensing Act of 1984 (the 1984 Act) setting forth the requirements for obtaining a license. In 1988 the Radio Television News Directors Association (RTNDA) filed a Petition for Rulemaking requesting NOAA to reopen these regulations in light of the President's January 5, 1988 Decision Directive encouraging commercial space development. On January 18, 1989, NOAA responded to this Petition, agreeing to reopen the rulemaking and incorporate certain principles favorable to commercial development that were consistent with the Directive. *see* 54 FR 1995.

Shortly thereafter, Congress began to review the 1984 Act and, on October 28, 1992, enacted the 1992 Act which repealed and succeeded the 1984 Act. The 1992 Act made significant changes to the 1984 Act, particularly with regard to the latter's requirement that all unenhanced data must be provide on a nondiscriminatory basis. The 1992 Act also provided for judicial review of

certain licensing and enforcement actions.

On March 10, 1994, the President announced a Policy Decision (the ''President's Policy'') to ''support and enhance U.S. competitiveness in the field of remote sensing space capabilities while at the same time protecting U.S. interests in the national security and international obligations.'' This policy adopted a number of principles that promote an appropriate balance between these interests.

On December 4, 1995 a *Notice of Inquiry and Request for Public Comment* was published in the **Federal Register** (60 FR 62054), wherein NOAA sought public comment to determine the extent the 1987 Regulations needed revision to conform to the President's Policy and the 1992 Act, and, if so, which issues should be addressed. NOAA received seven sets of comments (*see* 61 FR 24480). On May 15, 1996, NOAA published a *Notice of Public Hearing* in the **Federal Register** (61 FR 24480) announcing a public hearing to be held at the Department of Commerce on June 14, 1996. The main theme that emerged at the public hearing was the request of commercial representatives for transparency and predictability in the regulations.

The regulations proposed herein update the 1987 Regulations to reflect these intervening events and information gathered through the public comment process, as well as the experience gained in the issuance of licenses over the last five years. When finalized, these regulations will apply to all existing licenses, as well as to all pending license applications (i.e. those applications which are currently being reviewed and for which no license has yet been issued) and will apply to all future applications to operate a private remote sensing system. The intent of the proposed regulations is to promote the development of the commercial remote sensing industry by keeping Government oversight to the minimum necessary to ensure protection of U.S. national security, international obligations and foreign policy interests. In addition, it is the intent of these regulations to make U.S. Government policies regarding remote sensing and established timeliness, predictable and transparent to licensees and applicants. An underlying premise is that helping the U.S. industry to lead this emerging market supports the long term national security, international obligation and foreign policy interests of the United States.

**Major Revisions**

*1. National Security and Foreign Policy Considerations*

The regulations incorporate the basic regulatory principle that any restrictions on a licensee, including those required for national security, international obligations and foreign policy purposes, should be the least burdensome possible to achieve the stated objective § 960.10(a)). This was one of the two principles previously recognized in the January 18, 1989, response to the RTNDA Petition for Rulemaking and is reflected in the President's Policy.

Proposed § 960.10(a) sets forth a presumption that, in the case of systems whose operational capabilities are similar to those of systems already licensed, national security, international obligations and foreign policy concerns can be resolved through license conditions similar to those established by the President's Policy and described in §§ 960.9 and 960.10 without the necessity of permanently barring any area from sensing. For systems whose operational capabilities exceed those of systems already licensed, the Government will make every effort to resolve any national security, international obligation and foreign policy concerns that may arise in review of license applications with license conditions rather than by denying the license.

Section 960.10(b) sets forth the basic license condition that has been designed to preserve national security, international obligations and foreign policy interests. This condition was established in the first license issued after the 1992 Act, refined slightly in the President's Policy, and is contained in all licenses issued since then. This condition provides that the Secretary of Commerce may require the licensee to stop imaging an area and/or stop distributing data of an area after being informed by the Secretary of Defense or State, as appropriate, that a period exists when national security, international obligations or foreign policy interests may be compromised. It should be noted that the consultation and decisionmaking must take place at the Secretarial level, thus ensuring that invoking this provision will be invoked only at the highest levels within the U.S. Government. The decision will take into account the potential negative economic impact of interrupting commercial operations.

In reaching determinations as to whether the unrestricted data collection and distribution capabilities of a licensed commercial remote sensing system would adversely affect the U.S. national security, international obligations and/or foreign policies, the Secretary of Defense or Secretary of State will exercise his or her judgment in light of the existing or emerging international situation. Of particular concern will be situations in which: (a) A condition of crisis or war exists or is developing and this condition poses an immediate and serious threat to U.S. or allied national security objectives such as affecting the lives or resources of U.S. or allied personnel; (b) a condition of crisis or serious impairment to U.S. international obligations or foreign policy exists or is developing and this condition poses an immediate serious and permanent threat to U.S. or allied relations with one or more foreign countries; (c) an adversary's ability to receive and exploit the data from the licensee's system contributes to the threat U.S. or allied national security objectives, concerning military planning and operations, or to implement international obligations, taking into account the ability of the adversary to receive and exploit similar data from other sources.

Subsection (c) also includes additional criteria that reflect the principle that restrictions be the least burdensome possible to achieve the stated objective: restrictions will be imposed on the smallest area and during the shortest period of time possible; alternatives to the complete suspension of operations such as delaying transmission of data and/or restricting the field of view will be considered; and the distribution of data will generally not be restricted if comparable data is otherwise available from foreign systems with comparable resolution and accessibility over which the U.S. has no jurisdiction or control.

The regulations implementing this condition recognize the need for close coordination between the U.S. Government and the licensee during periods when concerns relating to national security, international obligations and foreign policies have been raised.

Subsection (d) allows (but does not require) the inclusion in a license of a related condition, also derived from the President's Policy, that ensures that, during periods when imaging or data distribution are restricted for national security, international obligations or foreign policy purposes under subsection (c), on request the licensee will provide the data exclusively to the U.S. Government by means of government furnished rekeyable encryption on the downlink. This condition makes commercial remote sensing assets available as appropriate

to enhance U.S. Government national security capabilities. Subsection (e) provides that technical modifications needed to meet this condition may be required to be paid for by the requesting agency in accordance with section 507(d) of the Act.

*2. Changes in Data Policy*

A major change made by the 1992 Act was to remove the 1984 requirement that all private operators must make their unenhanced data available on a nondiscriminatory basis. The 1992 Act retains this requirement of essentially Governmental systems, such as the Landsat system and those systems that are substantially funded by the U.S. Government, but allows the operator of a non-governmental system to follow normal commercial practices unless U.S. interests dictate otherwise. (section 201(e), 202(b)(3), and 501).

Section 960.11 of the regulations implements this change within the Act's overall objective of making environmental data available to the widest possible spectrum of users, particularly for scientific and operational purposes in support of the public good. This section addresses three categories of licensees. The first are those whose development, fabrication, launch, or operations costs have been funded entirely or in substantial part directly by the Government. As dictated by the Act, these operators must make their unenhanced data available on a nondiscriminatory basis (§ 960.11(a)). This requirement ensures that the data are broadly accessible and is consistent with the basic policy codified in the Paperwork Reduction Act, 44 U.S.C. 3506 *et. seq.* and included in OMB Circular A–130, that data paid for by the taxpayer is a public good to be made equally available to all members of the public *see* 44 U.S.C. 3506(d).

The second category of licensees are those that are fully commercial, i.e., not funded by the Government in whole or in part. These operators will be allowed to follow their preferred commercial data practices, subject to providing the unenhanced data to the governments of those states sensed, subject to national security, international obligations and foreign policy concerns, as discussed below (§ 960.11(b)). These licensees will be encouraged to promote access to their data on as widespread a basis as possible and it is anticipated that, in most cases, there will be a commercial incentive to reach a broad customer base. It is recognized that in some cases, some of the data collected by such systems may not become generally accessible. However, NOAA believes that overall this loss will be outweighed by the substantially greater volume of data that will be collected by a vigorous commercial industry. It should be noted that limited purchases by the United States Government as a normal customer of the licensee would not constitute funding or support for purposes of this section.

The third category of licensees falls between the first two and consists of those for whom the U.S. Government provides some support. Here, the Government's interest is more significant, because of the investment by the taxpayer and the possible precedential effect hat permitting restricted access could have on future U.S. access to the data from foreign international data exchange involving government subsidized public-private ventures. The data policy applicable to these licensees will be determined on a case-by-case basis, balancing the effect on the licensee of limiting its commercial options against the potential benefits of providing widespread access of the data for scientific, educational or other non-commercial purposes supporting the public good. In evaluating the potential for data loss, NOAA will consider both the data to be gathered by the particular licensee as well as the possible implications for future intergovernmental data exchanges.

It is anticipated that the U.S. Government interest in making the data available frequently can be addressed through terms and conditions in the license that do not require full nondiscriminatory data access policy. For example, it may be possible to accommodate such interests by ensuring access for research, education, and other governmental purposes, while protecting a licensee's commercial options.

*3. The Sensed State Provision*

When Congress removed the blanket nondiscriminatory data access requirement, it was careful to ensure that access to the unenhanced data would remain consistent with the basic international principle, contained in the United Nations' Principles on Remote Sensing, that the government of a sensed state should have timely access to all such data concerning its own territory. Section 202(b)(2) of the 1992 Act requires that all licenses include the condition that the licensee shall 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 on reasonable terms and conditions as soon as such data are available; consistent with national security, international obligations and foreign policy of the U.S.

Section 960.9(c) of the proposed regulations incorporates this requirement and discusses the terms and conditions that are ''reasonable'' in those cases where the data will not be made available on a nondiscriminatory basis. Making the data available to different classes of customers, e.g. researcher, commercial end user, and value-added redistributor, at different prices is reasonable provided the data is available to the sensed state on the most favorable terms available to any member of the class appropriate to the intended use by that state.

If a licensee intends to provide its unenhanced data on a restricted or exclusive basis, it becomes more difficult to determine what is ''reasonable'' vis-a-vis a sensed state. The price of these data, if measured in terms of their value to a particular commercial customer, may be prohibitive to a small government that simply wishes to monitor its own natural resources or to use the data, for example, for purposes of land use planning or to mitigate the effects of a recent natural disaster. On the other hand, the same price may be reasonable if the sensed state intends to use the data for competitive purposes. The terms and conditions will have to be considered on a case-by-case basis. In any event, the sensed state has the opportunity to demonstrate that the terms result in an undue hardship (§ 960.9(c)(3)(D)).

*4. Procedural Changes*

The existing regulations state that they are intended to provide the ''minimum practicable procedures'' for licensing private operators of remote sensing space systems. In order to promote the growth of the U.S. remote sensing industry, U.S. Government review of license applications and foreign agreements must be as efficient and expeditious as possible. Congress recognized this need by establishing certain statutory deadlines for U.S. Government administrative action.

The Government's remote sensing policy with regards to preserving national security, international obligations and foreign affairs interests should be clear and predictable. Predictability is critical in terms of the conditions that may require restrictions on imaging after a system is operational. The provisions of the regulations describing these conditions are discussed under number 1 above and set forth at § 960.10.

The proposed regulations clearly state, and are intended to promote adherence to, the time limits that Congress has established for these reviews.

The specific process by which the various agencies of the U.S. Government will interact in the review of a license and amendment applications, significant or substantial foreign agreement, and determinations concerning the restrictions and limitation on imaging and data collection, will be established in a Memorandum of Understanding (MOU) among the agencies. The MOU will specify that disagreements among the agencies will be decided by the President. To promote transparency and predictability of government action in these procedures, we expect that the MOU will be publicly available. The MOU will be finalized by the time of issuance of a final rule.

Section 960.6 of both the existing and proposed regulations require a license applicant to supply the NOAA Administrator with sufficient information about a proposed remote-sensing space system's orbit and data collection characteristics to determine that a system will be operated in a manner that preserves the national security and international obligations of the United States.

Section 960.8(f) allows the applicant to request a hearing before an Administrative Law Judge (ALJ) regarding any adverse action on a license application. The documentation in the record will serve as the basis for the ALJ's determination as to whether the Administrator's action regarding any conditions imposed on the license, denial of the license, or a decision that no action can be taken within the required limit, was appropriate.

Section 960.12 sets forth regulations for the review of proposed significant and substantial foreign agreements between licensees and foreign nations or persons for which notification is required pursuant to section 202(b)(6) of the Act and § 960.9(g) of these regulations. We would note that the Act does not expressly confer the right to approve foreign agreements, but it is our interpretation that the Secretary has sufficient authority under the statute to prevent a licensee from entering into an agreement that violates the national security, international obligation or foreign policy interests of the United States. Accordingly, submission and approval of these will be a condition of the license (960.9(c)).

To provide due process, the regulations treat negative advice to a licensee concerning a proposed foreign agreement as an ''adverse action'' under section 203(b) of the Act, which grants the right to a hearing on the record for certain actions, e.g., denying or conditioning a license. Finally, § 960.12 contains a number of implementing record keeping requirements similar to those for the initial license review (*see* § 960.12(b)–(d)).

*5. Investors in Licensees*

Section 960.14 is new. It is intended to encourage investment in the space remote sensing industry while ensuring that those licensed to operate these systems retain sufficient control to be able to preserve U.S. national security, international obligations and foreign policies. In essence, it requires a licensee to notify NOAA of significant changes in ownership and to give the Government the opportunity to review those changes that might result in a shift of control, particularly to foreign persons or nations.

Section 960.14(a)(1) simply requires the licensee to notify NOAA when a domestic investor's financial interest in the licensee reaches ten percent. Certain basic information such as the identity of the investor and the extent of the holdings must be provided within ten days after the 10 percent threshold is reached.

Section 960.14(a)(2) recognizes that the potential for transfer of control of the management and/or operations of a licensee is more likely when a single domestic investor acquires a financial interest in the licensee of 25 percent or more. If the licensee, notwithstanding the acquisition of such interest, will retain control, it must document this fact and include the information described in this section.This documentation is to be filed within 10 days of the transaction.

Section 960.14(a)(3) requires an amendment where the financial interest of a single domestic investor will reach or exceed 40 percent of the licensee. In effect, it is presumed that an investment at this level results in a transfer of control.

Section 960.14(b)(1) requires the licensee to notify NOAA when a foreign investor's financial interest in the licensee reaches five percent. Certain basic information such as the identity of the investor and the extent of the holdings, and any updates to the technology control plans, if necessary, must be provided within ten days after the five percent threshold is reached.

Section 960.14(b)(2) recognizes that the potential for transfer of control of the management and/or operations of a of a licensee is more likely when a foreign investor holds a financial interest in the licensee of 15 percent or more. If the licensee, notwithstanding such acquisition, will retain control, it must document this fact and include the information described in this section. Section 960.14(b)(3) provides that this documentation must be filed 60 days prior to acquisition together with the relevant investment agreement which is considered a ''significant agreement'' under § 960.12.

Section960.14(b)(4) requires an amendment to the license where the financial interest of either a foreign investor or foreign investors as a whole will exceed 40 percent of the licensee. In effect, it is presumed that an investment at this level results in control. Since control by foreign investors generally will not be approved, licensees may obtain approval for an amendment of this nature only by rebutting this presumption with clear documentation that it retains control over its management and operations. In addition to other specified information for an amendment, it must include a certification that no foreign persons can influence the corporation's activities and that the control of the Board of Directors is still exerted by the majority U.S. shareholders. The licensee must also establish a technology control plan that ensures that the company complies with relevant U.S. laws such as export control laws.

Foreign investment that exceeds 49 percent of the licensee is prohibited in § 960.14(b)(5).

Section 960.14(c) provides that if through the acquisition of a financial interest by any person(s) or nation(s), regardless of the percentage of investment, or a through contractual or other relationship, there will be a transfer of control of the licensee, § 960.13(d)(2) requires an amendment of the license. However, as this section makes clear, control of these sensitive remote-sensing systems to foreign investors generally raises national security, international obligation or foreign policy concerns and an amendment involving such a transfer of control is unlikely to be approved.

The procedures in this section applies only to U.S. operators that are subject to U.S. jurisdiction or control. However, a foreign operator over which the U.S. initially has no jurisdiction or control, may decide to carry out its activities in the U.S. to the extent that it becomes subject to U.S. jurisdiction and control under § 960.2(c). In such cases the provisions with respect to changes in foreign ownership will be set forth in the license.

*6. New Enforcement Provisions*

Section 203(a) of the 1992 Act revised the administrative authorities granted to the Secretary, primarily to provide grater judicial oversight and more predictability for the licensees. Thus, the Administrator now may seek an injunction in order to terminate, modify, or suspend a license or to terminate licensed operations in the case of violations of the Act, regulations, or license. Further, the Administrator may obtain a warrant in order to seize records or objects believed to be used in a violation.

Subpart C of the proposed regulations would implement these changes. They also continue to set forth the procedures for imposing any administrative civil penalty under section 203(b) of the Act. These include provisions for the formal agency adjudication on the record to which the licensee is entitled which are found in 15 CFR part 904.

*7. Additional Changes*

a. Definitions

Several new technical definitions have been added relating to the operational capability of a remote sensing system. These include the terms: ''ground sample distance,'' ''field of view,'' ''instantaneous field of view,'' ''resolution,'' ''spatial resolution,'' and ''tasking.'' Experience in prior licensing exercises has shown that these parameters help define the operational characteristics of the system for the purpose of determining national security and foreign policy concerns and the definitions are intended to establish these informational requirements as precisely as possible.

In accordance with the President's policy, the regulations define the term ''foreign agreement'' to establish those that are ''significant and substantial'' and, therefore, subject to the advance notification requirement of sections 202(b)(6) of the Act and implemented in § 960.9(g) of the regulations. The definition focuses on the two types of agreements that could have particular national security or foreign policy implications: Those that give a foreign party a degree of control over the operation of the system, e.g. the ability to control the spacecraft, task the sensors, or exercise managerial control over the system, including technology transfer; and those that establish a particularly important role for a foreign party in distributing the data from the system, either by operating a foreign ground station or by acting as a major customer or distributor; and those that involve foreign investment. If the agreement effectively expands the capability of the system, for example by adding a ground station that could collect data not anticipated by the license, the process would require an amendment to the license (*see* § 960.13(e)(3)).

The proposed regulations would state that ordinary data sales agreements might be considered a significant or substantial foreign agreement. However, NOAA requests comment on this issue.

New definitions have also been added defining ''beneficial owner'' and ''voting interest,'' as part of the new foreign investment agreement provisions.

Finally, the definition of ''unenhanced data'' has been modified consistent with the 1992 Act, and the definition of ''value-added activity'' has been deleted as no longer necessary.

b. Informational Requirements

The proposed regulations update the informational requirements of a license application. As with the existing regulations, the intent is to solicit only that information relevant to those limited U.S. interests covered by the 1992 Act while ensuring that applications will be as complete as possible. The information of primary importance is that describing the orbit and data collection characteristics aspects of a proposed system which are significant in terms of its national security and foreign policy implications (§ 960.6(c). Additional relevant information concerns the applicant's data distribution plans and the extent of any U.S. government support of the system. This information is needed to determine the appropriate data access policy (§§ 960.6(d) and (e)).

c. The Archive Provision

In accordance with section 502 of the Act § 960.9(h) states that licenses will include terms and conditions for making unenhanced data available to U.S. Government agencies, including the Archive, for the specific purpose of including it in the basic data set. The negotiation to provide such data on reasonable terms and conditions will take into account the commercial value of the data. This section also states that before the licensee unenhanced data obtained under the license is purged, the licensee shall offer such unenhanced data to the Archive, at the cost of reproduction and transmission, which the Archive will then distribute at the cost of fulfilling user requests. Because the licensee will offer this unenhanced data at this minimum cost and the Archive will distribute the data at the cost of fulfilling user requests, it is presumed that the commercial value of the data is negligible. No licensee can negotiate terms with a potential customer or distributor that would prohibit or otherwise prevent the licensee from meeting its obligation to make all data collected available to the Archive.

d. Protecting Proprietary Information

Proposed § 960.7 would require that the applicant for a license submit two different versions of their application. One version would be the proprietary version, with brackets around the information that should be given confidential treatment; and the other would be the public version, with the information inside the brackets taken out. The prospective licensee must include a general justification for such confidential treatment. This requirement reflects a balance between the needs of the licensees to be assured that the sensitive information which they submit will be treated confidentially, and the need to enable the public to have access to these government records.

**Request for Public Comment**

NOAA is requesting public comment on the major revisions in the proposed regulations, as described above. NOAA is particularly seeking comment on the following: (1) The definition of ''Significant or Substantial Foreign Agreement''; (2) the review of foreign investment agreements; (3) the reporting of ''beneficial owners''; and (4) the information requirements of the application process.

With regards to the definition of ''Significant or Substantial Foreign Agreement'' as well as the review of such foreign agreements, NOAA has proposed a regime for addressing issues of foreign ownership, or control over U.S. licensed private remote sensing systems. As stated in an earlier section, the intent is to set up a regime that ensures that undue foreign control or influence over satellite operations does not compromise national security or foreign policy goals while at the same time promoting and permitting investment in these capital intensive systems. By monitoring the investment closely and having certain thresholds which raise the level of scrutiny, the intent is that detailed review at certain thresholds will be able to prevent the occurrence of any imperiling national security situations. We are interested in hearing if our approach adequately achieves our intentions, or, given our intent, it would be better to adopt a regime similar to that found at 10 U.S.C. 2327 for defense procurements or 50 U.S.C. app. 2710, the Exon-Florio investment review procedures. Also of

concern is whether the requirement to provide information about beneficial owners should be qualified to require that information only need be provided about ''known'' beneficial owners. This would make the NOAA regulatory requirement consistent with the Security and Exchange Commission's requirement to provide information on ''known'' beneficial owners.

Concerning information requirements of the application process, and technical definitions found in these proposed regulations, NOAA is considering placing these requirements in an appendix to the regulations. This would make it easier to change the required contents of an application, as only notice in the **Federal Register** need be provided for changes. This would give the Administrator greater flexibility in the face rapidly changing technology. NOAA has also increased the information requested in the application to include information about export licenses which the applicant holds or intends to apply for. NOAA is seeking comment on whether this requirement is duplicative of the existing export control regime.

**Classificaiton**

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

This proposed rule establishes a process intended to promote the development of the industry and to minimize any adverse impact on any entity, large or small, that may seek a license to operate a private remote-sensing space system. Even though there has been a substantial reduction in size and cost of Earth remote-sensing space projects, costs of development and launch still involve extraordinary capitalization. As such, small entities have yet to enter this field and appear highly unlikely to do so.

Accordingly, the Assistant General Counsel for Legislation and Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that the proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

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

This proposed rule contains collection-of-information requirements subject to review and approval by OMB under the Paperwork Reduction Act (PRA). The proposed rule revises collection of information requirements that were previously approved by the Office of Management and Budget under control number 0648–0174. A request to make these revisions has been submitted to the Office of Management and Budget for approval. Public reporting burden for these collections of information is estimated to average 20 hours per license applications; 5 hours for amendment submissions; 10 hours for foreign agreement notification; 2 hours for notification of disposition/orbital debris change; and 1 hour for notification of deviation of orbit. This estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including, through the use of automated collection techniques or other forms of information technology. Send comments regarding this burden estimate or any other aspect of this collection of information to Charles Woolbridge, NOAA, National Environmental Satellite, Data, and Information Service, 1315 East West Highway, Room 3620, Silver Spring, MD 20910–3282 and to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attention: NOAA Desk Officer). Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

*C. National Environmental Policy Act (42 U.S.C. 4321 et seq.)*

Publication of the proposed regulations 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**

Scientific equipment, Space transportation and exploration.

Dated: October 28, 1997.

**Robert S. Winokur,**

*Assistant Administrator.*

Accordingly, for the reasons set forth above, part 960 of Title 15 of the Code of Federal Regulations is proposed to be revised to read as follows:

## PART 960—LICENSING OF PRIVATE REMOTE-SENSING SYSTEMS

**Subpart A—General**



**Subpart B—Application Process**



**Subpart C—Enforcement Procedures**



**Authority:** 15 U.S.C. 5624.

## Subpart A—General

### § 960.1 Purpose.

(a) These regulations set forth the procedural and informational requirements for licensing and supervising the operation of 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.*) (Pub. L. 102–555) (the Act). The regulations are intended to facilitate development of the commercial space remote-sensing industry in the United States and broadly promote the beneficial use of remote sensing data while ensuring compliance with basic requirements of the Act:

(1) Preserving the national security of the United States;

(2) Observing the international obligations and policies of the United States;

(3) Ensuring that unenhanced data collected by licensed systems concerning the territory of any country are made available to the government of that country as soon as such data are

available and on reasonable terms and conditions;

(4) Ensuring that remotely sensed data from space are widely available for research, particularly environmental and global change research; and

(5) Maintaining a permanent comprehensive 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 President's Policy announced on March 10, 1994 entitled, ''U.S. Policy on Foreign Access to Remote Sensing Space Capabilities'', decisions regarding the issuance of licenses and operational conditions (*see* §§ 960.8, 960.9, 960.12, 960.13 and 960.14) will be made by the Secretary of Commerce, or his or her designee, after consultation with the Secretaries of Defense and State with respect to national security, international obligations, and foreign policy.

(c) Obtaining a license to operate a satellite pursuant to these regulations does not affect related licensing requirements of other Federal agencies such as the Department of State, the Federal Communications Commission, and the Department of Transportation.

**§ 960.2 Scope.**

(a) The Act and these regulations apply to any person subject to the jurisdiction or control of the United States who operates or proposes to operate a private remote-sensing system either directly or through affiliate, or subsidiary. For the purposes of these regulations a person is subject to the jurisdiction or control of the United States if such person is:

(1) An individual who is a United States citizen; or

(2) A corporation, partnership, association, or other entity organized or existing under the laws of any state, territory, or possession of the United States.

(b) Other private space system operators may be subject to U.S. jurisdiction and control, and their operations, therefore, subject to the provisions of the Act and these regulations, if they have substantial connections with the United States or deriving substantial benefits from U.S. law that support their international remote-sensing operations. Substantial connections include factors or a combination of factors such as using a U.S. launch vehicle and/or platform, operating a spacecraft command and/or data acquisition station in the U.S., and processing the data at and/or marketing it from facilities within the U.S. The following examples are intended to illustrate the application of this paragraph, and should not be considered limitations thereon, or as an indication of how other Federal agencies may interpret related licensing requirements that they administer.

Example 1: A non-U.S. corporation launches an operational remote-sensing space system, pursuant to a Department of Transportation license, using a U.S. operated launch vehicle and/or a platform launched from U.S. territory. The company operates no spacecraft command ground station in the U.S. although it has technicians and supervisors present in the U.S. to ensure integration of the foreign-built satellite or space system with the launch vehicle. The company acquires data directly from the space system and processes and distributes it from facilities outside the U.S., although it advertises the availability of data and/or information in U.S. publications.

The company is not subject to U.S. jurisdiction or control and requires no license for its remote-sensing activities.

Example 2: A company's operation is the same as in Example 1 except that it acquires, processes and distributes the data to U.S. and foreign customers from one or more facilities within the U.S.

The company is subject to U.S. jurisdiction and control and requires a license for the purposes of this Act and these regulations.

Potential applicants with questions concerning the application of these regulations to specific operations may consult with the Administrator prior to filing an application. Such consultations shall not be included in the record of any subsequently filed application unless the applicant specifically so requests or the Administrator so advises the applicant.

(c) These regulations are applicable to any action taken on or after the effective date of these regulations by the Secretary with respect to any existing, proposed or future license.

**§ 960.3 Definitions.**

For purposes of these regulations, the following terms have the following meanings:

*Act* means the Land Remote Sensing Policy Act of 1992.

*Administrator* means the Administrator of NOAA or his or her designee.

*Affiliate* means any person who is under common ownership or control with the applicant or licensee.

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

*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 the voting power of any security or financial interest in a licensee; and the power to dispose of, or to direct the disposition of, any security or other financial interest in a licensee. All securities or other financial interests of the same class beneficially owned by a person, regardless of the form which such beneficial ownership takes, shall be aggregated in calculating the number of shares beneficially owned by such person. A person shall be deemed to be the beneficial owner of a security or other financial interest if that person has the right to acquire beneficial ownership, as defined above, within sixty days including but not limited to any right to acquire: through the exercise of any option, warrant or right; through the conversion of a security; pursuant to the power to revoke a trust, discretionary account, or similar arrangement; or pursuant to the automatic termination of a trust, discretionary account or similar arrangement.

*Field of view* means the solid angle through which an instrument is sensitive to radiation.

*Ground sample distance (GSD)* means the distance of the terrain between successive ground resolution cells (the area on the terrain that is covered by the instantaneous field of view of a detector).

*Instantaneous field of view (IFOV)* means the narrow angle within which incident energy is focused on the detector of the radiometer at a particular instant in time; defined as the radio of detector size to the focal length of the optical system, and often expressed in microradians.

*Measured values* means the assigned numbers, shades or colors, which represent, in a standardized system, an amount of electromagnetic radiation sensed in a spectral band.

*NOAA* means the National Oceanic and Atmospheric Administration.

*Party* (to a licensing process of foreign agreement notification) shall include the Secretary, the applicant, or the Secretary of Defense, the Secretary of State and the head of any other Federal organization, as appropriate, recognized by the Secretary of Commerce as being involved in any proceedings between the U.S. Government and a licensee/applicant.

*Person* means any individual (whether or not a citizen of the United

States), corporation, partnership, association, or other entity organized or existing under the laws of any nation, or consortium of any such entities acting together for the acquisition, holding, or disposal of securities or other financial interests in the licensee. ''Person'' does not include any government or intergovernmental organization or agency thereof.

*President's Policy* means the President's Policy entitled ''U.S. Policy on Foreign Access to Remote Sensing Space Capabilities'' announced on March 10, 1994.

*Remote sensing space system* means any instrument or device or combination thereof flown on any space-borne platform and any related ground based facilities capable of actively or passively sensing the Earth's surface (including bodies of water) from space by making use of the properties of the electromagnetic waves emitted, reflected, or diffracted by the sensed objects. For purposes of these regulations, small, hand-held cameras shall not be considered remote sensing systems.

*Resolution* means the ability of an entire remote sensing system, including lens, antennae, display, exposure, processing, and other factors, to render an interpretable image.

*Secretary* means the Secretary of Commerce.

*Security* means any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral trust certificate, pre-organization certificate or subscription, transferable share, investment contract, voting trust certificate, certificate of deposit for a security, any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into a national securities exchange relating to foreign currency, or, in general, any interest or instrument commonly as a ''security'', or any certificate of interest or participation in, temporary or interim certificate for, recipe for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.

*Significant or substantial foreign agreement* means an agreement with a foreign nation or person that provides for:

(1) Cooperation in the operation of the spacecraft;

(2) Tasking of the satellite sensors, modifying satellite tasking commands, or revising the priority of tasking requests, or otherwise providing an opportunity to exercise a significant level of managerial control over the system's operation;

(3) Real-time direct access to the system's unenhanced data.

(4) Distributorship arrangements involving the receipt of high volumes of the system's unenhanced data;

(5) An equity interest in the Licensee, if the equity interest in the Licensee by a foreign nation and/or person equals or exceeds or will equal or exceed 15 percent of total outstanding shares, or entitles the foreign person to a position on the Licensee's Board of Directors;

(6) The acquisition by any person(s) or nation(s) of any security or other financial interest of the licensee, regardless of the percentage acquired, that will result in a transfer of sufficient voting power to control the management, policies, and/or operations of the licensee; or any contractual or other relationship with a foreign person or nation, wherein the foreign person or nation obtains the ability to control the management, policies, technology transfer and/or operations of the licensee.

(7) Significant or Substantial Foreign agreements may include agreements for the sale of data, for the sale of value added products, or for the establishment of marketing outlets in foreign countries, pursuant to operations in the ordinary course of business as described in the applicant's plan for sale and distribution contained in a license application submitted pursuant to these regulations.

*Spatial resolution* means the ground area sensed by a radiometers's IFOV calculated at nadir as the product of the IFOV and the satellite altitude.

*Spectral band* means the interval in the electromagnetic spectrum defined by two wavelengths, frequencies, or wave numbers.

*Subsidiary* means a person in which the applicant or licensee holds the voting power necessary to control its management, policies, and/or operations. If a subsidiary is the entity responsible for operation a remote sensing space system, and the subsidiary is under the jurisdiction or control of the United States, the subsidiary must obtain the license.

*Tasking* means any action taken to command a satellite or it's sensor to acquire data for direct transmission or storage on the satellite's recording subsystem. Such action can be in the form of commands sent to the satellite from a ground site for immediate execution or for storage in the satellite's memory for execution at a specified time or location within a given orbit.

*Unenhanced data* means Earth remote sensing signals or imagery products that are unprocessed or subject only to data preprocessing. Data preprocessing may include rectification of system and sensor distortions in remote-sensing data received directly from the satellite; registration of such data with respect to features of the Earth; and calibrations of spectral response with respect to such data, but does not include conclusions, manipulations, or calculations derived from such data, or a combination of the remote-sensing data with other data and excludes phase history data for synthetic aperture radar systems or other space based radar systems.

*Voting Power* means the power to vote, or direct the voting of, any security or other financial interest in a licensee, including the power to vote on or for:

(1) The conduct of the operations or significant policies of the licensee;

(2) The selection or appointment of directors, trustees, or partners (or persons exercising similar functions of the licensee); and/or

(3) The power to vote on the appointment of the principal executive officers of the licensee.

## Subpart B—Application Process

### § 960.4 Pre-application consultation.

Potential applicants are encouraged to contact the Administrator at the earliest possible planning stages. Such consultation may reveal design or data collection requirements that may be accommodated early at low cost or avoid costly changes in design or data collection characteristics. Consultation before a license application is submitted may also prove useful in defining informational requirements and in expediting review. Informal consultations held prior to the submission of an application will not be considered part of the agency record of an application. The agency record will be open upon the filing of the application pursuant to § 960.5.

### § 960.5 Filing Information.

(a) *Who must file.* A person desiring to operate a private remote space sensing system and/or establish substantial connections with the United States relating to the operation of a private remote space sensing system shall file an application for such a license under these regulations. The holder of an existing license seeking to modify the terms of that license shall file an application for an amendment under § 960.13.

(b) *Where to file.* Applications and all related documents shall be filed with the Assistant Administrator, National

Environmental Satellite, Data and Information Service (NESDIS), NOAA, Department of Commerce, Washington, D.C. 20233.

(c) *Form.* No particular form is required but each application must be in writing, must include all of the information specified in this subpart, and must be signed by an authorized principal executive officer.

(d) *Number of copies.* Three (3) copies of each application must be submitted in a readily reproducible form. If proprietary treatment is requested for any portion of the application, one (1) copy of the public version required by § 960.7(b) must also be submitted in a readily reproducible form.

**§ 960.6 Information to be included in the application.**

The following information shall be filed by the applicant and revised as necessary:

(a) The name, mailing address, telephone number and citizenship of: The applicant and any affiliates or subsidiaries; the chief executive officer of the applicant and each director, if the applicant is a corporation, or each general partner, if the applicant is a partnership; all executive personnel or senior management; any directors, partners, executive personnel or senior management who hold positions with or serve as consultants for any foreign nation or person; each domestic beneficial owner of an interest equal to or greater than 10 percent in the applicant; each foreign owner of an interest equal to or greater than 5 percent in the applicant; each foreign lender and amount of debt where foreign indebtedness exceeds 25 percent of an applicants total indebtedness; and a person upon whom service of all documents may be made.

(b) A copy of the charter or other authorizing instrument certified by the jurisdiction in which the applicant is incorporated or organized and authorized to do business.

(c) Orbital and data collection characteristics regarding the applicant's proposed remote sensing space system in sufficient detail to enable the secretary to determine whether the proposal meets requirements of the Act and the President's Policy. These characteristics shall include:

(1) The date of the intended commencement of operations and the expected duration of the operations;

(2) The number and type of satellites and sensors proposed;

(3) The range of orbits and altitudes proposed, orbital characteristics such as inclination angle, equator crossing time, and those parameters which affect swath width;

(4) The range of ground sample distance, spatial resolution, field of view, and instantaneous field of view proposed;

(5) The specific spectral bands and/or radar characteristics that are proposed;

(6) The data collection capabilities proposed including on board storage capacity, off-nadir viewing, scene revisit time, tasking procedures, and scheduling plans;

(7) The command (uplink and downlink) and mission data (downlink) transmission frequencies and system transmission (uplink and downlink) footprint;

(8) The methods applicant will use to ensure that integrity of its operations during a national security crisis, including plans for: positive control of the spacecraft and relevant ground stations; denial of unauthorized access to data transmissions to or from the satellite; and restriction of collection and/or distribution of unenhanced data from specific areas at the request of the U.S. Government. If such plans include encryption, encryption devices used will require U.S. Government approval.

(9) A description of an significant or substantial agreements between the applicant, its affiliates and subsidiaries, with foreign nation or person, including copies if available;

(10) The proposed concept of operations for the system; and

(11) If the applicant wishes, information concerning the extent to which data comparable to those generated by the applicant's system could be acquired or made available from foreign systems which are not subject to these regulations.

(d) The applicant's proposed technology control plan, if the concept of operations includes any international component which requires an export license. Such plan should ensure that the applicant:

(1) Maintain policies and procedures to safeguard the export of controlled information that is entrusted to it; and

(2) Complies with U.S. export control laws and regulations, and does not take actions adverse to the conditions of the license; and

(3) Protects the operational control of the licensed system from foreign influence and any technology transfer that would impinge on national security, international obligations and foreign policy; and

(4) Informs the Administrator of all export licenses which the applicant holds or intends to apply for.

(e) The applicant's plans for providing access to or distributing the unenhanced data generated by the system including:

(1) A description of the plan for the sale and distribution of such data;

(2) The method for making the data available to governments whose territories have been sensed;

(3) A description of the place for making data available to the Archive inclusion in the basic data set; and

(4) Opportunities for the data to be made available for long term monitoring, protection, and study of the changing global environment and study of the changing global environment.

(f) If the applicant is proposing to follow a commercial data distribution and pricing policy as provided for by § 960.11(b) or (c), the application shall include the following additional financial information:

(1) The extent of the private investment in the system;

(2) The extent of any direct funding or other direct assistance which the applicant or its affiliates or subsidiaries have received or anticipate receiving from any agency of the U.S. Government for the development, fabrication, launch, or operation of the system including direct financial support, loan guarantees, or the use of U.S. Government equipment or services;

(3) Any existing or anticipated contract(s) between the applicant, affiliate, or subsidiary and U.S. Government agencies for the purchase of data, information, or services from the proposed system;

(4) Any other relationship between the applicant, affiliate, or subsidiary and the U.S. Government which has supported the development, fabrication, launch, or operation of the system; and

(5) Any plans to provide preferred or exclusive access to the unenhanced data to any particular user or class of users.

(g) The plan for post-mission disposition of any remote-sensing satellites owned or operated by the applicant to allow a determination that the plan minimizes orbital debris and does not endanger public safety. If the satellite disposition involves an uncontrolled re-entry the applicant must provide an analysis of the total debris casualty area of the system's components and structure surviving re-entry and assure that the system design minimizes the threat to the public from such re-entry.

(h) If information supplied in an application becomes materially inaccurate or incomplete prior to issuance of the license, the operator must promptly file the new or corrected information with the Administrator. If new or revised information is filed

during the application process, the Administrator shall promptly determine whether the deadline imposed by section 201(c) of the Act must be extended to allow adequate review of the revised application and, if so, for how long.

**§ 960.7 Confidentiality of information.**

(a) *Proprietary information*. The Administrator will treat business or trade secrets or commercial or financial information, the release of which to the public would cause substantial harm to the competitive position of the submitter, as proprietary information, if that information is so designated by the submitter.

(1) Any person who submits information to the Administrator in connection with any requirements imposed by these regulations may request that the Administrator consider that information, or any specified part, be treated as proprietary.

(2) The submitter shall identify proprietary information on each page by placing brackets around the proprietary information and clearly stating at the top of each page containing such information ''Proprietary Treatment Requested.''

(3) The submitter shall provide a general explanation as to why proprietary treatment is being requested.

(b) Public summary. Prior to issuance of a license, any person submitting information for which proprietary treatment is requested, shall also provide to the Administrator a public version of the document. This public summary shall be available for public review at a location designated by the Administrator. The public summary shall include:

(1) An adequate public summary of all proprietary information; and

(2) A statement itemizing those portions of the proprietary information which cannot be summarized adequately and all arguments supporting that conclusion for each portion.

(c) Status during consideration of request. While considering whether to grant a request for proprietary treatment, the Administrator will not disclose or make public the information. The Administrator normally will decide not later than 14 days after the Secretary receives the request. The Administrator will give persons whose request for proprietary treatment of their information has been denied seven (7) working days notice before the information is disclosed.

(d) *Treatment of proprietary information.* Unauthorized disclosure of any proprietary information marked in accordance with this section is subject to the criminal penalties set forth in 18 U.S.C. 1905. NOAA shall provide marked information only to those interested agencies which require the information for review purposes and shall ensure that the copies provided to these agencies contain all markings provided.

(e) *Requests for disclosure.* (1) Requests for public disclosure of information submitted, reported, or collected pursuant to this part shall be in accordance with 15 CFR 903.1 (which directs the reader to 15 CFR part 4).

(2) Upon receipt of a request for disclosure of information for which proprietary treatment has been requested, NOAA will immediately notify the applicant or licensee who submitted the information and inquire whether the applicant or licensee continues to request proprietary treatment.

(3)(i) If the applicant or licensee waives or withdraws a request for proprietary treatment in full or in part, the person shall deliver to NOAA a written statement to that effect. If the person confirms the request for proprietary treatment, such person is strongly encouraged to deliver to NOAA a written statement in sufficient time for NOAA to fully consider it in making its formal determination (generally, not later than the close of business on the seventh working day after being notified under paragraph (e)(3) of this section). Such statement shall provide an explanation as to why each piece of information subject to the request is entitled to proprietary treatment under this section. The explanation should describe:

(A) The commercial or financial nature of the information;

(B) The nature and extent of competitive advantage enjoyed as a result of possession of the information;

(C) The nature and extent of the competitive harm that would result from public disclosure of the information;

(D) The extent to which the information has been disseminated to employees and contractors of the person submitting the information;

(E) The extent to which persons other than the person submitting the information possess, or have access to, the information; and

(F) The nature of the measures that have been and are being taken to protect the information from disclosure; and

(G) Present any other arguments against disclosure of information.

(ii) Failure to respond to the agency notification in a written statement will be deemed as a waiver of confidential treatment.

**§ 960.8 Review procedures for license applications.**

(a)(1) Within twenty-one (21) days after the receipt of an application, the Administrator, shall notify the applicant, in writing whether the application omits any of the information required by § 960.6.

(2) For any systems whose operational capabilities are similar to those of previously licensed systems, an application will be considered to be complete on the date of receipt if all information required in § 960.6 has been provided. For any systems whose operational capabilities exceed those of previously licensed systems, the Administrator shall determine the additional information necessary to complete the application. The Administrator shall notify the applicant of the need for this information and specify the period of time in which to provide it. The 120 day review period prescribed in section 201(c) of the Act will commence upon receipt of the information requested by the Administrator.

(b) The Administrator shall review any completed application and make a determination thereon, in accordance with the Act and § 960.1(b) within 120 days of the receipt of such completed application. If final action has not occurred within such time, the Administrator shall inform the applicant of any pending issues and of actions required to resolve them.

(c) Before issuing a licensee, the Administrator shall find, in writing, that the applicant will comply subject to penalties prescribed by law with any national security concerns, international obligations, and foreign policies of the United States and with all other requirements of the Act and these regulations.

(d)(1) If the Administrator denies the license or includes additional conditions in the license other than those set forth in §§ 960.9 and 960.10, the Administrator shall notify the applicant in writing together with a concise statement, of the facts in the record which the Administrator has determined support the action. Such notice shall inform the applicant that, within twenty-one (21) days of the date the notice was mailed, the applicant may request a hearing on the record on the Administrator's decision by serving a written request on the Administrator at the address specified in the Notice.

(2) The applicant shall be entitled at any time during business hours to inspect and copy the entire record, in

accordance with applicable law (e.g. 5 U.S.C. 552b, the Freedom of Information Act), upon which the decision was made.

(3) In the interest of compiling an accurate record of the decisionmaking for later possible review, oral communications on matters affecting the substance of a pending receives such a communication, the Administrator shall include in the record a summary of the communication and the circumstances surrounding its receipt.

(e)(1) The hearing requested under paragraph (d)(1) of this section may be granted unless, in accordance with 5 U.S.C. 554(a)(4), the hearing would involve the conduct of a military or foreign affairs function, i.e. determinations concerning license conditions necessary to meet national security concerns, international obligations and foreign policy concerns are not subject to review. A determination to deny a hearing on this basis shall constitute final agency action.

(2) Any hearing shall be closed to the public as necessary to protect classified information.

(3) A hearing under this section shall be based solely on the record developed in accordance with § 960.6 and this section.

(4) The hearing shall be held in accordance with the procedures set forth at 15 CFR part 904, subpart C, except to the extent that these sections allow the introduction of testimony or other evidence not contained in the administrative record upon which the decision was made (*see* e.g. §§ 904.204(d) and (e); 904.240–242; and 904.252).

(f) The Administrator shall terminate the license application process if:

(1) The application is withdrawn before the decision approving or denying it is issued; or

(2) the applicant, after receiving a request for additional information pursuant to paragraph (c) of this section, does not provide such information within the time stated in the notice.

**§ 960.9 Conditions for operation.**

(a) Each license issued for the operation of a remote sensing space system shall specify that the licensee shall comply with all the requirements of the Act and these regulations, and shall set forth the conditions necessary to ensure compliance.

(b) A licensee shall operate its system in a manner that preserves the national security and observes the international obligations and the foreign policies of the United States. The basic license conditions to ensure compliance with these requirements are set forth in § 960.10 and conditions consistent with this section will be incorporated in each license. Any additional conditions necessary to ensure compliance with these requirements will be incorporated into that license in accordance with § 960.8(d).

(c)(1) A licensee shall make available to the government of any country (including the United States) unenhanced data collected by its system concerning the territory under the jurisdiction of such government as soon as such data are available and on reasonable terms and conditions. However, no sensed data shall be provided to the sensed state if such release is contrary to U.S. national security, international obligations or foreign policy concerns, e.g. where the sensed state is deemed to be a state sponsor of terrorism or a country subject to U.S. or international arms embargoes.

(2) To comply with this subsection, a licensee must make its unenhanced data available on request to the affected government as soon as the licensee is able to distribute them commercially or as soon as the licensee has processed them into a format that the licensee uses for its own purposes, whichever occurs sooner.

(3) For purposes of this subsection, terms and conditions are reasonable if the licensee:

(i) Follows a nondiscriminatory data access policy that complies with section 501 of the Act and § 960.11 of this part;

(ii) Makes the unenhanced data available to all users on a regular commercial basis and does not establish terms and conditions which favor any user, or any class or users over the affected government in terms of delivery, format pricing, or technical considerations; or

(iii) Establishes separate, reasonable terms and conditions for the affected government if the licensee makes some or all of the unenhanced data available only to particular users. In establishing these reasonable terms and conditions the licensee shall take into account the intended use of the data by the affected government; and

(iv) Has provided affected governments an opportunity to demonstrate that the above terms and conditions present an undue hardship in acquiring the unenhanced data.

(4) Issues relating to appropriate notification of affected governments including issues concerning disputed territories and the methods for ensuring availability, international obligations and foreign policy will be referred to the Department of State.

(5) Issues relating to national security will be referred to the Department of Defense.

(d) A licensee shall make available on a nondiscriminatory basis in accordance with section 501 of the Act and § 960.11 of this part any unenhanced data designated by the Administrator in the license in accordance with section 201(e) of the Act and § 960.11.

(e) A licensee shall dispose of any space platforms owned or operated by the licensee upon termination of operations under the license in a manner satisfactory to the President. The licensee shall obtain approval from the Administrator of all plans and procedures for the disposition of such platforms, e.g. uncontrolled re-entry, burn on re-entry or controlled de-orbit, providing sufficient notification to allow determination that the proposed procedures will minimize orbital debris and not jeopardize safety.

(f) A licensee shall inform the Administrator immediately of any deviation or proposed deviation from the approved operational characteristics of the system furnished pursuant to § 960.6 or § 960.13. Such notification is required sufficiently prior to the deviation so as to enable government approval of such deviation if circumstances permit or, if advance notice is not possible because of an emergency posing an imminent and substantial threat of harm to human life, property, the environment or the remote sensing space system itself, the licensee shall notify the Administrator of the deviation as soon as circumstances permit.

(g) A licensee shall notify the Administrator, for review under § 960.12, or its intent to enter into any significant or substantial foreign agreement. The proposed agreement may not be implemented by the licensee until the licensee has been advised by the Administrator that the document's provisions are acceptable or acceptable with conditions.

(h) A licensee shall make available unenhanced data requested by the Archive for the basic data set on reasonable terms as agreed by the licensee and the Archive. A licensee shall make available to the Administrator for review upon request the record of unenhanced data obtained pursuant to the license. Before any unenhanced data so obtained is purged from its holdings, or the holdings of its distributors, or customers that may have rights to distribute such data, the licensee shall make such data available to the Archive at the cost of reproduction and transmission with no

further restrictions on release of the data to the public.

(i) If the space system will utilize a U.S. Government platform, the licensee will reach an agreement with the appropriate agency to reimburse the Government for all related costs and to ensure that use of the platform will not interfere with the Government's mission.

**§ 960.10 National security, international obligations and foreign policy concerns.**

(a) For any system whose operational capabilities are similar to those of previously licensed systems, it is presumed that any concerns relating to national security, international obligations, and foreign policies can be resolved through the imposition of similar license conditions. For any system whose operational capabilities exceed those of previously licensed systems, the Administrator shall make every effort to resolve these concerns through license conditions and any additional ones as necessary, but may deny the issuance of a license if necessary to avoid compromising these concerns.

(b) The conditions in licenses shall include:

(1) The licensee shall maintain positive control of the spacecraft at all times and shall include safeguards to ensure the integrity of spacecraft operations. The Licensee shall also maintain and make available to the U.S. Government, upon request, a record of all satellite tasking operations for the previous year, and allow the Administrator to inspect such records at all reasonable times.

(2) During periods when national security or international obligations and/or foreign policies may be compromised, as defined by the Secretary of Defense or the Secretary of State, respectively, the Secretary may, after consultation with the appropriate agency(ies), require a Licensee to limit data collection and/or distribution by the system to the extent necessitated by the given situation. Decisions to impose such limits only will be made by the Secretary of Commerce in consultation with the Secretary of Defense or the Secretary of State, as appropriate.

(3) During those periods when, and for those geographic areas that, the Secretary will require the Licensee to limit distribution under paragraph (b)(2) of this section the licensee shall, on request, make the unenhanced data thus limited available exclusively to the U.S. Government by means of government furnished rekeyable encryption on the down-link. To make this possible, the conditions in the license shall also require the licensee to use only encryption devices approved by the U.S. Government and to use a data down-link format that allows the U.S. Government access and use of these data during such periods.

(c) In determining the extent of required controls on the collection or distribution of imagery, the Government will give full consideration to:

(1) Making limitations imposed applicable to the smallest geographic area feasible and for the briefest period of time necessary for the full achievement of the intended objective.

(2) Alternative actions such as delaying the transmission or distribution of data, restricting the field of view of the system, encryption of the data if this is possible, or other means to control access to the data so as to justify the overall impact on commercial operations.

(d) In accordance with section 507(d) of the Act, if the conditions described in paragraph (b)(3) of this section or any other license conditions result in technical modifications being imposed on a licensee on the basis of national security concerns and the Administrator, in consultation with the appropriate federal agencies, determines that additional costs will be incurred by the licensee, or that past development costs (including the cost of capital) will not be recovered by the licensee, the agency or agencies requesting such technical modifications may be required to reimburse the licensee for such additional or development costs, but not for anticipated profits. Reimbursements may cover costs associated with required changes in system performance, but not costs ordinarily associated with doing business abroad. The costs and terms associated with meeting this condition will be negotiated directly between the Licensee and the agency or agencies requesting the technical modifications in accordance with section 507(d) of the Act. In no event shall licensees be entitled to reimbursements for license conditions imposed on the basis of international obligations and foreign policy considerations.

**§ 960.11 Data policy for remote sensing space systems.**

(a) In accordance with section 501 of the Act, if the U.S. Government has or will directly fund all or a substantial part of the development, fabrication, launch, or operation costs of a licensed system, the Administrator shall state in the license that all of the unenhanced data from the system shall be made available on a nondiscriminatory basis.

(b) If the U.S. Government has not funded and will not fund, either directly or indirectly,any of the development, fabrication, launch, or operations costs of a licensed system, the Administrator shall make no designation in the license and the licensee may provide access to its unenhanced data in accordance with normal commercial policies, subject to the requirement for providing data to the government of any sensed state in § 960.9(c) and subject to implementation of the licensee's plan contained in its application to provide widespread access to its unenhanced data for non-commercial scientific and educational purposes.

(c) If the U.S. Government has funded some of the development, fabrication, launch, or operations costs of a licensed system (either directly or indirectly), the Administrator, in consultation with other appropriate U.S. agencies, shall determine whether the interest of the United States in promoting widespread availability of remote-sensing data requires that some or all of the unenhanced data from the system be made available on a nondiscriminatory basis in accordance with section 501 of the Act and shall designate in the license any data subject to this requirement. In making this determination, the Administrator shall consider:

(1) The extent and proportion of private and federal funding of the system;

(2) The extent of the governmental versus the commercial market for the unenhanced data;

(3) The effect of a nondiscriminatory data access designation on the applicant's commercial activity;

(4) The extent to which the applicant's proposed commercial data policies would encourage foreign operators to limit access, particularly for research and public benefit purposes; and

(5) The extent to which the U.S. interest in promoting widespread data availability can be satisfied through license conditions that ensure access to the data for research and public benefit purposes without requiring full nondiscriminatory access.

(d) The data policy established pursuant to this section shall be consistent with any contract or other agreement entered into between a U.S. government agency and the licensee.

**§ 960.12 Notification of Foreign Agreements**

(a) Upon notification by a licensee, pursuant to § 960.9(g), the Administrator shall initiate review of the proposed significant or substantial

agreement in light of the national security, international obligations and foreign policy concerns of the U.S. Government.

(b)(1) If the Administrator determines, pursuant to the Act and § 960.1(b), that a proposed agreement will impair his or her ability to enforce the terms or conditions of the license, the Administrator shall identify the terms and conditions of the license and specify how the agreement impairs enforcement.

(2) If the Administrator determines, under paragraph (d)(1) of this section that a proposed agreement will compromise a specific national security interest, international obligation, or foreign policy of the United States, the Administrator shall provide the Licensee with an unclassified explanation of the U.S. interest that is at risk, if such is possible without jeopardizing the interest at risk. Such notice shall inform the licensee that, within twenty-one (21) days from the date the notice was mailed, the licensee may provide an alternative that will not jeopardize the U.S. interest that is at risk or request a hearing or, within seven (7) days of such date, may request an expedited hearing.

(e)(1) The Administrator shall grant the hearing requested under paragraph (d) of this section unless, in accordance with 5 U.S.C 554(a)(4), the hearing would involve the conduct of a military or foreign affairs function, i.e. determinations of the concerning license conditions necessary to meet national security concerns, international obligations and foreign policy concerns are not subject to review. A determination to deny a hearing on this basis shall constitute final agency action. Any hearing shall be closed as necessary to protect classified information. The hearing shall be based solely on the record developed in accordance with this section and shall be for the purpose of determining whether a preponderance of the evidence in that record supports the objection raised to the proposed agreement.

(2) The applicant shall be entitled at any time during business hours to inspect and copy the entire record, in accordance with applicable law, upon which the decision was made.

(3) In the interest of compiling an accurate record of the decisionmaking for later possible review, oral communications on matters affecting the substance of a pending receives such a communication, the Administrator shall include in the record a summary of the communication and the circumstances surrounding its receipt.

(f)(1) A hearing requested under paragraph (d) of this section shall be held in accordance with the procedures set forth as 15 CFR part 904, subpart C, except insofar as those procedures provide for the introduction of testimony or other evidence not contained in the administrative record upon which the decision was made (*see* e.g. §§ 904.204 (d) and (e); 904.240–242; and 904.251–252).

(2) The Licensee shall be entitled to an expedited hearing as provided for in 15 CFR 904.209 if the request is filed and all other parties are served within seven (7) days of the date the Administrator's notice under paragraph (d) of this section, was mailed, specifically sets forth the Licensee's objections to the determinations contained in the notice, and demonstrates that delaying the proposed agreement during the time necessary to complete the normal hearing process will jeopardize that agreement. Where an expedited hearing is granted, the procedures of subpart C of 15 CFR part 904 shall be modified to accommodate the following schedule:

(i) The hearing shall commence within 5 days after the filing of the request with the Office of the Administrative Law Judge (ALJ) unless the ALJ postpones the date of the hearing or grants continuation of the hearing in the interest of justice or the parties agree that it shall commence at a later time.

(ii) The ALJ shall make provision for daily transcripts. Hearing shall be stenographically reported, transcribed, and made available to the public as required by statute.

(iii) Within 5 days of the conclusion of the hearing, the parties shall propose findings and conclusions to the ALJ accompanied by a supporting brief.

(iv) Within 10 days after receipt of such brief, the ALJ shall issue his or her findings and conclusions and a statement of the reasons on which they are based. The ALJ's decision shall become final in 10 days unless a party files suit in the United States District Court contesting the decision as not based upon substantial evidence in the record considered as a whole.

(v) Extensions of procedural dates shall be granted only when required in the interest of justice, unless the parties otherwise agree.

(g) Notification of any agreement that provides for an on-going or a continuous relationship serves as notification of specific transactions carried out within the scope of that agreement.

(h) A Licensee seeking to enter a foreign agreement that would require the modification of the terms of an existing license shall submit a license amendment as provided in § 960.14 and the proposed foreign agreement shall be considered in the context of the amendment review process.

### § 960.13 Amendments to licenses.

(a) The licensee shall notify the Administrator when the information supporting a license has become inaccurate and shall file all necessary amendment applications in a timely manner. Notifications shall contain all relevant new information and shall be filed at the same address identified in § 960.5(a). Amendment applications shall be filed in accordance with the procedures specified in §§ 960.5 and 960.6 for original license applications.

(b) Pursuant to the Act and § 960.1(b), the Administrator shall determine whether the amendment is permissible under the Act and § 960.9.

(c) If the Administrator determines that the notification omits information required for an amendment application, the Administrator shall notify the licensee of the items omitted.

(d) A licensee may not take any of the following actions until it has been granted an amendment to the license:

(1) Assign the license;

(2) Transfer sufficient voting power to control the management, policies and/or operations of the licensee or an operating subsidiary to any person or to foreign nations or persons collectively;

(3) Incur any change in citizenship of the chairman of the board, president, or other chief executive officer; or

(4) Deviate from the orbital characteristics, performance specifications, data collection and exploitation capabilities, and any other operational characteristic identified under § 960.6(c), except to the extent necessitated by an emergency posing an imminent and substantial threat of harm to human life, property, the environment or the remote sensing space system itself. In such emergency cases, the licensee shall return to previously approved operations as soon as circumstances permit. Any request to depart from approved orbital and data collection characteristics of the system for an extended period shall be in the form of a timely request to amend the license.

### § 960.14 Investment agreements.

(a)(1) *Domestic investment agreements.* If the acquisition of any security or other financial interest in a licensee results in any domestic person becoming the beneficial owner of 10 percent or more of such securities or class of such securities, or of any other financial interest in the licensee, the

acquisition constitutes a material change in the information supporting the license and requires notification under § 960.13. The licensee shall file this notification within ten days of the acquisition and shall include:

(i) The name of the acquirer;

(ii) The date of acquisition;

(iii) The number of shares of securities or the extent of any other financial interest in the licensee owned; and

(iv) Such other information as NOAA may specify.

(2) If the acquisition of any security or other financial interest in a licensee results in any domestic person becoming the beneficial owner of 25 percent or more of such class of securities, or any other financial interest of the licensee, the licensee shall provide assurance that such acquisition will not result in a transfer of sufficient voting power to control its management, policies, and/or operations. The licensee shall file a statement within 10 days of such acquisition setting forth the basis for its conclusion that no such transfer of voting power will occur and include the following information in addition to that required by paragraph (a)(1) of this section:

(i) The identity and residence of the beneficial owner and of all other persons by whom or on whose behalf the purchases are to be effected;

(ii) The number of shares of such securities or the extent of any other financial interest in the licensee which are beneficially owned, and the number of shares or other financial interests which there is a right to acquire, directly or indirectly, by

(A) Such person, and

(B) By each affiliate of such person, giving the background, identity, and residence of each such associate;

(iii) Information as to any contracts, arrangements, or understandings with any person with respect to any securities of or other financial interests in the licensee, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, guaranties of loans, guaranties against loss or guaranties of profits, division of losses or profits, or the giving or withholding of proxies, naming the persons with whom such contracts, arrangements, or understandings have been entered into, and giving the details thereof;

(iv) The number of shares of the securities and the particular class of securities, or the extent of the other financial interests in the licensee, which are retained by existing beneficial owners; and

(v) Such additional information, as NOAA may prescribe as necessary or appropriate to protect the national security interests or international obligations of the United States.

(3) Before any domestic person becomes the beneficial owner of 40 percent or more of any securities, any class of securities, or any other financial interest of the licensee, the licensee must file an amendment application in accordance with § 960.13 at least 90 days prior to acquisition.

(b)(1) *Foreign investment agreements.* If the acquisition of any security or other financial interest in a licensee results in any foreign person or nation becoming the beneficial owner of 5 percent or more of such securities or class of such securities, or of any other financial interest in the licensee, the acquisition constitutes a material change in the information supporting the license and requires notification under § 960.13 unless the licensee has provided notice in advance of acquisition pursuant to paragraphs (b)(2)–(5) of this section. The licensee shall file this notification within ten days of the acquisition and shall include:

(i) The name of the acquirer;

(ii) The date of acquisition;

(iii) The number of shares of securities or the extent of any other financial interest in the licensee owned;

(iv) Any updates to the technology control plan, if necessary; and

(v) Such other information as NOAA may specify.

(2) Before any foreign person or nation, becomes the beneficial owner or 15 percent or more of any securities, any class of securities, or any other financial interest of the licensee, the licensee shall provide assurance that such acquisition will not result in a transfer of sufficient voting power to control its management, policies, and/or operations. The licensee shall file a statement setting forth the basis for its conclusion that no such transfer will occur and include the following information in addition to that required by paragraph (b)(1) of this section:

(i) The identity, residence, and citizenship of the beneficial owner and of all other foreign persons or nations by whom or on whose behalf the purchases are to be effected;

(ii) The number of shares of such securities or the extent of any other financial interest in the licensee which are beneficially owned, and the number of shares or other financial interests which there is a right to acquire, directly or indirectly, by

(A) Such foreign person or nation, and

(B) By each affiliate of such foreign person or nation, giving the background, identity, residence and citizenship of each such associate;

(iii) Information as to any contracts, arrangements, or understanding with any foreign person or nation with respect to any securities of or other financial interests in the licensee, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, guaranties of loans, guaranties against loss or guaranties of profits, division of losses or profits, or the giving or withholding of proxies, naming the persons with whom such contracts, arrangements, or understandings have been entered into, and giving the details thereof;

(iv) The number of shares of the securities and the particular class of securities, or the extent of the other financial interests in the licensee, which are retained by existing beneficial owners;

(v) Any updates to the technology control plan, if necessary; and

(vi) Such additional information, as NOAA may prescribe as necessary or appropriate to protect the national security interests or international obligations of the United States.

(3) The statement required by this section shall be provided at least 60 days prior to acquisition by foreign persons or nations. The statement shall be filed with the relevant investment agreement which shall be deemed a ''significant or substantial agreement'' and reviewed in accordance with § 960.12.

(4) Before any foreign person(s) or nation(s) collectively become the beneficial owners of more than 40 percent of any securities, any class of securities, or any other financial interest of the licensee, the licensee must file an amendment application in accordance with § 960.13 at least 90 days prior to acquisition. The amendment application must clearly rebut the presumption that the acquisition will result in the transfer of sufficient voting power to control the licensee's management, policies, and/or operations and shall include a certification, in writing, to the Administrator that no foreign persons or nations, either individually or collectively, can influence the Licensee's corporate activity related to its obligations under the terms and conditions of its license; this certification must show that control over the Board of Directors is still exercised by the majority U.S. shareholders and explain how the Board of Directors insures that there is no undue influence exercised by the foreign shareholders on the appointment of key officers of the corporation.

(5) No amendment shall be granted where more than 49% of the voting interest will be beneficially owned by foreign persons or nations.

(c) If the acquisition by any person(s) or nation(s) of any security or other financial interest of the licensee, regardless of the percentage acquired, will result in a transfer of sufficient voting power to control the management, policies, and/or operations of the licensee; or if any person(s) or nation(s) will through a contractual relationship or any other means obtain the ability to control the management, policies and/or operations of the licensee, the licensee must file an amendment application in accordance with § 960.13 at least 90 days prior to acquisition. There is a strong presumption that the transfer of such an interest to foreign persons or nations will not preserve the national security or international obligations of the United States and will not be approved.

(d) The provisions of this section apply only to licensees that are subject to U.S. jurisdiction or control under § 960.2(a). Foreign persons that are subject to U.S. jurisdiction or control under § 960.2(b) shall report changes in their financial interests in accordance with the terms and conditions of their licensees.

**§ 960.15 Certain rights not conferred by license.**

Issuance of a license does not affect the authority of the Federal Communications Commission under the Communications Act of 1934 (47 U.S.C. 151 *et seq.*), or the authority of the Secretary of Transportation under the Commercial Space Launch Act of 1984 (49 U.S.C. app. 2601 *et seq.*), the authority of the Secretary under the Export Administration Act (50 U.S.C. app. 2401 *et seq.*), or the authority of the Secretary of State under the Arms Export Control Act (22 U.S.C. 2778).

## Subpart C—Enforcement Procedures

**§ 960.16 General**.

The Administrator may take appropriate actions against a licensee if the licensee fails to comply with the Act, these regulations, or any condition or restriction in the license, Such actions may include any or all of the following: pursuit of judicial determinations to terminate, modify or suspend licenses or to terminate licensed operations, administratively imposed civil penalties, and seizure pursuant to warrant. Such actions shall be taken in accordance with this subpart.

**§ 960.17 Prohibitions.**

It is unlawful for any person who is subject to the jurisdiction or control of the United States, directly or through any subsidiary or affiliate to:

(a) Operate a private remote sensing system without possession of a valid license issued under the Act and these regulations;

(b) Violate any provision of the Act or these regulations or any term, condition, or restriction of the license; or

(c) Violate any order, directive, or other notice issued by the Secretary in accordance with § 960.10(b)(2) to inform the licensee of any temporary restrictions imposed or necessary actions to be followed during periods when national security or international obligations/and or foreign policies may be compromised.

**§ 960.18 Sanctions.**

As authorized by section 203(a) of the Act, if the Administrator determines that the licensee has substantially failed to comply with the Act, these regulations, or any term, condition or restriction of the license, the Administrator may request the appropriate U.S. Attorney to seek an order of injunction or similar judicial determination from the U.S. District Court for the District of Columbia Circuit or a U.S. District Court within which the licensee resides or has its principal place of business, to terminate, modify, or suspend the license, and/or to terminate licensed operations on an immediate basis. For purposes of this section, failure to comply with the Act, these regulations or a term, condition, or restriction of a license or of the Act shall be considered substantial where

(a) The failure is knowing; or

(b) The failure occurs after notice by the Administrator; or

(c) The licensee has been advised that it failed to comply with an international obligation, foreign policy or national security concern of the United States.

**§ 960.19 Civil penalties.**

(a) In addition to the sanctions provided in § 960.16, any person who violates any provision of the Act or of any license issued thereunder or regulation contained in this part may be assessed a civil penalty by the Administrator of not more that $10,000 for each violation. Each day of operation in violation constitutes a separate violation.

(b) When the Administrator proposes the assessment of a civil penalty under this section, the Administrator will serve upon the licensee by mail a Notice of Civil Penalty and Assessment (Notice) containing:

(1) A concise statement of the facts believed to show a violation;

(2) A specific reference to the provisions of the Act, regulation, or license allegedly violated;

(3) The amount of the proposed penalty in accordance with paragraph (a) of this section.

(c) Within 30 days after receipt of the Notice, the licensee may request a hearing by serving a written request on the Administrator either in person or by certified or registered mail, return receipt requested, at the address specified in the Notice. Such hearing shall be held in accordance with procedures set forth at 15 CFR part 904, supart C.

(d) If the respondent does not request a hearing within thirty days of the date of the Notice, the civil penalty and the assessment shall become the final determination of the Administrator.

**§ 960.20 Seizure.**

If the Administrator believes that any object, record, or report, was used, is being used or is likely to be used in violation of the Act, these regulations or any condition or restriction of the license, the Administrator may seek a warrant from a magistrate to seize such item(s) by showing probable cause for this belief. Seizure shall be conducted in accordance with 15 CFR part 904, subpart F.

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[CA 083–0053b; FRL–5911–5]**

## Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision, San Diego County Air Pollution Control District, Ventura County Air Pollution Control District

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve revisions to the California State Implementation Plan (SIP) which concern the control of volatile organic compound (VOC) emissions from metal container, metal closure, and metal coil coating operations and marine vessel coating operations. The intended effect of proposing approval of these rules is