officer. Hearings may be closed to the public as necessary to protect classified or proprietary information. Transcripts made available to the public, as required by statute. Classified and proprietary information shall not be included in the public transcripts. Within thirty (30) days of the conclusion of the hearing, the hearing officer shall recommend a decision to the Administrator.

(c) The hearing requested under paragraph (a) of this section may be granted unless the issues being appealed involve the conduct of military or foreign affairs functions. Determinations concerning limitations on data collection or distribution, license conditions, or enforcement actions necessary to meet national security concerns, foreign policies or international obligations are not subject to a hearing under this Section. A determination to deny an appeal/hearing on this basis shall constitute final agency action.

(d) The Administrator may adopt the hearing officer’s recommended decision or may reject or modify it. The Administrator will notify the appellant of the decision, and the reason(s) therefore, in writing, within thirty (30) days of receipt of the hearing officer’s recommended decision. The Administrator’s action shall constitute final Agency action.

(e) Any time limit prescribed in this section may be extended for a period not to exceed thirty (30) days by the Administrator for good cause, upon his/her own motion or written request from the appellant.

(f) The licensee shall be entitled to an expedited hearing on the review of a foreign agreement if the request is filed with the Administrator within seven (7) days of the date of mailing of the Assistant Administrator’s notice under §960.8(d)(1). The request shall set forth the licensee’s response to the determinations contained in the notice, and demonstrate that the time necessary to complete the normal hearing process will jeopardize the agreement.

(1) Expedited hearings shall commence within five (5) days after the filing of the request with the Administrator unless the Administrator or the hearing officer postpones the date of the hearing or the parties agree that it shall commence at a later time.

(2) Within five (5) days of the conclusion of the hearing, the hearing officer shall prepare findings and conclusions for consideration by the Administrator. Within fourteen (14) days after receipt of such material, the Administrator shall issue his/her findings and conclusions and a statement of the reasons on which they are based. This decision constitutes final agency action.

§960.11 Conditions for operation.

(a) Each license issued for the operation of a system shall require the licensee to comply with the Act and the regulations in this part. The licensee shall ensure that its license information is kept current and accurate. A licensee’s failure to notify NOAA in a timely manner of any changes to that information on which the determination to issue the license or a subsequent licensing action was or will be made may result in penalties for non-compliance being levied, pursuant to Section 203(a)(3) of the Act.

(b) The following conditions, as a minimum, shall be included in all licenses:

(1) The licensee shall operate its system in a manner that preserves the national security and observes the foreign policy and international obligations of the United States. Specific limitations on operational performance, including, but not limited to, limitations on data collection and dissemination, as appropriate, will be specified in each license.

(2) The licensee shall maintain operational control from a location within the United States at all times, including the ability to override all commands issued by any operations centers or stations.

(3) The licensee shall maintain and make available to the Assistant Administrator records of system tasking, operations and other data as specified in the license for the purposes of monitoring and compliance. Periodic reporting and record keeping requirements will be specified in the license. The licensee shall allow the Assistant Administrator access, at all reasonable times, to all facilities which comprise...
the remote sensing space system for
the purpose of conducting license mon-
toring and compliance inspections.

(4) The licensee may be required by
the Secretary to limit data collection
and/or distribution by the system as
determined to be necessary to meet
significant national security or signifi-
cant foreign policy concerns, or inter-
national obligations of the United
States, in accordance with the proce-
dures set forth in the Interagency MOU
Fact Sheet found in Appendix 2 of this
part. During such limitations, the li-
censee shall, on request, provide
unenhanced restricted images on a
commercial basis exclusively to the
U.S. Government using U.S. govern-
ment-approved rekeyable encryption
on the down-link and shall use a data
down-link format that allows the U.S.
Government access to these data dur-
ing such periods.

(5) A licensee shall notify the Assist-
ant Administrator of its intent to
enter into any significant or substan-
tial foreign agreement, and shall sub-
mit this agreement for review in ac-
cordance with §960.8. The proposed
agreement may not be implemented by
the licensee until the licensee has been
advised by the Assistant Administrator
that the document’s provisions are ac-
ceptable.

(i) Notification of any agreement
that provides for an on-going or a con-
tinuous relationship serves as notifica-
tion of specific transactions carried out
within the scope of that agreement for
purposes of the regulations in this part
and the Act. Such notification does not
relieve a licensee of any obligation
under any other laws including U.S. ex-
port laws or regulations to secure nec-
essary U.S. Government authorizations
and/or licenses, to provide notification,
or to comply with other requirements.

(ii) A licensee seeking to enter a for-
.eign agreement that would require the
modification of the terms of an exist-
ing license shall submit a license
amendment, as provided in §960.7.

(6) In accordance with Section 201(e)
of the Act and §960.12, a licensee shall
make available on reasonable commer-
cial terms and conditions, in accord-
ance with the Act and §960.12, any
unenhanced data designated by the As-
sistant Administrator.

(7) A licensee shall provide to the
U.S. Government, upon request, a com-
plete list of all archived, unenhanced
data which has been generated by its
licensed system which is not already
maintained in a public catalog. Any in-
formation on this list which is deemed
proprietary by the licensee should be
so noted by the licensee when the list
is provided to the U.S. Government.

(8) A licensee shall make available
unenhanced data requested by the De-
partment of the Interior on reasonable
cost terms and conditions as agreed by
the licensee and the Department of the
Interior. After the expiration of any
exclusive right to sell, or after an
agreed amount of time, the Depart-
ment of Interior shall make these data
available to the public at the cost of
fulfilling user requests.

(9) Before purging any licensed data
in its possession, the licensee shall
offer such data to the National Sat-
eellite Land Remote Sensing Data Ar-
chive at the cost of reproduction and
transmission. The Department of the
Interior shall make these data avail-
able immediately to the public at the
cost of fulfilling user requests.

(10) A licensee shall make available
to the government of any country (in-
cluding the United States) upon re-
quest by that government, unenhanced
data collected by its system concerning
the territory under the jurisdiction of
such government. The data shall be
provided as soon as the licensee is able
to distribute the data commercially or
as soon as the licensee has processed
them into a format that the licensee
uses for its own purposes, whichever
occurs sooner, on reasonable terms and
conditions. However, no data shall be
provided to the sensed state if such re-
lease is contrary to U.S. national secu-
ritv concerns, foreign policy or inter-
national obligations or is otherwise
prohibited by law, e.g., where trans-
actions with the sensed state are pro-
hibited by the laws of the United
States. The U.S. Government may re-
quire, as a specific license condition,
coordination with NOAA prior to ful-
filling specific sensed state requests for
unenhanced data.

(11) A licensee shall inform the As-
sistant Administrator immediately of
any operational deviation or proposed
deviation of the system which would violate the conditions of the license. If advance notice is not possible because of an emergency posing an imminent and substantial threat to human life, property, the environment or the system itself, the licensee shall notify the Assistant Administrator of the deviation as soon as circumstances permit.

(12) A licensee shall dispose of any satellites 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 Assistant Administrator of all plans and procedures for the disposition of satellites as part of the application process.

(13) The licensee shall submit a Data Protection Plan to the Assistant Administrator for review and approval. The licensee’s Data Protection Plan shall contain the process to protect data and information throughout the entire cycle of tasking, operations, processing, archiving and dissemination.

(i) If the operating license restricts the distribution of certain data and imagery to the U.S. Government or U.S. Government-approved customers, including data whose public distribution is limited for 24 hours after collection, the Data Protection Plan should also provide for secure delivery of restricted data and imagery to U.S. Government-approved customer facilities.

(ii) Communications links that may require protection include, but are not limited to: Telemetry, tracking and commanding; narrowband and wideband data, including satellite platform and sensor data, imagery, and metadata; and terrestrial delivery methods including electronic and physical package delivery.

(iii) The licensee’s Data Protection Plan must be approved by NOAA before the licensee’s remote sensing space system may be launched. NOAA encourages the licensee’s early submission and review of the Data Protection Plan to avoid any negative impacts on its system’s development and launch schedule.

(iv) The Assistant Administrator may require the licensee to revise its Data Protection Plan if the system is altered from what was originally licensed.

(14) A license is not an asset of the licensee and shall not be mortgaged, sold or pledged as collateral.

(c) The Assistant Administrator may waive any of the conditions in §960.11(b) upon a showing of good cause and following consultations with the appropriate agencies.

§ 960.12 Data policy for remote sensing space systems.

(a) In accordance with 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 license shall require that all of the unenhanced data from the system be made available on a nondiscriminatory basis except on the basis of national security, foreign policy or international obligations.

(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 licensee may provide access to its unenhanced data in accordance with reasonable commercial terms and conditions, subject to the requirement of providing data to the government of any sensed state, pursuant to §960.11(b)(10).

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

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