

under this act. When Congress passed the Land Remote Sensing Policy Act of 1992 (the Act), it made several revisions to the licensing process to stimulate commercial interest in operating systems. On March 10, 1994, the President issued his policy to promote U.S. competitiveness in remote sensing space capabilities while protecting U.S. national security and foreign policy interests. Since 1993, NOAA has issued nine licenses.

NOAA is considering updating its 1987 regulations to reflect statutory changes, intervening events, and recent licensing experiences and to ensure that the Government's oversight is simple, transparent, and predictable. Particularly, NOAA seeks to support the President's policy that long term U.S. national security and foreign policy interests are best served by ensuring the U.S. industry continues to lead this emerging market.

In order to foster the policy of transparency in the licensing process, NOAA is seeking public input on whether extensive new regulations are necessary and, if so, what issues should be addressed in such rule. To assist this process, NOAA developed, for the Task Group, a series of Discussion Packages that highlight some of the more significant areas for discussion. NOAA is seeking early public input on these and on other significant aspects of the licensing process. NOAA is especially interested in suggestions for innovative methods to carry out its statutory licensing responsibilities in ways that enhance U.S. competitiveness. The significant issues identified to date and highlighted in the discussion packages can be summarized as follows:

1. Review Procedures for License Applications

A. How can the process be improved and modified to provide greater transparency and predictability and shorter response time?

NOAA seeks to eliminate uncertainty from the licensing process that could potentially threaten commercial practices while preserving essential national security and foreign policy interests. For each new system, these interests are first addressed during the review of the license application. The review must be thorough and careful, but at the same time transparent, predictable, and timely so as not to deter pursuit of and investment in potential systems. The Government must complete its review within the statutory time limit of 120 days or, if possible, within a shorter time limit.

To address these legitimate interests and comply with the intent of the Act

and the President's policy, NOAA is considering whether the Government should institute more formal administrative time limits and more detailed record keeping requirements in making determinations on a license application. It is contemplated that under such a system any reviewing agency unable to comply with a time limit would be required to submit a satisfactory explanation and specify the additional time required. The administrative record would be opened as soon as an application is received and would include all comments on that application. *Ex parte* communications would not be permitted and oral input should not influence the process in any way. The applicant would have the right to inspect this record during business hours.

To promote timely and transparent decisions NOAA is considering additional procedures pursuant to its enforcement authority under section 203 of the Act. This section establishes the right to a hearing on the record in the event NOAA takes certain adverse actions such as the denial of a license or imposition of conditions in a license. NOAA is considering defining adverse actions to include the Government's failure to act within the applicable time limit and/or advise the applicant of the reasons for the delay.

In the event of an appeal, the administrative record would stand alone as evidence for all determinations made during the application review. NOAA would have to demonstrate that a preponderance of the evidence in this record establishes, for example, that the system proposed would compromise identified national security or foreign policy interests. As such, the record would have to include information from the appropriate secretary sufficient to identify the interest at risk and describe why the proposed system would not preserve that interest. (This information may be classified where necessary). Should NOAA establish such an appeal process, the record would have to contain this information and the evidence would have to be sufficient to meet the requisite test or the agency determination would not prevail.

B. What are the minimum informational requirements for a complete application?

A related issue in terms of ensuring expeditious review is determining when an application is considered complete. It is important that applicants and the Government agree on what basic information must be provided in order to enable the Government to perform a thorough review and, at the same time, avoid over-burdening the applicant.

Such an understanding also will avoid frequent requests for additional information which delay the process. Particularly important is the information that describes the operational aspects of a proposed system which are significant in terms of its national security and foreign policy implications. NOAA is interested in assessing what information is necessary before a review can begin and what level of burden is imposed by gathering the information necessary for a complete application. Any comments received on this issue also will be relevant in terms of compliance with the Paperwork Reduction Act.

The existing informational requirements are found at 15 CFR 960.6. A more complete list, that includes additional items identified as significant by the reviewing agencies during recent license application reviews, is contained in Discussion Package 1. This Discussion Package also sets forth in more detail the type of process that NOAA is considering for reviewing license applications.

2. Restricting Imaging To Preserve National Security/Foreign Policy Interests—What Standard Must Be Applied and What Procedures Must Be Followed?

Once a license is issued and a remote sensing satellite is operational, the most critical issue for the licensee is when the Government might restrict imaging of a particular area and for how long because of national security or foreign policy considerations.

The basic license condition, derived from the President's policy, provides:

The Secretary of Commerce may, after consulting with the Secretary of Defense or State, as appropriate, require the licensee to limit imaging an area and/or limit distributing data from an area during any period when national security or foreign policy interests may be compromised.

To ensure that restrictions will be invoked only where appropriate, this consultation and any decision to implement this condition will be controlled at the Secretarial level and any Secretarial disagreement will be elevated to the Presidential level.

While the above standard and process appears to have achieved considerable consensus, questions have been raised whether such a standard is too vague. For example, representatives of the media addressed this issue in the 1989 Petition for Rulemaking. The media representatives have maintained that imaging could be restricted only if "there is clear evidence that such action is necessary to prevent serious and immediate injury to distinct and