

U.S. COMMERCIAL REMOTE SENSING POLICY

April 25, 2003

FACT SHEET

The President authorized a new national policy on April 25, 2003 that establishes guidance and implementation actions for commercial remote sensing space capabilities. This policy supersedes Presidential Decision Directive 23, U.S. Policy on Foreign Access to Remote Sensing Space Capabilities, dated 9 March 1994. This fact sheet provides a summary of the new policy.

I. Scope and Definitions

This policy provides guidance for: (1) the licensing and operation of U.S. commercial remote sensing space systems; (2) United States Government use of commercial remote sensing space capabilities; (3) foreign access to U.S. commercial remote sensing space capabilities; and (4) government-to-government intelligence, defense, and foreign policy relationships involving U.S. commercial remote sensing space capabilities.

For the purposes of this document:

- "Remote sensing space capabilities" refers to all remote sensing space systems, technology, components, products, data, services, and related information. In this context, "space system" consists of the spacecraft, the mission package(s), ground stations, data links, and associated command and control facilities and may include data processing and exploitation hardware and software; and
- "Commercial remote sensing space capabilities" refers to privately owned and operated space systems licensed under the Land Remote Sensing Policy Act of 1992, their technology, components, products, data, services, and related information, as well as foreign systems whose products and services are sold commercially.

No legal rights or remedies, or legally enforceable causes of action are created or intended to be created by this policy. Officers of the United States and those agents acting on their behalf implementing this policy shall do so in a manner consistent with applicable law.

II. Policy Goal

The fundamental goal of this policy is to advance and protect U.S. national security and foreign policy interests by maintaining the nation's leadership in remote sensing space activities, and by sustaining and enhancing the U.S. remote sensing industry. Doing so will also foster economic growth, contribute to environmental stewardship, and enable scientific and technological excellence.

In support of this goal, the United States Government will:

- Rely to the maximum practical extent on U.S. commercial remote sensing space capabilities for filling imagery and geospatial needs for military, intelligence, foreign policy, homeland security, and civil users;
- Focus United States Government remote sensing space systems on meeting needs that can not be effectively, affordably, and reliably satisfied by commercial providers because of economic factors, civil mission needs, national security concerns, or foreign policy concerns;
- Develop a long-term, sustainable relationship between the United States Government and the U.S. commercial remote sensing space industry;
- Provide a timely and responsive regulatory environment for licensing the operations and exports of commercial remote sensing space systems; and
- Enable U.S. industry to compete successfully as a provider of remote sensing space capabilities for foreign governments and foreign commercial users, while ensuring appropriate measures are implemented to protect national security and foreign policy.

III. Background

Vital national security, foreign policy, economic, and civil interests depend on the United States ability to remotely sense Earth from space. Toward these ends, the United States

Government develops and operates highly capable remote sensing space systems for national security purposes, to satisfy civil mission needs, and to provide important public services. United States national security systems are valuable assets because of their high quality data collection, timeliness, volume, and coverage that provide a near real-time capability for regularly monitoring events around the world. United States civil remote sensing systems enable such activities as research on local, regional, and global change, and support services and data products for weather, climate, and hazard response, and agricultural, transportation, and infrastructure planning.

A robust U.S. commercial remote sensing space industry can augment and potentially replace some United States Government capabilities and can contribute to U.S. military, intelligence, foreign policy, homeland security, and civil objectives, as well as U.S. economic competitiveness. Continued development and advancement of U.S. commercial remote sensing space capabilities also is essential to sustaining the nation's advantage in collecting information from space. Creating a robust U.S. commercial remote sensing industry requires enhancing the international competitiveness of the industry.

IV. Licensing and Operation Guidelines for Private Remote Sensing Space Systems

The Secretary of Commerce, through the National Oceanic and Atmospheric Administration (NOAA), licenses and regulates the U.S. commercial remote sensing space industry, pursuant to the Land Remote Sensing Policy Act of 1992, as amended, and other applicable legal authorities. The Secretary of Defense and the Secretary of State are responsible for determining the conditions necessary to protect national security and foreign policy concerns, respectively. NOAA, in coordination with other affected agencies and in consultation, as appropriate, with industry, will develop, publish, and periodically review the licensing regulations and associated timelines governing U.S. commercial remote sensing space systems.

To support the goals of this policy, U.S. companies are encouraged to build and operate commercial remote sensing space systems whose operational capabilities, products, and services are superior to any current or planned foreign commercial systems. However, because of the potential value of its products to an adversary, the operation of a U.S. commercial remote sensing space system requires appropriate security measures to address U.S. national security and foreign policy concerns. In such cases, the United States Government may

restrict operations of the commercial systems in order to limit collection and/or dissemination of certain data and products, e.g., best resolution, most timely delivery, to the United States Government, or United States Government approved recipients.

On a case-by-case basis, the United States Government may require additional controls and safeguards for U.S. commercial remote sensing space systems potentially including them as conditions for United States Government use of those capabilities. These controls and safeguards shall include, but not be limited to: (1) the unique conditions associated with United States Government use of commercial remote sensing space systems; and (2) satellite, ground station, and communications link protection measures to allow the United States Government to rely on these systems. The United States Government also may condition the operation of U.S. commercial remote sensing space systems to ensure appropriate measures are implemented to protect U.S. national security and foreign policy interests.

V. United States Government Use of Commercial Remote Sensing Space Capabilities

To support the goals of this policy, the United States Government shall utilize U.S. commercial remote sensing space capabilities to meet imagery and geospatial needs. Foreign commercial remote sensing space capabilities, including but not limited to imagery and geospatial products and services, may be integrated in United States Government imagery and geospatial architectures, consistent with national security and foreign policy objectives.

With regard to the national security remote sensing space architecture, the Secretary of Defense and the Director of Central Intelligence, in consultation with industry as appropriate, shall:

- Determine which needs for imagery and geospatial products and services can be reliably met by commercial remote sensing space capabilities;
- Communicate current and projected needs to the commercial remote sensing space industry;
- Competitively outsource functions to enable the United States Government to rely to the maximum practical extent on commercial remote sensing space capabilities for filling imagery and geospatial needs;

- Establish the National Imagery and Mapping Agency (NIMA) as the agency of primary responsibility for acquiring and disseminating commercial remote sensing space products and services for: (1) all national security requirements; and, (2) in consultation with the Secretary of State, all foreign policy requirements.

With regard to civil remote sensing space capabilities, the Secretaries of Commerce and the Interior and the Administrator of the National Aeronautics and Space Administration (NASA), in consultation with other United States Government agencies, and with industry, as appropriate, shall:

- Determine which civil needs can be met by commercial remote sensing space capabilities; and
- Communicate current and projected needs to the commercial remote sensing space industry.

United States Government civil agencies acting individually, or when beneficial, together, shall:

- Competitively outsource functions to enable the United States Government to rely to the maximum practical extent on commercial remote sensing space capabilities for filling civil imagery and geospatial needs;
- Acquire and operate United States Government systems that collect data only when such data (1) are not offered and will not be made available by U.S. commercial remote sensing space systems; or (2) require collection, production, and/or dissemination by the United States Government due to unique scientific or technological considerations or other mission requirements; and
- Coordinate with NIMA procurement of all U.S. commercial remote sensing data and products that are restricted to United States Government or United States Government-approved users pursuant to NOAA license conditions due to U.S. national security or foreign policy concerns.

Agencies shall allocate the resources required to implement these objectives within the overall policy and resource guidance of the President and available appropriations. Civil agencies may acquire commercial remote sensing space products and services directly, through cooperative arrangements with other civil agencies, or through NIMA. When procuring through another

agency, civil agencies will reimburse the procuring agency, consistent with the Economy Act.

VI. Foreign Access To U.S. Commercial Remote Sensing Space Capabilities

It is in U.S. national security, foreign policy, and economic interests that U.S. industry compete successfully as providers of remote sensing space products and capabilities to foreign governments and foreign commercial users. Therefore, license applications for U.S. commercial remote sensing space exports shall be considered favorably to the extent permitted by existing law, regulations and policy when such exports support these interests.

The United States Government will consider remote sensing exports on a case-by-case basis. These exports will continue to be licensed pursuant to the United States Munitions List or the Commerce Control List, as appropriate, and in accordance with existing law and regulations. The following guidance will also apply, when considering license applications for remote sensing exports:

- The United States Government will take into account exports' potential contribution to achieving the goals of this policy, the overall relationship, particularly the existing defense and defense trade relationship with the proposed recipient nation, and broader U.S. national security, foreign policy, and economic objectives;
- As a general guideline, remote sensing exports that are currently available or are planned to be available in the global marketplace also will be considered favorably;
- Exports of sensitive or advanced information, systems, technologies, and components, however, will be approved only rarely, on a case-by-case basis. These items include systems engineering and systems integration capabilities and techniques, or enabling components or technologies, i.e., items with capabilities significantly better than those achievable by current or near-term foreign systems. The Secretary of State, in consultation with the Secretary of Defense and the Director of Central Intelligence, shall maintain a Sensitive Technology List that includes these items. This list shall be made available to U.S. industry, consistent with national security and foreign policy

concerns. The Department of State shall use the list in the evaluation of requests for exports; and

- Sensitive or advanced remote sensing exports, including but not limited to a sub-set of items specifically identified on the Sensitive Technology List, will be approved only on the basis of a government-to-government agreement or other acceptable arrangement that includes, among other things, end-use and retransfer assurances that protect U.S. controlled technical data, and broader national security and foreign policy needs. Such agreements also may include protections for intellectual property and economic interests. To facilitate timely implementation, the disposition of export license applications will be expedited after completion of such agreements or arrangements.

VII. Government-to-Government Intelligence, Defense, and Foreign Relationships

The United States Government will use U.S. commercial remote sensing space capabilities to the maximum extent practicable to foster foreign partnerships and cooperation, and foreign policy objectives, consistent with the goals of this policy and with broader national security objectives. Proposals for new partnerships regarding remote sensing that would raise questions about United States Government competition with the private sector shall be submitted for interagency review. In general, the United States Government should not pursue such partnerships if they would compete with the private sector, unless there is a compelling national security or foreign policy reason for doing so.

VIII. Implementation Actions

Implementation of this directive will be within the overall policy and resource guidance of the President and subject to the availability of appropriations. Agencies have been directed to complete a series of specific implementation actions within 120 days from the date of this directive.