



Guidance Circular

GC No: 960.16-1
Subject: Guidance for Applicants and Licensees on Scope of Affiliates and Subsidiaries
Date: June 7, 2022

Guidance Circulars (GC) are intended to provide guidance to entities subject to or potentially subject to the Land Remote Sensing Policy Act of 1992 (51 U.S.C. § 60101 *et seq.*) and the National Oceanic and Atmospheric Administration's (NOAA's) implementing regulations at 15 CFR Part 960. The contents of this document do not have the force and effect of law and are not meant to bind the public in any way. The document is only intended to provide clarity to the public regarding existing requirements under the law or agency policies.

Applicable Statute: 51 U.S.C. § 60121, 60122

Applicable Regulations: 15 C.F.R. 960.16

If you have suggestions for improving this GC, we invite you to provide feedback to NOAA's Commercial Remote Sensing Regulatory Affairs office (CRSRA) at crsra@noaa.gov, noting the number of the GC you are discussing in your email. Please note that responses by email are not anonymous and the entirety of the response, including the email address, attachments, and other supporting materials, may be disclosed pursuant to federal freedom of information law. Sensitive personal information, trade secrets, or financial information should not be included with the response.

Overview of Issue:

The Land Remote Sensing Policy Act of 1992 ("Act") authorizes the Department of Commerce (delegated to NOAA) to license private entities to operate private remote sensing space systems. The Act provides: "No person that is subject to the jurisdiction or control of the United

States may, *directly or through any subsidiary or affiliate*, operate any private remote sensing space system without a license.” 51 U.S.C. § 60122(a) (emphasis added).

Accordingly, NOAA’s regulations prohibit “[a]ny person who operates a system from the United States and any person who is a U.S. person” from taking certain actions “directly or through a subsidiary or affiliate.” 15 C.F.R. § 960.16. NOAA only licenses one entity as the operator of a system as discussed in Guidance Circular 960.4-1¹ However, the Act and its implementing regulations extend NOAA’s jurisdiction to the actions of subsidiaries and affiliates of the operator so that NOAA may better administer its statutory and regulatory responsibilities and prevent the use of related persons or entities to elude legal requirements under this framework.

In other words, NOAA’s jurisdiction and prohibitions extend to actions taken by subsidiaries and affiliates when those actions are tied to the operation of a system within NOAA’s jurisdiction. In this connection, the regulations define an affiliate or subsidiary as:

[A] person who directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with, the applicant or licensee.

15 C.F.R. § 960.4. This GC provides further explanation when NOAA considers a person acting “through a subsidiary or affiliate” in the context of these regulations.

1. Actions Regarding the System

First, NOAA considers an applicant or licensee acting through a subsidiary or affiliate when the subsidiary or affiliate owns, controls, or manages the system directly. Please note that *any* entity other than the applicant or licensee that owns, controls, or manages the system must be disclosed, and their actions will be attributed to the applicant or licensee. In this connection, an applicant must identify “any entity or individual other than the Applicant” that “will own, control, or manage” any remote sensing instrument in the system, spacecraft in the system, or mission control center that can operate the system. See 15 C.F.R. pt. 960, App. A. Similarly, licensees would need to request a modification in their license if they intend another entity to own, control, or manage any remote sensing instrument in the system, spacecraft in the system, or mission control center that can operate the system. See 15 C.F.R. § 960.13.

Note that this analysis is distinct from the traditional principles of *respondeat superior*, where a company is liable for the acts of its employees taken within the scope of their employment and intended, at least in part, to benefit the company. NOAA also retains the discretion to consider traditional principles of vicarious liability in other circumstances when a liable party controls the conduct of an acting party.

¹ For an explanation of the meaning of the terms “person” and “operates” in these regulations, see Guidance Circular 960.4-1.

NOAA provides the following list of examples entities that are **not** to be included in the license application:

- Entity that contributed financially to the operation of the system operation through grant or otherwise and does not own, control, or manage any instrument in the system, spacecraft in the system, or mission control center that can operate the system;
- Entity that enters into a non-exclusive agreement to request imagery or data from the system;
- Students or teachers operating the system in their capacity as students or teachers for a system licensed by their academic institution;
- Individual employees of the licensee corporation.

2. Subsidiaries or Affiliates that Play a Role in the Operation of the System

Second, an action can be taken “through a subsidiary or affiliate” where the subsidiary or affiliate exercises a sufficient degree of administrative control over an action related to operation of the system. NOAA understands the term control (including the terms controlling, controlled by and under common control with) to be informed by legal principles under the law of “agency.” This means that NOAA considers “control” to mean having direct or indirect power to affect the management, policies, or actions of an entity. When NOAA considers how much control an applicant or licensee has in relation to its subsidiary or affiliate, NOAA will consider the applicant’s or licensee’s knowledge and direction of the actions, both generally and in the context of the specific action at issue. Similarly, when appropriate, NOAA will consider the entity’s knowledge and direction of the applicant’s or licensee’s conduct. Although a formal relationship between the applicant or licensee and the entity is important in this analysis, so are the practical realities of how the applicant or licensee and entity actually interact. NOAA’s review is limited to facts relevant to control over actions related to operation of the system.

To effectively account for the role of affiliates or subsidiaries that may exercise administrative control, NOAA requires applicants to identify “any subsidiaries and affiliates playing a role in the operation of the System.” See 15 C.F.R. pt. 960, App. A (Applicant Information Required). In this sense, “playing a role” refers only to an affiliate or subsidiary’s sufficient control to manage, influence, or cause operational decisions.

Applicants should identify any person that both plays a role in the system and is controlled by the applicant, controls the applicant, or is in common control with the applicant. Similarly, licensees would need to request a modification in their license if they intend a subsidiary or affiliate to begin to play a role in the operation of the system. See 15 C.F.R. § 960.13. Applicants and licensees are deemed liable for the acts of its employees taken within the scope of their employment and intended, at least in part, to benefit the applicant. Therefore, employees of the applicant need not be specifically identified in the application.

In the below examples, NOAA identifies various relationships between subsidiaries and affiliates and the applicant or licensee and whether the relationship is needs to be identified in the license application:

Relationship to Applicant/Licensee	Description of Control over the System	Identified in License Application
U.S. Parent Company	Final approval over all operational conduct.	Yes, but not as a subsidiary or affiliate. In this case, the Parent Company is the actual operator that should be licensed.
Non-U.S. Parent Company	Board control that directs general management of remote sensing operations.	Yes; this is an affiliate that plays a role in the operation of the system.
Parent Company	None, but fully owns the applicant/licensee.	No; the Parent company does not play any role in the operation of the system.
Affiliate that is controlled by the same Parent company.	None	No
Non-U.S. affiliate that is controlled by the same Parent company.	Owens and operates one of the mission control centers to be used in system operations.	Yes; the affiliate is an entity that owns and operates a mission control center of the system.
Subsidiary	None: instead, it carries out sales of imagery.	No
Subsidiary	Operates one spacecraft in the system.	Yes; the subsidiary is an entity that operates a spacecraft in the system.
Affiliate controlled by the same Parent company.	None: instead, it submits non-exclusive requests for specific imagery/data.	No
Non-U.S. Affiliate controlled by the same Parent company.	Essentially tasks the system because it has an exclusive contractual right to submit requests for specific imagery/data, and the operator must comply.	Yes; NOAA must consider whether the affiliate is actually the operator that should be licensed.

The above examples cannot cover every possible scenario. When in doubt, please reach out to CRSRA to discuss your particular situation.

Opportunity for Feedback:

We welcome any feedback you may have about this GC. Please contact CRSRA at csra@noaa.gov.