

Policy Guidance: Annual Compliance Certification



Guidance Circular

GC No: 960.14-1
Subject: Guidance for Licensees Regarding Completion of the Annual Compliance Certification
Date: January 26, 2023

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.

If you have suggestions for improving this GC, we invite you to provide feedback to CRSRA at crsra@noaa.gov, noting the number of the GC you are discussing in your email.

Applicable Statute: 51 U.S.C. § 60121, 60122, 60123

Applicable Regulations: 15 C.F.R. 960.4 defining "material fact," and "modification"; 15 C.F.R. 960.8, 960.13, 960.14

Overview of Issue

The Land Remote Sensing Policy Act of 1992 authorizes the Department of Commerce (delegated to NOAA) to license private entities to operate remote sensing space systems, and prohibits the operation of remote sensing space systems without such a license. The implementing regulations require that all NOAA remote sensing licenses contain several standard license conditions.¹ One such license condition requires the licensee to certify in writing that all material facts in the license remain accurate by no later than October 15th of each year.² This

¹ 15 C.F.R. § 960.8.

² See 15 C.F.R. § 960.8(g); see also 15 C.F.R. § 960.14(a)

mandatory certification process is referred to by CRSRA as the Annual Compliance Certification (ACC).

In order to assist licensees with timely completion of the ACC, CRSRA issues the current calendar year's certification form in advance of the October 15th submission due date. The form reiterates the regulatory requirements of the ACC and provides a streamlined format for licensees to certify that the material facts³ of the license remain accurate. Should the licensee find a material fact to no longer be accurate, the licensee must provide all accurate material facts, explain why there is a discrepancy between the terms of the license and the accurate material facts, and seek guidance from CRSRA on how to correct the error or errors.⁴

The preamble to 15 C.F.R. Part 960 emphasizes that "licensees must understand how critical it is to comply with this [ACC] requirement carefully."⁵ Nevertheless, since the regulations were promulgated in July 2020, there has been inconsistent compliance with this license condition and the accompanying regulatory provisions. Licensees continue to submit untimely and incomplete ACCs and fail to adhere to the mandatory process set forth at 15 C.F.R. § 960.14(b).

CRSRA has further observed licensees to appear to conflate the annual ACC process with the license modification process. Significantly, the ACC is not an annual reminder to licensees to request modifications to their licenses, nor is the ACC a substitute for a license modification request. As highlighted in the preamble to 15 C.F.R. Part 960, "if a material fact is no longer true at the time of the annual certification, the licensee is already out of compliance with the requirement to obtain approval for a license modification prior to a change in any material fact[.]"⁶

Guidance for Compliance with the ACC

Certification of Material Facts

By its authorizing legislation, CRSRA may "administer to or take from any person an oath, affirmation, or affidavit concerning any matter relating to the enforcement of this chapter."⁷ This statutory authority is invoked by requiring timely and accurate certification of the material facts listed in the license by the licensee.⁸ To better underscore the significance of the ACC process and the serious and thorough manner with which each licensee is expected to approach their compliance with this requirement, CRSRA is amending language in its annual ACC form to be consistent with 28 U.S.C. § 1746, which provides as follows:

Wherever, under any law of the United States or under any rule, regulation, order, or requirement made pursuant to law, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or

³ 15 C.F.R. § 960.4 defines *material fact* as "a fact an applicant provides in the application, or a fact in Parts C or D of a license."

⁴ 15 C.F.R. § 960.14(b).

⁵ Licensing of Private Remote Sensing Space Systems, 85 Fed. Reg. 30790, 30801 (July 20, 2020).

⁶ See Licensing of Private Remote Sensing Space Systems, 85 Fed. Reg. 30790, 30801 (July 20, 2020).

⁷ 51 U.S.C. § 60123(a)(7).

⁸ 15 C.F.R. § 960.14.

statement, in writing of such person which is subscribed by him, as true under penalty of perjury, and dated, in substantially the following form:

(1) If executed without the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date).

(Signature)".

(2) If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date).

(Signature)".

As set forth above, section 1746 provides the form by which the unsworn certificate must substantially follow. Future amendments to CRSRA's ACC form will track this language. Accordingly, beginning in the 2023 calendar year, when a licensee submits an ACC pursuant to its license condition and the mandatory requirements at 15 C.F.R. § 960.14, the licensee must certify the ACC as true under penalty of perjury.

Process for Handling an Inaccurate Material Fact Identified During the ACC

The procedures that govern the ACC are distinct from the procedures for the submission of a license modification request.⁹ If a licensee determines that one or more material facts are no longer accurate at the time the ACC is due, the licensee is required to follow the process specified at 15 C.F.R. § 960.14(b). This process includes providing all accurate material facts and explaining the reason for any discrepancies between the material facts listed in the license and the accurate material facts. In addition, this process requires the submission to "[s]eek guidance from [CRSRA] on how to correct any errors."¹⁰ Upon receiving the licensee's request for guidance regarding how to correct any such errors, CRSRA's response to a licensee's request for corrective guidance "may include requesting a license modification." Pursuant to this process, a licensee should not submit a license modification in tandem with the filing of its ACC and should wait to receive CRSRA's corrective guidance. Upon receipt of the ACC form and prior to its submission, a licensee who recognizes that one or more of its licensed material facts already changed should not submit a late license modification request; instead, that licensee must comply with 15 C.F.R. § 960.14(b) by submitting a complete and accurate ACC and consulting with CRSRA to receive corrective guidance before taking further action. If CRSRA determines that the licensee must request a license modification to correct the errors noted in the ACC, CRSRA will so inform the licensee, and the licensee must then submit a license modification request consistent with the procedures described at 15 C.F.R. § 960.13. CRSRA may also evaluate whether any further compliance or enforcement measures are appropriate.

Common Scenarios

CRSRA has observed several common noncompliance scenarios associated with the ACC process. This is in no way an exhaustive list of possible violations of ACC requirements; however, these examples serve to highlight circumstances in which additional efforts should be made to satisfy those requirements.

⁹ 15 C.F.R. § 960.13, 960.14.

¹⁰ 15 C.F.R. § 960.14(b)(3).

Inaccurate material fact listed in the license. Upon receiving the annual ACC form from CRSRA, a licensee reviews the material facts of the license and discovers that a material fact or facts listed in the license is or are inaccurate. CRSRA has observed that, commonly, in this situation the licensee returns the ACC, noting the discrepancy and requesting a modification to the inaccurate material fact or facts. As noted in the preamble to the regulation, however, this constitutes a violation as all license modifications must be requested and approved prior to a change to any material fact. In this hypothetical scenario, the licensee has committed a further violation in that the licensee did not follow the appropriate steps mandated in 15 C.F.R. § 960.14(b) for correcting the inaccuracy. In response to this scenario, the licensee should list the accurate material fact, explain the reason for the discrepancy, and request from CRSRA guidance on appropriate corrective measures.

A related scenario may occur when the licensee conflates the procedures at 15 C.F.R. § 960.13 with the procedures at 15 C.F.R. § 960.14 by submitting a modification request in reaction to an inaccurate material fact discovered in the license while completing the ACC process. Variations on this scenario may include the licensee submitting a modification request shortly prior to completing its annual certification, submitting a modification request alongside the annual certification, or submitting a modification request after submitting the annual certification but without first seeking corrective guidance from CRSRA. In each case a violation has occurred if the material fact changed prior to the licensee submitting and receiving approval for a modification request. A violation has also occurred if the licensee substitutes the procedures to attain a license modification (found at 15 C.F.R. § 960.13) for compliance with the series of ACC steps required by 15 C.F.R. § 960.14 and its corresponding license condition.

Upon reviewing the material facts of the license in order to certify the facts for the ACC, a licensee determines that a modification will soon be needed. Upon receiving the annual ACC form from CRSRA, a licensee reviews the material facts of the license and discovers that a material fact listed in the license may soon change, and a modification request needs to be submitted. Provided the material facts all remain accurate, the licensee should complete the ACC. The licensee should begin a separate action to request a license modification to address the coming changes *before* the changes are made so that the material facts of the license remain accurate at all times.

ACC not completed by the deadline required by 15 C.F.R. Part 960. Upon receiving the annual ACC form from CRSRA, for any reason, a licensee does not submit the certification by the October 15th deadline. The ACC deadline is firm and CRSRA will not make exceptions to this deadline, therefore this constitutes a violation regardless of the reason. The licensee should immediately communicate with CRSRA to seek guidance.

Recommendation for Developing Standard Operating Procedures

In order to assist in complying with licensed and regulatory requirements, CRSRA recommends that licensees develop Standard Operating Procedures (SOPs) responsive to requirements for requesting license modifications as well as execution of the ACC. CRSRA encourages licensees to meet with the agency to discuss the regulatory requirements such SOPs would be designed to address, with the goal of assisting licensees to better understand the legal obligations the licensees are expected to fulfill. Even if a licensee has already developed SOPs for this purpose, CRSRA still encourages further dialogue between the agency and the licensee so that CRSRA may assist the licensee with improvements to those SOPs or their implementation. Note, however, that neither the existence of nor the adherence to internal SOPs is a substitute for compliance with the Land Remote Sensing Policy Act of 1992, 15 C.F.R. Part 960, or the conditions of a NOAA remote sensing license.

Noncompliance with the Annual Compliance Certification

Noncompliance with any requirement provided by the authorities discussed in this guidance circular may result in enforcement action, including civil administrative penalties.¹¹

Opportunity for Feedback: We welcome any feedback you may have about this GC. Please contact CRSRA at crsra@noaa.gov.

¹¹ See 51 U.S.C. § 60123(a)(3); see also 15 C.F.R. § 960.17.