

AMERICAN SPACE COMMERCE FREE ENTERPRISE ACT OF  
2017

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APRIL 24, 2018.—Committed to the Committee of the Whole House on the State of  
the Union and ordered to be printed

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Mr. SMITH of Texas, from the Committee on Science, Space, and  
Technology, submitted the following

R E P O R T

[To accompany H.R. 2809]

[Including cost estimate of the Congressional Budget Office]

The Committee on Science, Space, and Technology, to whom was referred the bill (H.R. 2809) to amend title 51, United States Code, to provide for the authorization and supervision of nongovernmental space activities, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:

Strike all after the enacting clause and insert the part printed  
in italic:

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) **SHORT TITLE.**—This Act may be cited as the “American Space Commerce Free Enterprise Act of 2017”.

(b) **TABLE OF CONTENTS.**—The table of contents is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings; policy; purposes.
- Sec. 3. Certification to operate space objects.
- Sec. 4. Permitting of space-based remote sensing systems.
- Sec. 5. Administrative provisions related to certification and permitting.
- Sec. 6. Technical and conforming amendments.
- Sec. 7. Office of Space Commerce.
- Sec. 8. Restriction on preventing launches and reentries of certified space objects.
- Sec. 9. Report on registration of space objects.
- Sec. 10. Comptroller General report.

**SEC. 2. FINDINGS; POLICY; PURPOSES.**

(a) **FINDINGS.**—Congress finds the following:

(1) The United States, through existing authorization and supervision mechanisms, satisfies and is in conformity with its obligation under the Outer Space Treaty to authorize and supervise nongovernmental space activities to assure such activities are carried out in conformity with the international obligations of the United States under the Outer Space Treaty.

(2) The United States has a robust and innovative private sector that is investing in, developing, and placing into outer space, spacecraft and payloads.

(3) Authorization and supervision mechanisms as of the date of enactment of this Act could be improved to relieve administrative burdens on new and innovative nongovernmental space actors.

(4) It serves the national interest to address misperceptions of legal uncertainty through the establishment of a general authorization and supervision certification authority for nongovernmental outer space activities.

(5) The private exploration and use of outer space by nongovernmental entities will further the national security, foreign policy, and economic interests of the United States.

(b) **POLICY.**—It is the policy of the United States that—

(1) United States citizens and entities are free to explore and use space, including the utilization of outer space and resources contained therein, without conditions or limitations;

(2) this freedom is only to be limited when necessary to assure United States national security interests are met and to authorize and supervise nongovernmental space activities to assure such activities are carried out in conformity with the international obligations of the United States under the Outer Space Treaty;

(3) to the maximum extent practicable, the Federal Government shall interpret and fulfill its international obligations to minimize regulations and limitations on the freedom of United States nongovernmental entities to explore and use space;

(4) to the maximum extent practicable, the Federal Government shall take steps to protect the physical safety of space objects operated by the United States that do not involve limitations on the freedoms of nongovernmental entities of the United States; and

(5) nongovernmental activities in outer space shall only be authorized and supervised in a transparent, timely, and predictable manner, with minimal costs and burdens placed on the entities authorized and supervised.

(c) **PURPOSES.**—The purposes of this Act and the amendments made by this Act are—

(1) to enhance the existing outer space authorization and supervision framework to provide greater transparency, greater efficiency, and less administrative burden for nongovernmental entities of the United States seeking to conduct space activities; and

(2) to ensure that the United States remains the world leader in commercial space activities.

(d) **DEFINITIONS.**—In this Act—

(1) the term “Agreement on the Rescue of Astronauts and the Return of Space Objects” means the Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space (signed at Washington, Moscow, and London on April 22, 1968, ratified by the United States on December 3, 1968; 19 UST 7570);

(2) the term “Convention on Registration of Space Objects” means the Convention on Registration of Objects Launched into Outer Space (signed at New York on January 14, 1975, ratified by the United States on September 15, 1976; 28 UST 695);

(3) the term “covered treaties on outer space” means—

- (A) the Outer Space Treaty;
  - (B) the Agreement on the Rescue of Astronauts and the Return of Space Objects;
  - (C) the Convention on Registration of Space Objects; and
  - (D) the Liability Convention;
- (4) the term “Liability Convention” means the Convention on the International Liability for Damage Caused by Space Objects (signed at Washington, Moscow, and London on March 29, 1972, ratified by the United States on October 9, 1973; 24 UST 2389); and
- (5) the term “Outer Space Treaty” means the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (signed at Washington, Moscow, and London on January 27, 1967, ratified by the United States on October 10, 1967; 18 UST 2410).

**SEC. 3. CERTIFICATION TO OPERATE SPACE OBJECTS.**

Title 51, United States Code, is amended by adding at the end the following:

**“Subtitle VIII—Authorization and Supervision of  
Nongovernmental Space Activities**

**“CHAPTER 801—CERTIFICATION TO OPERATE SPACE OBJECTS**

“Sec.

- “80101. Definitions.
- “80102. Certification authority.
- “80103. Certification application and requirements.
- “80104. Mitigation of space debris.
- “80105. Continuing certification requirements.
- “80106. Certification transfer.
- “80107. Certification expiration and termination.
- “80108. Existing license or pending application for launch or reentry.
- “80109. Private Space Activity Advisory Committee.
- “80110. Exemptions.
- “80111. Protecting the interests of United States entity space objects.

**“§ 80101. Definitions**

“In this subtitle:

“(1) AGENCY.—The term ‘agency’ has the meaning given the term Executive agency in section 105 of title 5.

“(2) AGREEMENT ON THE RESCUE OF ASTRONAUTS AND THE RETURN OF SPACE OBJECTS.—The term ‘Agreement on the Rescue of Astronauts and the Return of Space Objects’ means the Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space (signed at Washington, Moscow, and London on April 22, 1968, ratified by the United States on December 3, 1968; 19 UST 7570).

“(3) CONVENTION ON REGISTRATION OF SPACE OBJECTS.—The term ‘Convention on Registration of Space Objects’ means the Convention on Registration of Objects Launched into Outer Space (signed at New York on January 14, 1975, ratified by the United States on September 15, 1976; 28 UST 695).

“(4) COVERED TREATIES ON OUTER SPACE.—The term ‘covered treaties on outer space’ means—

- “(A) the Outer Space Treaty;
- “(B) the Agreement on the Rescue of Astronauts and the Return of Space Objects;
- “(C) the Convention on Registration of Space Objects; and
- “(D) the Liability Convention.

“(5) LIABILITY CONVENTION.—The term ‘Liability Convention’ means the Convention on the International Liability for Damage Caused by Space Objects (signed at Washington, Moscow, and London on March 29, 1972, ratified by the United States on October 9, 1973; 24 UST 2389).

“(6) NATIONAL OF THE UNITED STATES.—The term ‘national of the United States’ has the meaning given such term in section 101(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)).

“(7) OUTER SPACE TREATY.—The term ‘Outer Space Treaty’ means the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (signed at Washington, Moscow, and London on January 27, 1967, ratified by the United States on October 10, 1967; 18 UST 2410).

“(8) SECRETARY.—The term ‘Secretary’ means, except as otherwise provided in this subtitle, the Secretary of Commerce, acting through the Office of Space Commerce.

“(9) SPACE-BASED REMOTE SENSING SYSTEM.—The term ‘space-based remote sensing system’ means a space object in Earth orbit that is—

“(A) designed to image the Earth; or

“(B) capable of imaging a space object in Earth orbit operated by the Federal Government.

“(10) SPACE DEBRIS MITIGATION.—The term ‘space debris mitigation’ means efforts to—

“(A) prevent on-orbit break-ups;

“(B) remove spacecraft that have reached the end of their mission operation from useful densely populated orbit regions; and

“(C) limit the amount of debris released during normal operations of a space object.

“(11) SPACE OBJECT.—

“(A) IN GENERAL.—The term ‘space object’ means—

“(i) a human-made object located in outer space, including on the Moon and other celestial bodies, with or without human occupants, that was launched from Earth, such as a satellite or a spacecraft, including component parts of the object; and

“(ii) all items carried on such object that are intended for use in outer space outside of, and independent of, the operation of such object.

“(B) INCLUSION.—Such term includes any human-made object that is—

“(i) manufactured or assembled in outer space; and

“(ii) intended for operations in outer space outside of, and independent of, the operations of such object in which the manufacturing or assembly occurred.

“(C) EXCLUSIONS.—Such term does not include—

“(i) an article on board a space object that is only intended for use inside the space object;

“(ii) an article manufactured or processed in outer space that is a material; or

“(iii) an article intended for use outside of a space object as part of the certified operations of the space object.

“(12) STATE.—The term ‘State’ means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any other commonwealth, territory, or possession of the United States.

“(13) UNITED STATES.—The term ‘United States’ means the States, collectively.

“(14) UNITED STATES ENTITY.—The term ‘United States entity’ means—

“(A) an individual who is a national of the United States; or

“(B) a nongovernmental entity organized or existing under, and subject to, the laws of the United States or a State.

#### “§ 80102. Certification authority

“(a) IN GENERAL.—Not later than 1 year after the date of enactment of the American Space Commerce Free Enterprise Act of 2017, the Secretary shall begin issuing certifications for the operation of a space object to any United States entity who submits an application for a certification in satisfaction of the requirements of this chapter.

“(b) CONSULTATION.—The Secretary shall, as the Secretary considers necessary, consult with the heads of other relevant agencies in carrying out the requirements of this chapter, pursuant to section 80311.

“(c) CERTIFICATION REQUIRED FOR OPERATION.—Beginning on the date that is 1 year after the date of enactment of the American Space Commerce Free Enterprise Act of 2017, a United States entity may not operate a space object unless the entity holds a certification issued under this chapter for the operation of such object or the entity holds a valid payload approval for launch or reentry under section 50904 as part of a license issued under chapter 509, and that satisfies the requirements of section 80108(a).

“(d) FOREIGN ENTITIES PROHIBITED.—The Secretary may not issue a certification under this chapter to any person who is not a United States entity.

“(e) COVERAGE OF CERTIFICATION.—The Secretary shall, to the maximum extent practicable, require only 1 certification under this chapter for a United States entity to—

“(1) conduct multiple operations carried out using a single space object;

“(2) operate multiple space objects that carry out substantially similar operations; or

“(3) use multiple space objects to carry out a single space operation.

**“§ 80103. Certification application and requirements**

“(a) APPLICATION PROCESS.—

“(1) IN GENERAL.—To be eligible for a certification or transfer of a certification to operate a space object under this chapter, a United States entity shall submit an application to the Secretary as provided in paragraph (2). Such application shall include, for each required item or attestation, sufficient evidence to demonstrate each fact or assertion.

“(2) CONTENTS.—An application described in paragraph (1) shall include only the following information, with respect to each space object and the operations proposed to be certified:

“(A) The name, address, and contact information of one or more nationals of the United States designated by the applicant as responsible for the operation of the space object.

“(B) An affirmation, and a document of proof, that the applicant is a United States entity.

“(C) If available at the time of submission of the application, the planned date and location of the launch of the space object, including the identity of the launch provider.

“(D) The general physical form and composition of the space object.

“(E) A description of the proposed operations of the space object that includes—

“(i) when and where the space object will operate; and

“(ii) when and where the operation of the space object will terminate.

“(F) A description of how the space object will be operated and disposed of in a manner to mitigate the generation of space debris.

“(G) Information about third-party liability insurance obtained, if any, by the applicant for operations of the space object, including the amount and coverage of such liability insurance.

“(H) Whether the space object will include a space-based remote sensing system.

“(3) ATTESTATIONS.—An application described in paragraph (1) shall contain an attestation by the applicant of each the following:

“(A) The space object is not a nuclear weapon or a weapon of mass destruction.

“(B) The space object will not carry a nuclear weapon or weapon of mass destruction.

“(C) The space object will not be operated or used for testing of any weapon on a celestial body.

“(D) All information in the application and supporting documents is true, complete, and accurate.

“(b) REVIEW OF APPLICATION.—

“(1) VERIFICATION OF INFORMATION AND ATTESTATIONS.—Not later than 90 days after receipt of an application under this section, the Secretary shall verify that—

“(A) the application is complete, including any required supporting documents;

“(B) the application does not contain any clear indication of fraud or falsification; and

“(C) the application contains each attestation required under subsection (a)(3).

“(2) DETERMINATION.—Not later than 90 days after receipt of an application under this section—

“(A) if the Secretary verifies that the applicant has met the application requirements described in paragraph (1), the Secretary shall approve the application and issue a certification to the applicant with or without conditions on the proposed operation of the space object pursuant to subsection (c)(1)(A); or

“(B) if the Secretary cannot verify that the applicant has met the application requirements described in paragraph (1) or if the Secretary determines it is necessary to deny the application pursuant to subsection (c)(1)(B), the Secretary—

“(i) shall issue a denial of the application signed by the Secretary (a duty that may not be delegated, including to the Office of Space Commerce); and

“(ii) shall, not later than 10 days after the decision to deny the certification—

“(I) provide the applicant with a written notification containing a clearly articulated rationale for the denial that provides, to the maximum extent practicable, guidance to the applicant as to how such rationale for denial could be addressed in a subsequent application; and

“(II) notify the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology of the House of Representatives of such rationale.

“(3) AUTOMATIC APPROVAL.—If the Secretary has not approved or denied the application before the deadline under paragraph (2), the certification shall be approved without condition. The Secretary may not allow tolling of the 90-day period under such paragraph.

“(4) IMPROPER BASIS FOR DENIAL.—The Secretary may not deny an application for a certification under this section in order to protect an existing certification holder from competition.

“(5) SUBSEQUENT REVIEW.—The Secretary may not prejudice a new application for the proposed operations denied pursuant to paragraph (2)(B) if such new application contains remedies addressing the rationale for such denial.

“(c) COMPLIANCE WITH THE OUTER SPACE TREATY.—

“(1) IN GENERAL.—If the Secretary determines, with clear and convincing evidence, that the proposed operation of a space object under an application for a certification under this chapter is a violation of an international obligation of the United States pertaining to a nongovernmental entity of the United States under the Outer Space Treaty—

“(A) the Secretary may condition the proposed operation covered by the certification only to the extent necessary to prevent a violation of such international obligation; or

“(B) if the Secretary determines that there is no practicable way to condition such certification to prevent such a violation, the Secretary may deny the application.

“(2) LIMITATION FOR DETERMINATIONS.—A determination under paragraph (1) shall be limited as follows:

“(A) The Federal Government shall interpret and fulfill its international obligations under the Outer Space Treaty in a manner that minimizes regulations and limitations on the freedom of United States nongovernmental entities to explore and use space.

“(B) The Federal Government shall interpret and fulfill its international obligations under the Outer Space Treaty in a manner that promotes free enterprise in outer space.

“(C) The Federal Government shall not presume all obligations of the United States under the Outer Space Treaty are obligations to be imputed upon United States nongovernmental entities.

“(D) Guidelines promulgated by the Committee on Space Research may not be considered international obligations of the United States.

“(3) PRESUMPTIONS.—In making a determination under paragraph (1), the Secretary shall presume, absent clear and convincing evidence to the contrary, that—

“(A) any attestation made by an applicant pursuant to subsection (a)(3) is sufficient to meet the international obligations of the United States pertaining to nongovernmental entities of the United States under the Outer Space Treaty addressed by such attestation; and

“(B) reasonably commercially available efforts are sufficient to be in conformity with the international obligations of the United States pertaining to nongovernmental entities of the United States under the Outer Space Treaty.

“(4) PROHIBITION ON RETROACTIVE CONDITIONS.—No other modifications may be made, or additional conditions placed, on a certification after the date on which the certification is issued (except to account for a material change as provided in section 80105(c) or the removal of a condition pursuant to subsection (d)).

“(5) NONDELEGABLE.—The responsibilities of the Secretary under this subsection may not be delegated, including to the Office of Space Commerce.

“(d) AUTHORITY TO REMOVE CONDITIONS.—The Secretary, as determined appropriate, may remove a condition placed on a certification pursuant to subsection (c).

**“§ 80104. Mitigation of space debris**

“(a) PLAN SUBMISSION.—To be eligible for a certification under this chapter, each application shall include a space debris mitigation plan for the space object. Such plan—

“(1) shall take into account best practice guidelines promulgated by the United States and the Interagency Debris Coordinating Committee; and

“(2) may take into account that a space object may end certified operations and be stored in a safe manner until such time as the space object is permanently disposed of or certified for further operations.

“(b) IMPLEMENTATION.—To the maximum extent practicable, a holder of a certification under this chapter shall notify the Secretary not later than 30 days before beginning to implement the disposal phase of a space debris mitigation plan described in subsection (a). Such certification holder shall, not later than 30 days after completing implementation of such phase, update the Secretary of the results of any space debris mitigation efforts.

**“§ 80105. Continuing certification requirements**

“(a) NOTIFICATION REQUIREMENT.—A certification holder shall, in a timely manner, notify the Secretary if—

“(1) a certified space object has terminated operations; or

“(2) a catastrophic event has occurred to a certified space object, such as the unplanned destruction of a space object.

“(b) MATERIAL CHANGE.—The Secretary shall require certification holders to inform the Secretary of—

“(1) any material changes to the space object or the planned operations of the space object prior to launch; and

“(2) any material anomalies or departures from the planned operations during the course of operations.

“(c) UPDATE TO CERTIFICATION.—Not later than 14 days after the date of receipt of information regarding a material change pursuant to subsection (b), the Secretary shall make a determination of whether such material change is substantial enough to warrant additional review under section 80103(b). Not later than 90 days after a determination that such review is warranted, the Secretary shall complete a similar such review process for such material change as is required for a certification applicant under such section.

**“§ 80106. Certification transfer**

“(a) IN GENERAL.—Subject to subsections (b) and (c), the Secretary shall provide for the transfer of a certification under this chapter from the certification holder to another United States entity to continue the operations allowed under such certification.

“(b) TRANSFER REQUEST REQUIREMENTS.—To be eligible for a transfer under subsection (a), the certification holder shall submit to the Secretary a request that includes—

“(1) any identifying information regarding the proposed transferee, including accompanying supporting documents, that would be required under an initial application under section 80103; and

“(2) each attestation required under section 80103(a)(3), including accompanying supporting documents, completed by the proposed transferee.

“(c) DETERMINATION.—Not later than 90 days after a certification holder submits a request under subsection (b), the Secretary shall complete a similar review process for the request for transfer as required for a certification applicant under section 80103(b).

**“§ 80107. Certification expiration and termination**

“(a) CERTIFICATION EXPIRATION.—A certification issued under this chapter shall expire on the earlier of—

“(1) the date on which all operations approved under such certification cease, including carrying out a space debris mitigation plan of any space object approved under such certification;

“(2) the date on which all space objects approved under the certification no longer exist; or

“(3) the date that is 5 years after the date on which the certification was approved, if no operations approved under the certification have commenced by such date.

“(b) CERTIFICATION TERMINATION.—

“(1) IN GENERAL.—The Secretary shall terminate a certification under this chapter if an applicant or certification holder is convicted of a violation of section 1001 of title 18 related to the certification process under this chapter.

“(2) ELIGIBILITY.—A certification holder whose certification is terminated under this subsection shall be ineligible to apply for or receive a certification under this chapter.

“(3) SPACE DEBRIS MITIGATION PLAN.—Upon termination of a certification under paragraph (1), the Secretary may require the certification holder to carry out the space debris mitigation plan submitted by the certification holder under section 80104.

**“§ 80108. Existing license or pending application for launch or reentry**

“(a) CONTINUATION OF EXISTING LICENSE.—Any United States entity for whom a payload has been approved (and not subject to an exemption under section 80110) on or before the effective date of this section for launch or reentry under section 50904 as part of a license issued under chapter 509 may—

“(1) elect to be immediately considered certified for operation under this chapter on such effective date, in which case all terms and conditions applicable to the payload as approved for launch or reentry as part of a license issued under chapter 509 shall apply for the duration of the operation of the payload; or

“(2) apply for a certification under this chapter for the operation of the licensed activities and may continue to operate pursuant to such license until such time as such certification is issued.

“(b) RESCINDING OR TRANSFER OF PENDING LICENSE.—A payload of a United States entity that, on the effective date of this section, is pending approval under section 50904 as part of a launch or reentry license issued under chapter 509 may be, at the election of the applicant for payload approval—

“(1) rescinded without prejudice; or

“(2) transferred to the Office of Space Commerce and deemed to be a pending application for certification under this chapter.

“(c) EFFECTIVE DATE.—This section shall take effect on the date that is 1 year after the date of enactment of the American Space Commerce Free Enterprise Act of 2017.

**“§ 80109. Private Space Activity Advisory Committee**

“(a) ESTABLISHMENT.—The Secretary shall establish a Private Space Activity Advisory Committee (in this section referred to as the ‘Committee’) consisting of 15 members who shall be appointed by the Secretary.

“(b) CHAIR.—The Committee shall designate one member as the chair of the Committee.

“(c) MEMBERSHIP.—

“(1) LIMITATION.—Members of the Committee may not be Federal Government employees or officials.

“(2) TRAVEL EXPENSES.—Members of the Committee shall receive travel expenses, including per diem in lieu of subsistence, in accordance with the applicable provisions under subchapter I of chapter 57 of title 5.

“(3) QUALIFICATIONS.—Members of the Committee shall include a variety of space policy, engineering, technical, science, legal, and finance professionals. Not less than 3 members shall have significant experience working in the commercial space industry.

“(d) TERMS.—Each member of the Committee shall serve for a term of 4 years and may not serve as a member for the 2-year period following the date of completion of each such term.

“(e) DUTIES.—The duties of the Committee shall be to—

“(1) analyze the status and recent developments of nongovernmental space activities;

“(2) analyze the effectiveness and efficiency of the implementation of the certification process under this chapter;

“(3) provide recommendations to the Secretary and Congress on how the United States can facilitate and promote a robust and innovative private sector that is investing in, developing, and operating space objects;

“(4) identify any challenges the United States private sector is experiencing—

“(A) with the authorization and supervision of the operation of space objects under this chapter;

“(B) more generally, with international obligations of the United States relevant to private sector activities in outer space;

“(C) with harmful interference to private sector activities in outer space; and

“(D) with access to adequate, predictable, and reliable radio frequency spectrum;

“(5) review existing best practices for United States entities to avoid the harmful contamination of the Moon and other celestial bodies;

“(6) review existing best practices for United States entities to avoid adverse changes in the environment of the Earth resulting from the introduction of extraterrestrial matter;

“(7) provide information, advice, and recommendations on matters relating to United States private sector activities in outer space; and

“(8) provide information, advice, and recommendations on matters related to the authority of the Secretary under this chapter or to private sector space activities authorized pursuant to this chapter that the Committee determines necessary.

“(f) ANNUAL REPORT.—The Committee shall submit to Congress, the President, and the Secretary an annual report that includes the information, analysis, findings, and recommendations described in subsection (e).

“(g) SUNSET.—The Committee shall terminate on the date that is 10 years after the date on which the Committee is established.

**“§ 80110. Exemptions**

“(a) IN GENERAL.—A certification is not required under this chapter for any of the following operations:

“(1) Space object activities authorized by another country that is a party to the Outer Space Treaty.

“(2) Launch or reentry vehicle operations licensed by the Department of Transportation under chapter 509.

“(3) Space stations licensed by the Federal Communications Commission under the Communications Act of 1934 (47 U.S.C. 151 et seq.).

“(b) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to exempt any entity from the requirement to obtain a permit to operate a space-based remote sensing system under chapter 802.

**“§ 80111. Protecting the interests of United States entity space objects**

“The President shall—

“(1) protect the interests of United States entity exploration and use of outer space, including commercial activity and the exploitation of space resources, from acts of foreign aggression and foreign harmful interference;

“(2) protect ownership rights of United States entity space objects and obtained space resources; and

“(3) ensure that United States entities operating in outer space are given due regard.”.

**SEC. 4. PERMITTING OF SPACE-BASED REMOTE SENSING SYSTEMS.**

(a) FINDINGS.—Congress finds the following:

(1) The commercial market for space-based remote sensing technologies and information has experienced significant growth since the passage of the Land Remote Sensing Policy Act of 1992.

(2) It is in the interest of the United States to foster new and novel space-based remote sensing applications and services and to help facilitate their continued domestic growth.

(3) Since the passage of the Land Remote Sensing Policy Act of 1992, the National Oceanic and Atmospheric Administration’s Office of Commercial Remote Sensing has experienced a significant increase in applications for private remote sensing space system licenses as authorized under section 60121 of title 51, United States Code.

(4) Many of the applicants for commercial space-based remote sensing licenses have encountered significant delays and unnecessary obstacles in the application process.

(5) The current licensing paradigm must be updated as to not discourage the continued growth of the United States space-based remote sensing industry. It must be updated in a way that satisfies the needs of commercial remote sensing market as well as the national security of the United States.

(6) In order to protect United States leadership and commercial viability in remote sensing technologies, the Federal Government should not limit commercial entities from providing remote sensing capabilities or data products that are available or reasonably expected to be made available in the next 3 years in the international or domestic marketplace.

(b) POLICY.—It is the policy of the United States that, to the maximum extent practicable, the Federal Government shall take steps to protect the national security interests of the United States that do not involve regulating or limiting the freedoms of United States nongovernmental entities to explore and use space. Federal Government agencies shall mitigate any threat to national security posed by the exploration and use of outer space by United States citizens and entities, to the maximum extent practicable, changing Federal Government activities and operations.

(c) AMENDMENT.—Title 51, United States Code, is further amended by adding at the end the following:

**“CHAPTER 802—PERMITTING OF SPACE-BASED REMOTE SENSING SYSTEMS**

“Sec.  
 “80201. Permitting authority.  
 “80202. Application for permit.  
 “80203. Continuing permitting requirements.  
 “80204. Permit transfer.  
 “80205. Agency activities.  
 “80206. Annual reports.  
 “80207. Advisory Committee on Commercial Remote Sensing.  
 “80208. Continuation of existing license or pending application.  
 “80209. Commercial Remote Sensing Regulatory Affairs Office.

**“§ 80201. Permitting authority**

“(a) IN GENERAL.—Not later than 1 year after the date of enactment of the American Space Commerce Free Enterprise Act of 2017, the Secretary is authorized to permit persons to operate space-based remote sensing systems.

“(b) CONSULTATION.—The Secretary shall, as the Secretary considers necessary, consult with the heads of other relevant agencies in carrying out the requirements of this chapter, pursuant to section 80311.

“(c) LIMITATION WITH RESPECT TO SYSTEM USED FOR OTHER PURPOSES.—In the case of a space object that is used for remote sensing and other purposes, the authority of the Secretary under this chapter shall be limited to the remote sensing operations of such space object.

“(d) DE MINIMIS EXCEPTION.—

“(1) WAIVER.—The Secretary may waive the requirement for a permit for a space-based remote sensing system that the Secretary determines is—

“(A) ancillary to the primary design purpose of the space object; or

“(B) too trivial to require a determination under section 80202(c) relating to national security.

“(2) GUIDANCE.—Not later than 1 year after the date of enactment of this subsection, the Secretary shall issue guidance providing a clear explanation of the criteria used by the Secretary to grant a de minimis waiver under paragraph (1)(B) for a space-based remote sensing system that is too trivial to require a determination under section 80202(c).

“(e) COVERAGE OF PERMIT.—The Secretary shall, to the maximum extent practicable, ensure that only one permit is required under this chapter to—

“(1) conduct multiple operations carried out using a space-based remote sensing system;

“(2) operate multiple space-based remote sensing systems that carry out substantially similar operations; or

“(3) use multiple space-based remote sensing systems to carry out a single remote sensing operation.

“(f) PROHIBITION ON OPERATION.—Not later than 1 year after the date of enactment of the American Space Commerce Free Enterprise Act of 2017, no person may, directly or through any subsidiary or affiliate, operate any space-based remote sensing system without a permit issued under this chapter.

“(g) RESPONSIBLE PARTY.—In any case in which the applicant for a permit under this chapter is not a United States entity, the applicant shall identify a United States entity that consents to be responsible for the permitted operation of the space-based remote sensing system.

“(h) OPERATION OF SPACE-BASED REMOTE SENSING SYSTEM.—For purposes of this chapter, the operation of a space-based remote sensing system—

“(1) begins when the system—

“(A) is located in outer space; and

“(B) can meet the minimum threshold and objective capabilities for the system’s stated need; and

“(2) shall not cover the acts of distribution, sale, or transfer of data, information, or services to persons, foreign or domestic, including any such acts taken pursuant to an agreement with such persons.

**“§ 80202. Application for permit**

“(a) APPLICATION PROCESS.—

“(1) IN GENERAL.—To receive a permit to operate a space-based remote sensing system under this chapter, a person shall submit an application to the Secretary as provided in paragraph (2). Such application shall include, for each required item, sufficient evidence to demonstrate each fact or assertion.

“(2) CONTENTS.—An application described in paragraph (1) shall include only the following information, with respect to each space-based remote sensing system and the operations proposed to be permitted:

“(A) The name, address, and contact information of one or more United States entity identified by the applicant, pursuant to section 80201(g), as responsible for the operation of the space-based remote sensing system.

“(B) If available at the time of submission of the application, the planned date and location of the launch of the applicable space object, including the identity of the launch provider.

“(C) The general physical form and composition of the space-based remote sensing system.

“(D) A description of the proposed operations of the space-based remote sensing system that includes—

“(i) when and where the space-based remote sensing system will operate;

“(ii) when and where the operation of the space-based remote sensing system will terminate; and

“(iii) any additional information necessary to make a determination under subsection (c) regarding a significant threat to national security, as prescribed in advance in regulation by the Secretary.

“(E) A description of how the space-based remote sensing system will be operated and disposed of in a manner to mitigate the generation of space debris.

“(F) Information about third-party liability insurance obtained, if any, by the applicant for operations of the space-based remote sensing system, including the amount and coverage of such liability insurance.

“(b) REVIEW OF APPLICATION.—

“(1) VERIFICATIONS.—Not later than 90 days after receipt of an application under this section, the Secretary shall verify that—

“(A) the application is complete pursuant to subsection (a); and

“(B) the application does not contain any clear indication of fraud or falsification.

“(2) DETERMINATION.—Not later than 90 days after receipt of an application under this section—

“(A) if the Secretary verifies that the applicant has met the application requirements described in paragraph (1), the Secretary shall approve the application and issue a permit to the applicant with or without conditions on the proposed operation of the space-based remote sensing system pursuant to subsection (c)(1)(A); or

“(B) if the Secretary cannot verify that the applicant has met the application requirements described in paragraph (1) or if the Secretary makes a determination to deny the application under subsection (c)(1)(B), the Secretary—

“(i) shall issue a denial of the application signed by the Secretary (a duty that may not be delegated, including to the Office of Space Commerce); and

“(ii) shall, not later than 10 days after the decision to deny the application—

“(I) provide the applicant with a written notification containing a clearly articulated rationale for the denial that, to the maximum extent practicable—

“(aa) provides guidance to the applicant as to how the articulated rationale for denial could be addressed in a subsequent application; and

“(bb) includes all classified information included in such rationale for which the applicant has the required security clearance; and

“(II) submit a notification of the denial to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology of the House of Representatives that—

“(aa) contains the clearly articulated rationale for the denial; and

“(bb) in the case of a denial pursuant to a national security determination under subsection (c)—

“(AA) includes an explanation of how, and clear and convincing evidence that, to the maximum extent practicable, the Federal Government took steps to mitigate a significant threat to the national security of the United States

posed by the operation of the applicant's space-based remote sensing system by changing Federal Government activities and operations; and

“(BB) may contain classified information.

“(3) AUTOMATIC APPROVAL.—If the Secretary has not approved or denied the application before the deadline under paragraph (2), the application shall be approved without condition. The Secretary may not allow tolling of the 90-day period under such paragraph.

“(4) IMPROPER BASIS FOR DENIAL.—The Secretary may not deny an application for a permit under this section in order to protect an existing permit holder from competition.

“(5) SUBSEQUENT REVIEW.—The Secretary may not prejudice a new application for the proposed operations denied pursuant to paragraph (2)(B) if such new application contains remedies addressing the rationale for such denial.

“(c) ADDRESSING NATIONAL SECURITY THREAT.—

“(1) IN GENERAL.—If the Secretary determines, with clear and convincing evidence, that the proposed operation of a space-based remote sensing system under an application for a permit under this chapter poses a significant threat to the national security of the United States as provided in paragraph (2)—

“(A) the Secretary may condition the proposed operation covered by the permit only to the extent necessary to address such threat; or

“(B) if the Secretary determines that there is no practicable way to condition such permit to address such threat, the Secretary may deny the application.

“(2) SIGNIFICANT THREAT TO NATIONAL SECURITY.—For purposes of a determination under paragraph (1), a significant threat to the national security of the United States is a threat—

“(A) that is imminent; and

“(B) that cannot practicably be mitigated through changes to Federal Government activities or operations.

“(3) REASONABLY COMMERCIALY AVAILABLE EFFORTS.—To the maximum extent practicable, the Secretary shall only place a condition on a permit that is achievable using reasonably commercially available efforts.

“(4) NOTIFICATION.—Not later than 10 days after the decision to condition the proposed operation covered by a permit pursuant to this subsection, the Secretary shall—

“(A) provide the applicant with a written notification containing a clearly articulated rationale for the condition that, to the maximum extent practicable—

“(i) provides guidance to the applicant as to how the articulated rationale for condition could be addressed in a subsequent application; and

“(ii) includes all classified information included in such rationale for which the applicant has the required security clearance; and

“(B) submit a notification of the condition to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology of the House of Representatives that—

“(i) contains the clearly articulated rationale for the condition;

“(ii) includes an explanation of how, and clear and convincing evidence that, to the maximum extent practicable, the Federal Government took steps to mitigate a significant threat to the national security of the United States posed by the operation of the applicant's space-based remote sensing system by changing Federal Government activities and operations; and

“(iii) may contain classified information.

“(5) PROHIBITION ON RETROACTIVE CONDITIONS.—No other modifications may be made, or additional conditions placed, on a permit after the date on which the permit is issued except to account for a material change as provided in section 80203(c).

“(6) NONDELEGABLE.—The responsibilities of the Secretary under this subsection may not be delegated, including to the Office of Space Commerce.

“(d) LIMITATIONS ON CONDITIONS.—

“(1) SAME OR SIMILAR CAPABILITY.—No operational condition under subsection (c) may be placed on a space-based remote sensing system that has the same or substantially similar space-based remote sensing capabilities as another system permitted under this chapter with no such condition.

“(2) CONDITIONS THAT EXCEED PERMITTED CONDITIONS.—The Secretary may not place a condition on a permit for a space-based remote sensing system that

exceeds a condition placed on an existing permitted system that has the same or substantially similar capabilities.

“(e) **COMMERCIALLY AVAILABLE CAPABILITY.**—

“(1) **EXCEPTION.**—The Secretary may not deny an application for, or place a condition on, a permit for the operation of a space-based remote sensing system for which the same or substantially similar capabilities, derived data, products, or services are already commercially available or reasonably expected to be made available in the next 3 years in the international or domestic marketplace. The exception in the previous sentence applies regardless of whether the marketplace products and services originate from the operation of aircraft, unmanned aircraft, or other platforms or technical means or are assimilated from a variety of data sources.

“(2) **CLEAR AND CONVINCING EVIDENCE.**—Each denial of an application for, and each condition placed on, a permit for the operation of a space-based remote sensing system, shall include an explanation of, and clear and convincing evidence that, the exception under paragraph (1) does not apply with respect to the proposed permitted operations of such system.

“(3) **DATABASE.**—The President shall—

“(A) maintain a database of commercially available capabilities described in paragraph (1);

“(B) update such database not less than once every 3 months; and

“(C) submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology of the House of Representatives a report containing the contents of the database upon each update required under subparagraph (B).

“(4) **APPLICANT SUBMISSIONS.**—An applicant for, or holder of, a permit for the operation of a space-based remote sensing system may submit to the Secretary evidence of, or information regarding, a commercially available capability described in paragraph (1) for consideration for inclusion in the database.

“(5) **NONAPPLICATION OF CONDITION.**—In any case in which the Secretary determines that the exception under paragraph (1) applies with respect to a permit for the operation of a space-based remote sensing system for which the Secretary has placed a condition under subsection (c), such condition shall not longer apply with respect to such permitted operations.

“(f) **AUTHORITY TO REMOVE CONDITIONS.**—Nothing in this section shall be construed to prohibit the Secretary from removing a condition placed on a permit pursuant to subsection (c).

“§ 80203. **Continuing permitting requirements**

“(a) **NOTIFICATION REQUIREMENT.**—A permit holder shall, in a timely manner, notify the Secretary if—

“(1) a permitted space-based remote sensing system has terminated operations; or

“(2) a catastrophic event has occurred to a space-based remote sensing system, such as the unplanned destruction of such system.

“(b) **MATERIAL CHANGE.**—The Secretary shall require permit holders to inform the Secretary of—

“(1) any material changes to the space-based remote sensing system or the planned operations of such system prior to launch; and

“(2) any material anomalies or departures from the planned operations during the course of operations.

“(c) **UPDATE TO PERMIT.**—Not later than 14 days after the date of receipt of information regarding a material change pursuant to subsection (b), the Secretary shall make a determination of whether such material change is substantial enough to warrant additional review under section 80202(b). Not later than 90 days after a determination that such review is warranted, the Secretary shall complete a similar such review process for such material change as is required for a permit applicant under such section.

“§ 80204. **Permit transfer**

“(a) **IN GENERAL.**—Subject to subsections (b) and (c), the Secretary shall provide for the transfer of a permit under this chapter from the permit holder to another person to continue the operations allowed under such permit.

“(b) **TRANSFER REQUEST REQUIREMENTS.**—To be eligible for a transfer under subsection (a), the permit holder shall submit to the Secretary a request that includes any identifying information regarding the transferee that would be required under an initial application under section 80202.

“(c) **DETERMINATION.**—Not later than 14 days after the date on which the Secretary receives a transfer request pursuant to subsection (b), the Secretary shall make a determination of whether such material change is substantial enough to

warrant additional review under section 80202(b). Not later than 90 days after a determination that such review is warranted, the Secretary shall complete a similar such review process for such transferee as is required for a permit applicant under such section.

“(d) MATERIAL CHANGE.—Any transfer of a permit under this chapter constitutes a material change under section 80203(b).

**“§ 80205. Agency activities**

“(a) UTILIZATION OF FEDERAL GOVERNMENT VEHICLE.—A person may apply for a permit to operate a space-based remote sensing system that utilizes, on a space-available basis, a civilian Federal Government satellite or vehicle as a platform for such system. The Secretary, pursuant to this chapter, may permit such system if it meets all conditions of this chapter.

“(b) ASSISTANCE.—The Secretary may offer assistance to persons in finding appropriate opportunities for the utilization described in subsection (a).

“(c) AGREEMENTS.—To the extent provided in advance by appropriation Acts, an agency may enter into an agreement for the utilization described in subsection (a) if such agreement is consistent with the agency’s mission and statutory authority, and if the space-based remote sensing system is issued a permit by the Secretary under this chapter before commencing operation.

**“§ 80206. Annual reports**

“(a) IN GENERAL.—The Secretary shall submit a report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology of the House of Representatives not later than 180 days after the date of enactment of the American Space Commerce Free Enterprise Act of 2017, and annually thereafter, on—

“(1) the Secretary’s implementation of this chapter, including—

“(A) a list of all applications received in the previous calendar year;

“(B) a list of all applications that resulted in a permit;

“(C) a list of all applications denied and an explanation of why each application was denied, including any information relevant to the adjudication process of a request for a permit;

“(D) a list of all applications that required additional information; and

“(E) a list of all applications whose disposition exceeded the 90-day deadline, the total days overdue for each application that exceeded such deadline, and an explanation for the delay; and

“(2) a description of all actions taken by the Secretary under the administrative authority granted by section 80301.

“(b) CLASSIFIED ANNEXES.—Each report under subsection (a) may include classified annexes as necessary to protect the disclosure of sensitive or classified information.

**“§ 80207. Advisory Committee on Commercial Remote Sensing**

“(a) ESTABLISHMENT.—The Secretary shall establish an Advisory Committee on Commercial Remote Sensing (in this section referred to as the ‘Committee’) consisting of 15 members who shall be appointed by the Secretary.

“(b) CHAIR.—The Committee shall designate one member as the chair of the Committee.

“(c) MEMBERSHIP.—

“(1) LIMITATION.—Members of the Committee may not be Federal Government employees or officials.

“(2) TRAVEL EXPENSES.—Members of the Committee shall receive travel expenses, including per diem in lieu of subsistence, in accordance with the applicable provisions under subchapter I of chapter 57 of title 5.

“(d) TERMS.—Each member of the Committee shall serve for a term of 4 years and may not serve as a member for the 2-year period following the date of completion of each such term.

“(e) DUTIES.—The duties of the Committee shall be to—

“(1) provide information, advice, and recommendations on matters relating to the United States commercial space-based remote sensing industry;

“(2) analyze the effectiveness and efficiency of the implementation of the space-based remote sensing system permitting process under this chapter;

“(3) provide recommendations to the Secretary and Congress on how the United States can facilitate and promote a robust and innovate private sector that is investing in, developing, and operating space-based remote sensing systems;

“(4) identify any challenges the United States private sector is experiencing with the authorization and supervision of the operation of space-based remote sensing systems under this chapter; and

“(5) provide information, advice, and recommendations on matters related to the authority of the Secretary under this chapter or to private sector space activities authorized pursuant to this chapter that the Committee determines necessary.

“(f) ANNUAL REPORT.—The Committee shall submit to Congress, the President, the Secretary, and the Director of the Office of Space Commerce, an annual report that includes the information, analysis, findings, and recommendations described in subsection (e).

“(g) SUNSET.—The Committee shall terminate on the date that is 10 years after the date on which the Committee is established.

**“§ 80208. Continuation of existing license or pending application**

“(a) CONTINUATION OF EXISTING LICENSE.—Any United States entity for whom a license for the operation of a space-based remote sensing system issued under subchapter III of chapter 601 that is valid on the effective date of this section may—

“(1) elect to be immediately considered permitted for operation under this chapter, in which case all terms and conditions of a license issued under such subchapter with respect to the operation of such system shall apply for the duration of the license; or

“(2) apply for a permit for operation under this chapter and may continue to operate pursuant to such license until such time as such permit is issued.

“(b) RESCIND OR TRANSFER OF PENDING LICENSE.—An applicant with an application for a remote sensing license under subchapter III of chapter 601 that is pending on the effective date of this section may be, at the election of the applicant—

“(1) rescinded without prejudice; or

“(2) transferred to the Office of Space Commerce and deemed to be a pending application for a permit under this chapter.

“(c) EFFECTIVE DATE.—This section shall take effect on the date that is 1 year after the date of enactment of the American Space Commerce Free Enterprise Act of 2017.

**“§ 80209. Commercial Remote Sensing Regulatory Affairs Office**

“On the date that is 1 year after the date of enactment of the American Space Commerce Free Enterprise Act of 2017, the Commercial Remote Sensing Regulatory Affairs Office of the National Oceanic and Atmospheric Administration is abolished.”

**SEC. 5. ADMINISTRATIVE PROVISIONS RELATED TO CERTIFICATION AND PERMITTING.**

Title 51, United States Code, is further amended by adding at the end the following:

**“CHAPTER 803—ADMINISTRATIVE PROVISIONS RELATED TO CERTIFICATION AND PERMITTING**

“Sec.

“80301. Administrative authority.

“80302. Consultation.

“80303. Appeal of denial or condition of certification or permit.

“80304. Exclusive authority for determination of international obligations.

“80305. Limitation on certain agency supervision.

“80306. Commercial exploration and use of outer space.

“80307. Rule of construction on concurrent application submission.

“80308. Federal jurisdiction.

“80309. Global commons.

“80310. Regulatory authority.

“80311. Consultation with relevant agencies.

“80312. Authorization of appropriations.

**“§ 80301. Administrative authority**

“(a) FUNCTIONS.—In order to carry out the responsibilities specified in this subtitle, the Secretary may—

“(1) seek an order of injunction or similar judicial determination from a district court of the United States with personal jurisdiction over the certification or permit holder to terminate certifications or permits under this subtitle and to terminate certified or permitted operations on an immediate basis, if the Secretary determines that the certification or permit holder has substantially failed to comply with any provisions of this subtitle, or with any terms of a certification or permit;

“(2) provide for civil penalties not to exceed \$10,000 (each day of operation constituting a separate violation) and not to exceed \$500,000 in total, for—

“(A) noncompliance with the certification or permitting requirements or regulations issued under this subtitle; or

“(B) the operation of a space object or space-based remote sensing system without the applicable certification or permit issued under this subtitle;

“(3) compromise, modify, or remit any such civil penalty;

“(4) seize any object, record, or report, or copies of materials, documents, or records, pursuant to a warrant from a magistrate based on a showing of probable cause to believe that such object, record, or report was used, is being used, or is likely to be used in violation of this subtitle or the requirements of a certification or permit or regulation issued thereunder; and

“(5) make investigations and inquiries concerning any matter relating to the enforcement of this subtitle.

“(b) REVIEW OF AGENCY ACTION.—Any holder of, or applicant for, a certification or a permit who makes a timely request for review of an adverse action pursuant to paragraph (2) or (4) of subsection (a) shall be entitled to adjudication by the Secretary on the record after an opportunity for any agency hearing with respect to such adverse action. Any final action by the Secretary under this subsection shall be subject to judicial review under chapter 7 of title 5, as provided in section 80303 of this chapter.

“(c) NO COST FOR CERTIFICATION OR PERMIT.—The Secretary may not impose a fee or other cost on a holder of, or applicant for—

“(1) a certification under chapter 801; or

“(2) a permit under chapter 802.

“(d) NO AUTHORITY TO SET CONDITIONS.—The Secretary may not impose a substantive condition on, or any other requirement for, the issuance of a certification or permit except as specifically provided in this subtitle.

“(e) FOIA EXEMPTION.—Paragraph (3) of section 552(b) of title 5 shall apply with respect to any filing relating to a certification or a permit under this subtitle.

“(f) LIMITATION ON EXCEPTIONS TO ADMINISTRATIVE PROCEDURES.—The exceptions under section 553(a)(1), section 553(b)(B), or section 554(a)(4) of title 5 shall not apply with respect to a certification or permit under this subtitle.

#### “§ 80302. Consultation

“(a) SENSE OF CONGRESS.—It is the sense of the Congress that—

“(1) the United States Government has assets in Earth orbit critical to national security, scientific research, economic growth, and exploration;

“(2) such assets represent a considerable investment of United States taxpayers; and

“(3) it is in the national interest of the United States to facilitate opportunities to provide for the protection of such assets.

“(b) REVIEW.—Not later than 30 days after the Secretary issues a certification under chapter 801, the Secretary shall review the operations of any space objects covered by the certification to determine whether the interaction between such operations and the operations of a Federal Government space object present a substantial risk to the physical safety of a space object operated by either party.

“(c) REQUIREMENT TO PARTICIPATE IN CONSULTATION.—If the Secretary makes a determination that a substantial risk identified under subsection (b) exists, the Secretary may require that the certification holder participate in a consultation under this section.

“(d) PARTIES TO A CONSULTATION.—

“(1) IN GENERAL.—A consultation under this section may be held, with respect to a substantial safety risk identified under subsection (b), between—

“(A) a certification holder responsible for the certified space object operations; and

“(B) any entity of the Federal Government operating a potentially affected space object.

“(2) PARTICIPATION.—The Secretary may not impose any requirement on a party pursuant to participation in the consultation.

“(e) MITIGATION OF SAFETY RISK.—In carrying out a consultation, the Secretary shall—

“(1) facilitate a discussion among the parties to the consultation;

“(2) encourage a mutual understanding of the safety risk; and

“(3) encourage, to the maximum extent practicable, voluntary agreements between the parties to the consultation to improve the physical safety of affected space object operations or mitigate the physical safety risk.

“(f) DURATION OF CONSULTATION; NOTICE.—Not later than 90 days after the Secretary requires a consultation under this section, the Secretary shall—

“(1) complete all activities related to the consultation; and

“(2) submit to Congress a written notification with respect to such consultation, that includes—

“(A) the names of each party to the consultation;

“(B) a description of the physical safety risk at issue;

“(C) whether any voluntary agreement was made by the parties; and

“(D) the content of any such agreement.

“(g) **RULE OF CONSTRUCTION.**—Nothing in this section shall be construed to grant any additional authority to the Secretary to regulate, or place conditions on, any activity for which a certification or permit is required under this subtitle.

**“§ 80303. Appeal of denial or condition of certification or permit**

“An applicant who is denied a certification under section 80103(b)(2)(B), an applicant who is denied a permit under section 80202(b)(2)(B), or an applicant whose certification or permit is conditioned pursuant to section 80103(c) or section 80202(c), respectively, may appeal the denial or placement of a condition to the Secretary. The Secretary shall affirm or reverse the denial or placement of a condition after providing the applicant notice and an opportunity to be heard. The Secretary shall dispose of the appeal not later than 60 days after the appeal is submitted. If the Secretary denies the appeal, the applicant may seek review in the United States Court of Appeals for the District of Columbia Circuit or in the court of appeals of the United States for the circuit in which the person resides or has its principal place of business.

**“§ 80304. Exclusive authority for determination of international obligations**

“Except for the Secretary as authorized by this subtitle, no agency may impose a requirement or make a finding with regard to an international obligation of the United States pertaining to a nongovernmental entity of the United States under the Outer Space Treaty relating to—

“(1) the operation of a space object certified under chapter 801; and

“(2) the carrying out of a space debris mitigation plan of a space object for which a certification was issued under chapter 801.

**“§ 80305. Limitation on certain agency supervision**

“(a) **IN GENERAL.**—Not later than 1 year after the date of enactment of the American Space Commerce Free Enterprise Act of 2017, no other agency shall have the authority to authorize, place conditions on, or supervise the operation of space objects required to be certified under chapter 801 or space-based remote sensing systems required to be permitted under chapter 802 except—

“(1) the Department of Transportation with respect to launch or reentry vehicle operations licensed under chapter 509; and

“(2) the Federal Communications Commission with respect to space stations licensed under the Communications Act of 1934 (47 U.S.C. 151 et seq.).

“(b) **AGREEMENT LIMITATIONS.**—Nothing in this section shall be construed to prevent an agency from including additional terms, conditions, limitations, or requirements, consistent with applicable provisions of law, beyond those required in this subtitle in a contract or other agreement with—

“(1) the holder of a certification under chapter 801 for the operation of the applicable space object; or

“(2) the holder of a permit under chapter 802 for the operation of the applicable space-based remote sensing system.

**“§ 80306. Commercial exploration and use of outer space**

“To the maximum extent practicable, the President, acting through appropriate Federal agencies, shall interpret and fulfill international obligations, including under the covered treaties on outer space, to minimize regulations and limitations on the freedom of United States nongovernmental entities to explore and use space.

**“§ 80307. Rule of construction on concurrent application submission**

“Nothing in this subtitle shall be construed to prevent an applicant from submitting to the Secretary concurrent applications for a certification under chapter 801 and a permit under chapter 802. The Secretary shall provide for applications under chapter 801 and chapter 802 to be filed concurrently or at different times, at the discretion of the applicant. To the maximum extent practicable, the Secretary shall avoid duplication of information required in concurrently filed applications.

**“§ 80308. Federal jurisdiction**

“The district courts shall have original jurisdiction, exclusive of the courts of the States, of any civil action resulting from the operation of a space object for which a certification or permit is required under this subtitle.

**“§ 80309. Global commons**

“Notwithstanding any other provision of law, outer space shall not be considered a global commons.

**“§ 80310. Regulatory authority**

“(a) IN GENERAL.—The Secretary shall issue such regulations as are necessary to carry out this subtitle.

“(b) REDUCING REGULATORY BURDEN.—In issuing regulations to carry out this subtitle, the Secretary shall avoid, to the maximum extent practicable, the placement of inconsistent, duplicative, or otherwise burdensome requirements on the operations of United States nongovernmental entities in outer space.

**“§ 80311. Consultation with relevant agencies**

“(a) IN GENERAL.—Subject to subsection (b), the Secretary shall, as the Secretary considers necessary, consult with the heads of other relevant agencies in carrying out this subtitle.

“(b) EXCLUSIVE AUTHORITY OF THE SECRETARY.—The consultation authority provided by subsection (a) shall not be interpreted to alter the exclusive authority of the Secretary to authorize, place conditions on, and supervise the operation of space objects under chapter 801 and space-based remote sensing systems under chapter 802, as provided in and subject to the limitations of section 80305.

**“§ 80312. Authorization of appropriations**

“There are authorized to be appropriated \$5,000,000 to the Office of Space Commerce for fiscal year 2018 to carry out this subtitle.”.

**SEC. 6. TECHNICAL AND CONFORMING AMENDMENTS.**

(a) TABLE OF CHAPTERS.—The table of chapters of title 51, United States Code, is amended by adding at the end the following:

**“Subtitle VIII—Authorization and Supervision of Nongovernmental Space Activities**

<b>“801. Certification to Operate Space Objects .....</b>	<b>80101</b>
<b>“802. Permitting of Space-Based Remote Sensing Systems .....</b>	<b>80201</b>
<b>“803. Administrative Provisions Related to Certification and Permitting .....</b>	<b>80301”.</b>

(b) REPEALS.—

(1) IN GENERAL.—Title 51, United States Code, is amended as follows:

(A) Subchapter III of chapter 601 is repealed.

(B) Section 60147 is repealed.

(C) The table of sections for chapter 601 is amended by striking the item relating to section 60147.

(D) The table of sections for chapter 601 is amended by striking the items relating to subchapter III.

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall take effect on the date that is 1 year after the date of enactment of this Act.

(c) TECHNICAL CORRECTIONS.—

(1) IN GENERAL.—Title 51, United States Code, is amended—

(A) in section 20302(c)(2), by striking “means has the meaning” and inserting “has the meaning”;

(B) in section 50702(c)(5), by striking “Space-Based Position” and inserting “Space-Based Positioning”; and

(C) in section 71102(1), by striking “tracking device” and inserting “tracking device to”.

(2) CHAPTER 513.—The table of chapters of title 51, United States Code, is amended by striking the item related to chapter 513 and inserting the following:

<b>“513. Space Resource Commercial Exploration and Utilization .....</b>	<b>51301”.</b>
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(3) CHAPTER 701.—The table of chapters of title 51, United States Code, is amended by striking the item related to chapter 701 and inserting the following:

<b>“701. Use of Space Launch System or Alternatives .....</b>	<b>70101”.</b>
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**SEC. 7. OFFICE OF SPACE COMMERCE.**

Section 50702 of title 51, United States Code, is amended—

(1) in subsection (a), by adding at the end before the period “, which shall be located in the principal physical location of the Office of the Secretary of Commerce”;

(2) in subsection (b), by striking “a senior executive and shall be compensated at a level in the Senior Executive Service under section 5382 of title 5 as determined by the Secretary of Commerce” and inserting “appointed by the President and confirmed by the Senate. The Director shall be the Assistant Secretary of Commerce for Space Commerce and shall report directly to the Secretary of Commerce”; and

(3) in subsection (c)—

- (A) in paragraph (4), by striking “and” at the end;
- (B) in paragraph (5), by striking the period at the end and inserting a semicolon; and
- (C) by adding at the end the following:
  - “(6) to authorize and supervise the operations of United States nongovernmental entities in outer space, pursuant to chapter 801 of this title;
  - “(7) to authorize and supervise the operations of space-based remote sensing systems pursuant to chapter 802 of this title; and
  - “(8) to facilitate and promote the development of best practices among operators of space objects and space-based remote sensing systems under this subtitle to address substantial risks to the physical safety of Federal Government space objects, including the risk of on-orbit collisions.”.

**SEC. 8. RESTRICTION ON PREVENTING LAUNCHES AND REENTRIES OF CERTIFIED SPACE OBJECTS.**

Section 50904(c) of title 51, United States Code, is amended by adding at the end the following: “No launch or reentry may be prevented under this authority on the basis of national security, foreign policy, or international obligations of the United States, including under the covered treaties on outer space (as defined in section 80101) if the payload has received a certification to operate as a space object under chapter 801.”.

**SEC. 9. REPORT ON REGISTRATION OF SPACE OBJECTS.**

(a) **IN GENERAL.**—Not later than 1 year after the date of enactment of this Act, the Secretary of Commerce, acting through the Office of Space Commerce and in consultation with the Private Space Activity Advisory Committee established under section 80109 of title 51, United States Code, shall submit to the Committee on Science, Space, and Technology of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report on the implementation of the space object registration obligations of the United States and other countries under Article VIII of the Outer Space Treaty and the Convention on Registration of Space Objects.

(b) **CONTENTS OF REPORT.**—The report required under subsection (a) shall include—

- (1) an identification of the practices and procedures among countries that are members of the Outer Space Treaty and the Convention on Registration of Space Objects in implementing and complying with the registration obligations contained in the treaties;
- (2) a description of any existing practices and procedures of the Federal Government for the registration of nongovernmental space objects; and
- (3) recommendations on how the registration of space objects in the United States could be improved to benefit the United States, including enabling United States leadership in commercial space activities.

**SEC. 10. COMPTROLLER GENERAL REPORT.**

Not later than 180 days after the date of enactment of this Act, the Comptroller General of the United States shall submit to Congress a report on removing the Office of Commercial Space Transportation from under the jurisdiction of the Federal Aviation Administration and reestablishing the Office under the jurisdiction of the Secretary of Transportation. Such report shall include—

- (1) the identification of key practices for successful organizational transitions;
- (2) the advantages and disadvantages of the removal and reestablishment with respect to the ability of the Office to continue to coordinate and communicate with Federal Aviation Administration on airspace issues; and
- (3) the identification of any issues that are preventing the Office from fully carrying out its statutory mandate, and if such issues would persist regardless of organizational location of the Office within the Department of Transportation.

## COMMITTEE STATEMENT AND VIEWS

### PURPOSE AND SUMMARY

The purpose of H.R. 2809, the “American Space Commerce Free Enterprise Act,” is to assure conformity with Outer Space Treaty obligations in the least burdensome manner possible. An additional purpose is to improve the international competitiveness of the U.S. by reforming the burdensome and inefficient space-based remote sensing regulatory system.

## BACKGROUND AND NEED FOR LEGISLATION

The U.S. is a Party to the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (“Outer Space Treaty”). Article VI of the Outer Space Treaty explicitly recognizes that non-governmental entities, such as private corporations, may explore and use outer space. Article I states, *inter alia*:

“Outer space, including the Moon and other celestial bodies, shall be free for exploration and use by all States without discrimination of any kind, on a basis of equality and in accordance with international law, and there shall be free access to all areas of celestial bodies”

Article IV then states, *inter alia*:

“States Parties to the Treaty shall bear international responsibility for national activities in outer space, including the Moon and other celestial bodies, whether such activities are carried on by governmental agencies or by non-governmental entities, and for assuring that national activities are carried out in conformity with the provisions set forth in the present Treaty. The activities of non-governmental entities in outer space, including the Moon and other celestial bodies, shall require authorization and continuing supervision by the appropriate State Party to the Treaty.”

In the U.S., a number of non-governmental entities are investing in and developing the capabilities to explore and use outer space in unique, novel, and unprecedented ways. This includes proposals by U.S. non-governmental entities to send robotic rovers to the surface of the Moon, to operate private space stations, to conduct on-orbit servicing and repairs, to prospect, extract, and utilize in-situ space resources, and to send private manned missions to the Moon, Mars, and beyond.

This bill also advances the national interests of the U.S. by updating and reforming the regulatory regime governing space-based remote sensing space systems. The existing regime, established under the 1992 Land Remote Sensing Act, is outdated and broken. American industry is not able to receive authorizations for space-based remote sensing space systems in a timely fashion. While existing law requires license applications to be adjudicated in no more than 120 days, in some instances license applications have languished in interagency review for years. This is significantly damaging the pipeline of space-based remote sensing innovation in the U.S., incentivizing innovative companies to go overseas, and compromising U.S. national security. By addressing remote sensing while also reforming authorization and supervision under the Outer Space Treaty, this bill provides a streamlined and improved process for both general space operators and remote sensing operators.

## LEGISLATIVE HISTORY

During the 113th, 114th and 115th Congresses, the House Committee on Science, Space, and Technology held 14 hearings and seven markups relevant to this bill.

On February 28, 2013, the Space Subcommittee held a hearing titled “A Review of the Space Leadership Preservation Act” to receive testimony on legislation (H.R. 6491) first introduced in the 115th Congress and re-introduced for the 115th Congress. This hearing informed the Committee’s consideration of the policies, organization, programs, and budget in re-authorizing the National Aeronautics and Space Administration (NASA) this Congress. The Subcommittee heard testimony from The Honorable Frank R. Wolf, Chairman of the Commerce-Justice-Science Subcommittee, The Honorable John Culberson, Mr. A. Thomas Young, Chair of the Board for SAIC (testifying on his own behalf), and Mr. Elliot Pulham, Chief Executive Officer of The Space Foundation.

On June 19, 2013, the Space Subcommittee held a hearing titled, “NASA Authorization Act of 2013.” The purpose of the hearing was to review a discussion draft of the NASA Authorization Act of 2013. The most recent NASA Authorization Act passed in 2010, authorized NASA for three years.

On July 10, 2013, the Space Subcommittee met to consider H.R. 2687, the NASA Authorization Act of 2013. This measure contained many provisions that affect commercial space.

On July 18, 2013, the Committee on Science, Space, and Technology met to consider H.R. 2687, the NASA Authorization Act of 2013. This measure contained many provisions that affect commercial space.

On November 20, 2013, the Space Subcommittee held a hearing titled “Commercial Space.” The hearing examined ways that companies are utilizing federal support and government policies to grow their commercial businesses in space launch, communications, GPS, remote sensing, weather monitoring, suborbital tourism and science experimentation, and human spaceflight. The witnesses addressed what government policies would be helpful to the U.S. commercial space industry. Witnesses also addressed the policies contained in H.R. 3038, the Suborbital and Orbital Advancement and Regulatory Streamlining (SOARS) Act. The first witness panel consisted of the Honorable Kevin McCarthy, Majority Whip of the U.S. House of Representatives. The second panel consisted of: Ms. Patricia Cooper, President of the Satellite Industry Association; Mr. Stuart Witt, CEO and General Manager of the Mojave Air and Space Port; and Mr. Dennis Tito, Chairman of the Inspiration Mars Foundation.

On February 4, 2014, the Space Subcommittee held a hearing titled “Necessary Updates to the Commercial Space Launch Act.” The industry has grown since the passage of the Commercial Space Launch Act of 1984 (P.L. 98–575) thirty years ago, and this law has been amended several times since then. The Commercial Space Launch Act (CSLA) provides authority to the FAA to license launches and indemnify launch providers from third-party claims should an accident occur. The law also provides a framework for the FAA’s authority. This hearing examined the various changes in the industry and what, if any, accompanying changes to the CSLA may be needed going forward. The Committee heard from three witnesses: Dr. George Nield, Associate Administrator for Commercial Space Transportation at the Federal Aviation Administration; Dr. Alicia Cackley, Director of Financial Markets and Community Investment Team at the Government Accountability Office; and Dr.

Henry Hertzfeld, Research Professor of Space Policy and International Affairs at the Elliot School of International Affairs at George Washington University.

On March 27, 2014, the Space Subcommittee of the House Committee on Science, Space, and Technology held a hearing titled “A Review of the National Aeronautics and Space Administration Budget for Fiscal Year 2015” to review the Administration’s fiscal year 2015 (FY15) budget request for NASA and examine its priorities and challenges. The hearing had one witness, the Honorable Charles F. Bolden, Jr., Administrator of NASA.

On April 9, 2014, the Space Subcommittee met to consider H.R. 4412, the NASA Authorization Act of 2014. The Act contained several provisions regarding barriers to commercial use of space.

On April 24, 2014, the Space Subcommittee held a hearing titled “An Overview of the National Aeronautics and Space Administration Budget for Fiscal Year 2014” with NASA Administrator Charles Bolden to review the Administration’s FY 2014 budget request for NASA and examine its priorities and challenges.

On April 29, 2014, the Committee on Science, Space, and Technology met to consider H.R. 4412, the NASA Authorization Act of 2014. The Act contained several provisions regarding barriers to commercial use of space.

On May 9, 2014, the Space Subcommittee held a hearing titled “Space Traffic Management: How to Prevent a Real Life ‘Gravity’.” There are currently three agencies that play a primary role in tracking and mitigation of orbital debris that may be hazardous to operational satellites, or life and property on Earth if the debris reentered the Earth’s atmosphere. The Joint Functional Component Command for Space (JFCC SPACE), part of the Department of Defense (DoD), is responsible for tracking orbital debris, the Federal Communications Commission (FCC) asserts jurisdiction for mitigating orbital debris from communications satellites, and the Federal Aviation Administration (FAA) regulates orbital debris from launch and reentry activities. This hearing explored the roles and responsibilities of DoD, FAA, and FCC in policing orbital debris, what authorities are currently granted by Congress to federal agencies, and how they coordinate these activities. The Subcommittee heard from five witnesses: Lt. Gen. John “Jay” Raymond, Commander, 14th Air Force, Air Force Space Command, and Commander, Joint Functional Component Command for Space, U.S. Strategic Command; Mr. George Zamka, Deputy Associate Administrator, Office of Commercial Space Transportation, Federal Aviation Administration; Mr. Robert Nelson, Chief Engineer, International Bureau, Federal Communications Commission; Mr. P.J. Blount, Adjunct Professor, Air and Space Law, University of Mississippi School of Law; and Mr. Brian Weeden, Technical Advisor, Secure World Foundation.

On September 10, 2014, the hearing titled “Exploring Our Solar System: The ASTEROIDS Act as a Key Step” gave the Committee an overview of the variety of issues facing the planetary science community, including challenges the community is facing due to the low inventories of Pu-238 for deep space missions, NASA’s proposed budget for planetary science, and potential commercial interests. Witnesses were also asked to comment on H.R. 5063, the American Space Technology for Exploring Resource Opportunities

In Deep Space (ASTEROIDS) Act. The Space Subcommittee heard from five witnesses: Dr. Jim Green, NASA Planetary Science Division Director; Dr. Jim Bell, Professor of Earth and Space Science Exploration, Arizona State University, and President, Board of Directors, The Planetary Society; Dr. Mark Sykes, CEO and Director, Planetary Science Institute; Professor Joanne Gabrynowicz, Professor Emerita, Director Emerita, Journal of Space Law Editor-in-Chief Emerita, University of Mississippi; Dr. Philip Christensen, Co-Chair, NRC Committee on Astrobiology and Planetary Science (CAPS), Chair, Mars Panel, NRC Planetary Decadal Survey, Regents Professor, Arizona State University.

On April 16, 2015, the Space Subcommittee held a hearing titled “An Overview of the Budget Proposal for the National Aeronautics and Space Administration for Fiscal Year 2016.” The purpose of the hearing was to review the Administration’s fiscal year 2016 (FY16) budget request for NASA and examine the Administration’s priorities and challenges. The sole witness was the Honorable Charles F. Bolden, Jr., Administrator, NASA.

On April 30, 2015, the Committee on Science, Space, and Technology met to consider H.R. 2039, the NASA Authorization Act for 2016 and 2017. This measure contained many provisions that affect commercial space.

On May 13, 2015, the Committee on Science, Space, and Technology met to consider H.R. 2262, the Spurring Private Aerospace Competitiveness and Entrepreneurship Act of 2015; H.R. 1508, the Space Resource Exploration and Utilization Act of 2015; H.R. 2261, the Commercial Remote Sensing Act of 2015; and H.R. 2263, the Office of Space Commerce Act.” H.R. 1508 was amended to change the definition of “asteroid resource” and to further ensure the bill would remain consistent with existing international obligations. All four bills passed in the Committee.

On November 17, 2015, the Space Subcommittee with the Environment Subcommittee held a hearing titled “Exploring Commercial Opportunities to Maximize Earth Science Investments.” The purpose of the hearing was to explore ways NASA can satisfy Earth science data requirements through public-private partnerships, including commercial capabilities. The subcommittees heard from five witnesses: Dr. Scot Pace, Director of the Space Policy Institute, George Washington University; Dr. Walter Scott, Founder and Chief Technical Officer, DigitalGlobe; Mr. Robbie Schingler, Co-Founder and President, PlanetLabs; Dr. Samuel Goward, Emeritus Professor of Geography, University of Maryland at College Park; Dr. Antonio Busalacchi, Professor and Director of the Earth System Science Interdisciplinary Center, University of Maryland.

On March 17, 2016, the Space Subcommittee held a hearing titled “An Overview of the Budget Proposal for the National Aeronautics and Space Administration for Fiscal Year 2017.” The purpose of the hearing was to review the Administration’s fiscal year 2017 (FY17) budget request for NASA. The sole witness was the Honorable Charles F. Bolden, Jr., Administrator, NASA.

On April 19, 2016, the Space Subcommittee held a hearing titled “The Commercial Space Launch Industry: Small Satellite Opportunities and Challenges.” The purpose of the hearing was to examine the current state of the small satellite commercial launch industry. The Subcommittee heard from two witnesses: Mr. Elliot Pulham,

Chief Executive Officer, Space Foundation; and Mr. Eric Stallmer, President, Commercial Spaceflight Federation (CSF).

On September 7, 2016, the Space Subcommittee held a hearing titled “Commercial Remote Sensing: Facilitating Innovation and Leadership.” The purpose of the hearing was to examine the current state of the space-based remote sensing industry, including scientific and technical advances in the fields of space-to-earth and space-to-space remote sensing. Examples of remote sensing applications include mapping technologies, crop monitoring, natural resource exploration, and national security. The hearing also assessed existing U.S. law and regulation governing private remote sensing space systems, including whether there is a need to reform existing law and regulation. The subcommittee heard from five witnesses: Mr. Kevin O’Connell, President and CEO, Innovative Analytics and Training LLC, and Former Chair, Federal Advisory Committee on Commercial Remote Sensing (ACCRES); Mr. Kevin Pomfret, Executive Director, Centre for Spatial Law and Policy; Ms. Michele R. Weslander Quaid, President, Sunesis Nexus LLC; Mr. Michael Dodge, Assistant Professor, Department of Space Studies, University of North Dakota; and Ms. Joanne Gabrynowicz, Professor Emerita, University of Mississippi School of Law.

On March 8, 2017, the Space Subcommittee held a hearing titled “Regulating Space: Innovation, Liberty, and International Obligations.” The purpose of the hearing was to examine U.S. international obligations in light of new and innovative space activities. The Subcommittee heard from five witnesses: Ms. Laura Montgomery, Attorney and Sole Proprietor, Ground Based Space Matters, LLC; Dr. Eli Dourado, Senior Research Fellow and Director, Technology Policy Program, Mercatus Center, George Mason University; Mr. Doug Loverro, Former Deputy Assistant Secretary of Defense for Space Policy; Mr. Dennis J. Burnett, Adjunct Professor of Law, University of Nebraska-Lincoln, College of Law; and Dr. Henry B. Hogue, Specialist in American National Government, Congressional Research Service.

On June 8, 2017, the Space Subcommittee held a hearing titled “An Overview of the National Aeronautics and Space Administration Budget for Fiscal Year 2018.” The purpose of the hearing was to review the Administration’s fiscal year 2018 (FY18) budget request for NASA. The sole witness was Mr. Robert M. Lightfoot, Jr., Acting Administrator, NASA.

On June 8, 2017, the Committee on Science, Space, and Technology met to consider H.R. 2809, the American Space Commerce Free Enterprise Act of 2017. This measure provides a transparent U.S. authorization and supervision certification process for non-governmental space activities that generates certainty for stakeholders and complies with Outer Space Treaty obligations and national security concerns in the least burdensome manner possible.

#### COMMITTEE VIEWS

##### *Authorization and supervision of U.S. non-governmental entities in space*

H.R. 2809 addresses authorization and supervision of non-governmental U.S. entities (“U.S. entities”). It is not intended to apply to government operation of space objects. The U.S. government and

the Executive Branch need not be subjected to the authorization and supervision authority, as established in H.R. 2809, to assure U.S. conformity with obligations under the Outer Space Treaty. The U.S. government assures conformity of its operations in the normal course of duties as provided by the Constitution and Federal law.

*Freedom of U.S. entities to explore and use outer space is in the national interest*

The freedom of U.S. entities to explore and use outer space is essential to the national interests of the United States.

Outer space is a vast region of scientific and economic wealth. Humanity is only beginning to understand and realize its benefits. The U.S., along with other spacefaring nations, seeks to explore and use outer space and derive economic benefits from its utilization. U.S. leadership cannot be sustained by government investment alone. The U.S. must allow private sector innovation to ensure continued leadership in the exploration and use of outer space.

Restricting the freedom of U.S. entities to explore and use outer space through executive branch regulatory authority should only be done when absolutely necessary, and when no other mechanism is available to address national interests. There are a number of existing legal mechanisms already available for the Executive Branch to exercise regulatory authority over and restrict the freedom of U.S. entities to explore and use outer space to address national interests. This includes regulatory authorities of the Department of Commerce, Department of State, Department of Transportation, the FCC, and the Treasury Department. Expanded regulatory authority is not necessary.

A streamlined process will assure that the U.S. remains in conformity with its obligations under the Outer Space Treaty. Furthermore, existing regulatory authorities governing space-based remote sensing systems are outdated, cumbersome, not serving the national interest, and are in need of reform.

Providing a legal and policy environment of freedom will increase American competitiveness and attract companies, talent, and investment that otherwise would have gone to other countries. Companies have many options when it comes to evaluating where to incorporate, headquarter, manufacture, and operate. This ensures America and its workforce will benefit from the developing economy in outer space.

*Authorization and supervision of space operations*

H.R. 2809 assures conformity with international obligations of the United States, pursuant to Article VI of Outer Space Treaty. It does so by establishing an authorization and supervision certification authority at the Department of Commerce that can condition or deny space operations to prevent violations of United States international obligations under the Outer Space Treaty. It does not grant authority to the Department of Commerce to authorize and supervise space operations to assure conformity with any or all international agreements or arrangements of the United States.

The underlying policy rationale is that the space operations of U.S. entities should only be regulated, under a specific regime with the authority to condition or deny space operations, to assure con-

formity with Senate advised and consented, presidentially ratified treaties, pursuant to Section 2, Clause 2, of the U.S. Constitution. Absent this policy, other types of international agreements or arrangements of the United States could be entered into by the Executive Branch without the advice and consent of the Senate and thereafter used as a basis to condition or deny U.S. entity space operations. Such a wide grant of discretionary regulatory authority to the Executive Branch could undermine the constitutional principle of separation of powers, and more importantly, the freedom and liberty of United States entities to explore and use outer space. The Committee finds that only the Outer Space Treaty rises to this level today. If, in the future, other treaties are signed and ratified by the United States that obligate the United States to regulate U.S. entity space operations via domestic implementation of legislation, Congress may then legislate as appropriate.

The Committee recognizes the United States is a Party to the Outer Space Treaty. Article VI of the Outer Space Treaty explicitly recognizes that non-governmental entities, such as private corporations, may explore and use outer space. Article I states, *inter alia*:

“Outer space, including the Moon and other celestial bodies, shall be free for exploration and use by all States without discrimination of any kind, on a basis of equality and in accordance with international law, and there shall be free access to all areas of celestial bodies”

Article IV then states, *inter alia*:

“States Parties to the Treaty shall bear international responsibility for national activities in outer space, including the Moon and other celestial bodies, whether such activities are carried on by governmental agencies or by non-governmental entities, and for assuring that national activities are carried out in conformity with the provisions set forth in the present Treaty. The activities of non-governmental entities in outer space, including the Moon and other celestial bodies, shall require authorization and continuing supervision by the appropriate State Party to the Treaty.”

In the U.S., a number of non-governmental entities are investing in and developing the capabilities to explore and use outer space in unique, novel, and unprecedented ways. This includes proposals by U.S. non-governmental entities to send robotic rovers to the surface of the Moon, to operate private space stations, to conduct on-orbit servicing and repairs, to prospect, extract, and utilize in-situ space resources, and to send private manned missions to the Moon, Mars, and beyond.

While the existing regulatory framework in the United States has, to date, been sufficient to meet U.S. international obligations under Article VI of the Outer Space Treaty, there is uncertainty as to whether, in the future, the Executive Branch would prohibit non-governmental entities from conducting activities in space based on the Obama Administration’s interpretation of United States obligations under the Outer Space Treaty.

This uncertainty stems from an April 8, 2016, regulatory authorization by the Department of Transportation (DOT), FAA, for the

launch of a payload for the company “Moon Express.” Specifically, the DOT/FAA stated that while the FAA made a favorable payload determination for this particular mission, not all non-traditional space missions may lend themselves to favorable payload determinations under the payload review authority under 51 U.S.C. 50904.

No State Party to the Outer Space Treaty has ever issued a diplomatic demarche to the United States that existing domestic laws of the United States were insufficient or violated United States obligations to authorize and supervise non-governmental activities pursuant to Article VI.

#### *Other Outer Space Treaties*

The Committee recognizes that the United States is a Party to the *Convention on International Liability for Damage Caused by Space Objects*, the *Convention on Registration of Objects Launched in Outer Space*, and *Agreement on the Rescue of Astronauts, the Return of Astronauts and Return of Objects Launched in Outer Space* (“other Space Treaties”). The Committee finds that these other Space Treaties do not implicate an obligation to authorize and supervise non-governmental entities to assure conformity with their provisions either pursuant to their own text, generally accepted means of treaty interpretation, or Article VI of the Outer Space Treaty. The obligations and rights within these other Space Treaties are State specific responsibilities that do not require conditioning or denying the operations of U.S. entities (e.g. liability, registration, rescue and return of astronauts). At this time, no provisions of these other Space Treaties warrant regulating U.S. entity operations in outer space to assure conformity with such other Space Treaties.

No State Party to these other Space Treaties has ever issued a diplomatic demarche to the United States that existing domestic laws of the United States were insufficient or violated United States obligations under these other Space Treaties.

#### *Outer Space Treaty obligations are State-to-State obligations, not private sector obligations*

The Outer Space Treaty is an agreement among States Party. H.R. 2809 assures that the activities of U.S. entities are carried out in conformity with the provisions set out in the Treaty. However, these provisions are obligations of the United States, not obligations of U.S. entities. Not all provisions should be interpreted to have any legal nexus to U.S. entity activities and not all provisions should be imputed upon U.S. entities. Pursuant to § 80103(c)(2)(A), the Federal Government shall interpret and fulfill its international obligations under the Outer Space Treaty in a manner that minimizes regulations and limitations on the freedom of United States nongovernmental entities to explore and use space. This should inform determination of imputability. This obligation is reiterated in § 80305. Likewise, pursuant to § 80103(c)(2)(B), the Federal Government shall interpret and fulfill its international obligations under the Outer Space Treaty in a manner that promotes free enterprise in outer space.

Rationale for Department of Commerce responsibility H.R. 2809 places the responsibility to authorize and supervise private space

activities to assure conformity with Outer Space Treaty obligations at the Office of Space Commerce in the Department of Commerce, not at DOT as proposed by the Obama Administration in the Section 108 report, required by P.L. 114–90, delivered to this Committee on April 4, 2016. There are a number of reasons why placing this responsibility at the Department of Commerce is the appropriate long-term decision for the United States and its industry.

Department of Commerce’s culture is more aligned with space activities than DOT’s regulatory culture. The mission statement of the Department of Commerce is to “create the conditions for economic growth and opportunity,” and that mission runs deep through the culture of the Commerce Department. Choosing DOT over the Department of Commerce may be more expedient in the short-term, but at the price foregoing of a long-term optimal solution. In the near term, some, but not all, planned activities may have a nexus to transportation. However, as the space economy develops, in-space activities will focus more on commerce, and less on transportation to and from Earth. The Department of Commerce is also accustomed to a number of issues that future stakeholders will need to consider such as international trade.

Placing authority at Department of Commerce also consolidates bureaucracy by merging the Department of Commerce, Office of Space Commerce, and the Department of Commerce, Office of Commercial Space Sensing Regulatory Affairs, while also reforming the current broken space-based remote sensing regulatory process, and minimizing the burden on other agencies.

Placing this authority at Department of Commerce establishes a “one-stop shop” for Outer Space Treaty compliance. Placing that authority within DOT would split the regulatory system. If DOT was granted this authority, remote sensing satellite operators would have to seek regulatory approval for their operations from two different organizations (the Department of Commerce and DOT).

Placing this authority at the Department of Commerce is a continuation of long-standing law and national policy. The Department of Commerce is currently responsible for regulating a subset of space activities, space-based remote sensing. Indeed, since 1984, the Department of Commerce has been the only Federal agency with the legal authority to authorize and supervise outer space activities. The FCC is authorized to regulate spectrum transmission and DOT is authorized to regulate launch and re-entry vehicle activities, but neither of them have the legal authority to authorize and supervise private space activities to assure compliance with the Outer Space Treaty.

Current law prohibits DOT from regulating outer space activities generally or space object operations beyond the launch and re-entry of space vehicles. It only has the ability to deny a launch if no license, authorization, or permit is required for the payload and the payload jeopardizes specific interests of the United States. The payload review authority at DOT was not intended nor designed to facilitate an authorization or supervision process for Article VI Outer Space Treaty compliance. Even if such an authority were granted to DOT, new processes, regulations, personnel, and funding would be needed for implementation.

Regarding fiscal and staffing requirements, in fiscal year 2017 the Department of Commerce's Commercial Remote Sensing Regulatory Affairs Office works with five full-time equivalent employees and a budget of \$1.2 million. In fiscal year 2017, the Office of Space Commerce has three full-time equivalent employees and a budget of \$800,000. H.R. 2809 will abolish the Commercial Remote Sensing Regulatory Affairs Office and move its responsibilities, budget, and as appropriate, staff, into the Office of Space Commerce. H.R. 2809 will streamline remote-sensing regulatory processes and as a result, require less staffing to implement. It is anticipated there will be staffing and fiscal efficiencies gained by the implementation of H.R. 2809 that can be used to offset any possible additional costs the Department of Commerce will face while implementing responsibilities under Chapter 801 of the bill. H.R. 2809 authorizes up to \$5 million in fiscal year 2018 and fiscal year 2019. The Committee believes that reforming the existing space-based remote sensing regulatory process, combined with efficiencies gained by a streamlined, minimally burdensome, certification process under Chapter 801 of H.R. 2809, and minimizing the administrative burden on DOT for future payload reviews, will result in savings for the taxpayer as compared to staffing and funds used under existing authorities at Department of Commerce and DOT.

The Committee fully supports DOT and the Office of Space Transportation. However, in this time of rapid technological change that the launch industry is experiencing, the Committee finds that DOT and Office of Space Transportation should focus their attention on licensing launch and reentry. They should not be responsible for authorizing and supervising private space object operations.

#### *Planetary Protection*

Pursuant to our international obligations under the Outer Space Treaty, operations may be conditioned or denied by the Secretary of Commerce, in consultation with appropriate agencies such as NASA at the Secretary's discretion, to prevent violations of U.S. obligation under Article IX of the Outer Space Treaty.

Article IX states, *inter alia*:

“In the exploration and use of outer space, including the Moon and other celestial bodies, States Parties to the Treaty shall be guided by the principle of cooperation and mutual assistance and shall conduct all their activities in outer space, including the Moon and other celestial bodies, with due regard to the corresponding interests of all other States Parties to the Treaty. States Parties to the Treaty shall pursue studies of outer space, including the Moon and other celestial bodies, and conduct exploration of them so as to avoid their harmful contamination and also adverse changes in the environment of the Earth resulting from the introduction of extraterrestrial matter and, where necessary, shall adopt appropriate measures for this purpose.”

H.R. 2809 posits long-standing United States policy, confirmed by both the Department of State and NASA, that Committee on Space Research (COSPAR) planetary protection guidelines are not

international obligations of the United States and are not legally binding. The United States and relevant stakeholders, including the scientific community and industry, should work together as activities expand beyond scientific exploration and use, to address mutual interests, and develop reasonable practices that take into account the need to avoid harmful contamination with the right to explore and use outer space. To date, no non-governmental entity has sent a robotic or manned mission to another celestial body. It is premature to proscribe COSPAR guidelines as binding international law. Instead, we should be guided by the principles of the Outer Space Treaty and avail ourselves to the flexibility these principles provide as State and private sector practice develops.

The Committee finds that Article IX of the Outer Space Treaty does not posit a legal obligation of scientific preservation of outer space or celestial bodies. The Committee also recognizes that there is not agreement on whether the obligation to avoid harmful contamination lies only with the States Parties, or whether non-governmental entities are similarly obligated.

#### *Certification*

The Committee recognizes that the term certification in the aviation and expendable launch vehicle context carries a presumption of technical regulation. It is not the intent for the term certification in H.R. 2809 to have that meaning. On the contrary, the intent is for the term certification to be interpreted as confirmation of first-party attestations of conformity with Outer Space Treaty obligations.

#### *Registration of space objects*

The Committee recognizes that the United States has not implemented in domestic legislation a national registry of space objects. The State Department reported to the Committee that long-standing national practice has been for the State Department to maintain a registry of space objects for the purposes of satisfying Article VIII of the Outer Space Treaty and U.S. obligations under the Convention on Registration of Objects Launched in Outer Space.

H.R. 2809 calls for a report on the registration of space objects. This report would include recommendations on if, and how, the registration of space objects in the U.S. could be improved to benefit the United States.

#### *Need for reform of 1992 Land Remote Sensing Act and space-based remote sensing regulation*

H.R. 2809 reforms provisions of the 1992 Land Remote Sensing Act governing the regulation of space-based remote sensing systems. The current regulatory system provides applicants with very little transparency or appeal process. Despite a statutory 120-day deadline for application adjudication, some applications have not been adjudicated for years. The current process harms the national security of the United States by forcing companies and technologies overseas, inhibiting insight into the capabilities and operations of those departing companies, stifling innovation and the commensurate workforce, jobs, and economic benefits, and limiting the domestic capabilities that can be shared with allies and utilized by combatant commanders.

U.S. policy and regulatory mechanisms need to be updated to reflect the current state of technology, as well as evolving market factors. Furthermore, the reformed process should anticipate newer developments with an eye toward efficient and objective regulation and incentive creation for U.S. industry. Any perceived national security concerns associated with commercial remote sensing needs to be put into the context of a complex and interconnected world, and appreciate that geospatial information has tremendous economic, societal, environmental and governmental value. The commercial remote sensing industry is now part of a larger, global geospatial information community.

Under the legal and regulatory structure established by H.R. 2809, the United States can continue to shape global developments through technical innovation, modern business processes, and by encouraging new applications. Industry would be incentivized to pursue new concepts, which serve both as a source of leverage and experimentation in a cutting-edge field. Failure to adapt our mindset, especially given the global nature of commercial remote sensing, will push U.S. remote sensing providers offshore to more favorable regulatory environments.

*Definition of space-based remote sensing system*

Under existing federal law, “space-based remote sensing system” is not defined. Under existing federal regulations (15 C.F.R. 960.3), a remote sensing system is defined as:

“any device, instrument, or combination thereof, the space-borne platform upon which it is carried, and any related facilities capable of actively or passively sensing the Earth’s surface, including bodies of water, from space by making use of the properties of the electromagnetic waves emitted, reflected, or diffracted by the sensed objects.”

The existing regulatory definition requires the system to be capable of actively or passively sensing the Earth’s surface.

The Committee is aware that, in practice, the Department of Commerce has regulated space-based remote sensing systems that, while capable of remotely sensing the Earth’s surface, are, in fact, designed to remotely sense space objects in Earth orbit. Furthermore, the Committee is aware that the application of this existing regulatory definition, coupled with a lack of statutory definition, is creating legal and regulatory uncertainty as new and innovative private space-based remote sensing systems are proposed.

The definition of space-based remote system adopted in H.R. 2809 seeks to address the lack of statutory definition, provide certainty for remote sensing operators, and address national security concerns. The Committee’s intent is that the phrase “designed to image the Earth” is limited to instruments designed to remotely sense the Earth’s surface. The Committee’s intent is that the phrase “capable of imaging a space object in Earth orbit operated by the Federal Government” is limited to systems capable of remotely imaging a space object in Earth orbit. It is also not intended to capture Federal Government space objects that are in Earth orbit that are not operational, for any reason, including because they are derelict or abandoned.

The Committee recognizes that some space-based remote sensing systems will not fall within either definition. The Committee is aware of proposed commercial remote sensing systems that are not designed to image the Earth and are incapable of imaging U.S. Government objects in orbit. In those instances, the intent of H.R. 2809 is to not require a commercial remote sensing permit under chapter 802 of the bill, but it is the Committee's intent to require space object certification under chapter 801. This construct provides certainty for applicants in the least burdensome manner, conforms to U.S. obligations under the Outer Space Treaty, and advances U.S. national security.

*Not all Space-Based Remote Sensing Systems will be Space Objects*

H.R. 2809 was designed to give maximum flexibility to space-based remote sensing system permit applicants to decide when, and if at all, space object certification is required under chapter 801.

Some space-based remote sensing systems will also be space objects for the purposes of chapter 801 certification requirements. In this instance, the space-based remote sensing system applicant can choose whether to file chapter 801 and chapter 802 applications concurrently, or at different times, subject to the requirements of having a certificate or permit prior to operation.

However, some space-based remote sensing systems will not be a space object, as defined in H.R. 2809, and therefore will not be subject to a chapter 801 certification requirement. For example, a space-based remote sensing system may be a hosted payload on a space object. In this case, the space object that is hosting will either be certified by the U.S. government to operate (in accordance with U.S. international obligations under the Outer Space Treaty) or a foreign government will be responsible for the operation of the space object (as it is either a foreign space object or a U.S. space object that demonstrates pursuant to § 80110 that another State Party to the Treaty authorized the space object operations). In either of these cases, the U.S. space-based remote sensing system will only be subject to a chapter 802 permit requirement, as chapter 801 is intended to satisfy Article VI of the Outer Space Treaty requirements that the appropriate State Party to the Treaty authorize and supervise non-governmental space activities. The Committee believes that when a remote sensing payload is integrated into a free-flying space object, the international legal obligations within the Outer Space Treaty are imbued upon the State authorizing the operation of the space object, not the State authorizing the remote sensing operations. The Committee recognizes that in the future, novel circumstances may arise in which space-based remote sensing systems are part of unique space object systems that host, provide power, or do various other services in support of the remote sensing system. Nonetheless, the public policy H.R. 2809 adopts is that for the purposes of the Outer Space Treaty, it is the authorizer of the space object hosting the remote sensing system that is responsible for Outer Space Treaty compliance, not the United States authorizing the remote sensing system for the purposes of national security.

*§ 80201(d) De Minimis Exception*

The intent of this provision is to grant the Secretary discretionary authority to exclude certain types of space-based remote sensing systems and lessen the regulatory burden on the private sector and the Executive Branch. For example, star trackers are intended to be considered “ancillary to the primary design purpose of the space object.” Digital handheld cameras are an example of an intended system that is “too trivial to require a determination under section 80202(c).”

The Committee directs the Secretary to promulgate regulatory guidance to provide a clear explanation of the criteria to be used by the Secretary to grant a de minimis waiver.

*§ 80201(f) Prohibition of Operation*

H.R. 2809 grants a broader scope of jurisdiction for the Secretary under chapter 802 as compared to chapter 801.

Under chapter 801, U.S. entities require a certification prior to operation of a space object. This does not include foreign subsidiaries and affiliates of a U.S. entity. Furthermore, no foreign entities are allowed to receive a chapter 801 certification. The rationale is that the Outer Space Treaty requires the “appropriate State Party” to authorize and supervise non-governmental space activities and that the “appropriate State Party” is the State from which a person is a citizen or in which a legal entity (e.g. corporation) exists. If a State chooses to allow foreign wholly owned subsidiaries in their jurisdiction and allows these legal entities to operate space objects that is their choice. However, such a choice carries consequences under the Outer Space Treaty, and such a State that allows such activity is the appropriate State Party to the Treaty to authorize and supervise.

But under chapter 802, the United States equity is national security, not Outer Space Treaty conformity. Therefore, the scope of jurisdiction is broader than chapter 802 and states that “no person may, directly or through any subsidiary or affiliate, operate a space-based remote sensing system without a permit issued under H.R. 2809.” This scope of jurisdiction is the exact same language under existing law (51 U.S.C. 60122(a)).

*§ 80202(a)(2)(D) Information Necessary to make a Determination*

The overall national security policy of H.R. 2809 is that U.S. national security is furthered, not when U.S. industry is restricted, but when it leads the rest of the world. The Committee recognizes that this policy needs to also take into account the need of the U.S. national security community to be empowered with information about planned space object and space-based remote-sensing system operations so that the national security community can plan accordingly for the operation of such private and commercial systems. Of particular importance is information about planned space-based remote sensing operations. For this reason, § 80202(a)(2)(D) allows for a permit application to include “any additional information necessary to make a determination under subsection (c) regarding a significant threat to national security.” However, the Committee is aware that requests for information can be abused and result in delay and obstructed permit application adjudications. For this reason, such information must be prescribed in advance by regulation.

The Committee is aware that it is not feasible for such prescription to include system specific information for any future permit applicant. The intent is for the information to be prescribed within reasonable bounds so that applicants and the Secretary (and as appropriate, other Department and Agency heads consulted) have clear expectations of information requirements for a permit application to be complete. Such prescription must also be sufficiently clear to meet legal requirements under the Administrative Procedures Act and constitutional provisions of Due Process. This is not intended to be an unbound authority to ask for any information from an applicant. The Committee will also monitor the nature of such information requests through oversight to ensure that this authority is not abused.

*Non-delegable determinations*

H.R. 2809 prohibits certain determinations under chapter 801 and chapter 802 from being delegated by the Secretary of Commerce. The intent is not to have the Secretary themselves process paperwork or conduct day-to-day Office of Space Commerce operations. The intent is that the Secretary, and only the Secretary, is authorized to sign a determination. While the Committee recognizes that such a signature will require Department of Commerce staff to communicate with and provide rationales for such a determination to the Secretary for the Secretary's consideration, the Committee finds this is appropriate given a public policy goal of H.R. 2809 is to enhance regulatory accountability.

*Clear and convincing evidence standard*

H.R. 2809 used the term "clear and convincing evidence." The intent of this terminology is to direct the Secretary to provide evidence that supports a firm belief or conviction that it is highly probable that the factual contentions of the determination are true.

*Significant threat to national security*

Existing law provides the Secretary of Commerce with the ability to condition or deny a space-based remote sensing system license "to preserve the national security of the United States." This existing legal standard has proven to be damaging to the U.S. industrial base and the long-term national security interests of the United States. Without a rational and reasonable standard to interpret this authority, there is no limitation on how it can be applied.

H.R. 2809 adopts a different legal standard as defined in § 80202(c)(2), specifically "significant threats to national security." "Significant threats to national security" is conditioned with the requirement of "imminence." Imminence is intended to include threats that will manifest almost immediately upon the beginning of proposed operations or shortly thereafter.

Significant threats to national security is also conditioned with the requirement that the threat "cannot practicably be mitigated through changes to Federal Government activities or operations." The Committee is concerned that the Federal Government is currently incentivized to delay applications out of an abundance of caution. While there may be no risk to national security, government officials are only tasked with reviewing the negative impacts of a proposed system, not the positive impact to U.S. national secu-

ity, nor the negative impacts to national security of stifling U.S. leadership. Similarly, the U.S. has an obligation to adapt and evolve its tactics, techniques, and procedures to account for technological modernization. While U.S. national security is compromised by a myopic approach to private sector technological innovation, national security is strengthened by a permissive environment that attracts technologies to the U.S. and affords the federal government greater insight into commercial remote sensing capabilities and operations.

The intent is that the Secretary, in consultation as the Secretary considers necessary with the heads of other relevant agencies, will assess proposed permit applicant operations in light of Federal Government activities and operations as known today and forecasted to be happening at the time of proposed permit applicant operations. This assessment is for the purposes of determining whether any identified significant threats to U.S. national security can be practicably mitigated by changes to Federal Government activities or operations.

The policy rationale is that the Executive Branch should not force an applicant to change their operations or deny their operation unless the Executive Branch took the time to see if there were practical ways for the Federal Government to address national security concerns. This is not meant to be an unreasonable burden for the Federal Government. The Secretary, in consultation as the Secretary considers necessary with the heads of other relevant agencies, has the discretionary authority to find there are not practical ways to mitigate. H.R. 2809 does not define the scope of practicality and intends for the Secretary to exercise discretionary authority in a reasonable way to balance the interests of the Federal Government with the need to mitigate.

Throughout our society, the government must adapt to an evolving technological landscape. Space is no different. By adjusting to private sector progress, rather than stifling innovation, the United States will remain at the forefront of this emerging field. This, in turn, will allow U.S. government insight into cutting-edge capabilities and operations, as well as the ability to respond and evolve to new challenges.

#### *Commercially available capability*

The Committee finds it is unreasonable and against the national interests of the United States to condition or deny space-based remote sensing system operations if there is already a commercially available capability. Commercial availability must take into account not just what is available at the time of a permit application, but also what is reasonably expected to be made available in the next three years. This is important because of the nature of space systems, which require significant lead-time to design, manufacture, launch, and calibrate. This will allow the U.S. to maintain leadership in the commercial remote sensing market, rather than a perpetual laggard. U.S. national security is compromised by adopting regulatory policies that stifle innovation and force the nation to follow rather than lead. The existing policy also limits U.S. insight into commercial remote sensing systems that are forced overseas into more favorable regulatory environments.

The Committee understands that the President currently maintains a database of commercially available capabilities and that it will not be a significant administrative burden for the Executive Branch to use and update the existing database to meet the requirements of § 80202(e). Furthermore, the Executive Branch routinely tracks the state of the commercial space sector for many different purposes. This survey could easily leverage those efforts.

*Interagency consultation*

The Committee is well aware of the need for the Secretary to be able to consult with other Departments and Agencies as the Secretary executes the duties to make determinations under H.R. 2809. The Committee recognizes that absent any specific statutory language, the Secretary would be imbued with organic authority to communicate with and consult with other Departments and Agencies. Nonetheless, H.R. 2809 posits in statutory language a consultation mechanism for the Secretary to consult with the heads of other relevant agencies as the Secretary considers necessary.

While the Secretary shall consult, the decision as to whether or not a consultation is necessary resides with the Secretary, not with the relevant agency to be consulted. Furthermore, the Secretary retains exclusive authority to authorize, place conditions on, and supervise the operations of space objects under chapter 801 and space-based remote sensing system under chapter 802. The rationale is that only the Secretary is legally responsible for authorizing and supervising these operations. The decision to vest this authority in a single Department is informed by Committee oversight of the existing regulatory process for commercial remote sensing, which imbues authority on three separate agencies. This failed process led to delays in agency adjudication, stifled innovation, and the departure of companies overseas.

The Committee recognizes that the Secretary may need to consult with the heads of other relevant agencies. The Committee anticipates the Secretary, under the guidance of the President, will establish via inter-agency memorandum or other Executive Branch directives, clear procedures for the Secretary to communicate with, and consult with, the heads of other relevant agencies.

The rationale for this consultation policy is to prevent inter-agency abuse of authorities and to prevent other agencies from, in practice, exercising a de-facto regulatory authority. The Committee is aware that in practice the legal directive “to consult” may in fact be implemented as a “coordinate” or a “concurrence” requirement, undermining the policy rationale of the H.R. 2809. The Committee intends to conduct diligent oversight of the implementation of this provision to ensure that this does not occur.

*§ 80202(b)(3) Interagency processes*

The Committee recognizes that in order to carry out an orderly adjudication of license applications within the 90 day time frame provided, subject to a Presidential extension of an additional 60 days, the Administration will need to organize an interagency process that provides for timely elevation and resolution of policy issues. The Committee anticipates that the Secretary of Commerce, in consultation with the Secretary of Defense and other departments and agencies as appropriate, will develop interagency ar-

rangements to carry out the authorities granted to the Administration under this Act.

*§ 80203(c) Update to permit*

It is the intent of the Committee that a review warranted under this section due to material change shall be subject to the authority of the President to grant a 60 day extension pursuant to § 80202(b)(4)

*Department of Transportation authority*

H.R. 2809, section 8, is a continuation of long-standing law and congressional intent with regards to the scope of DOT's legal authority under 51 U.S.C. 50904(c). This intent, as evidenced in the law and in Committee report language accompanying the Commercial Space Launch Act of 1984, is that DOT should not act contrary to a national security or foreign policy (including international obligations) determination made by another agency in the course of granting an approval for a payload by such agency. In order to prevent confusion regarding DOT's legal authority under 51 U.S.C. 50904(c), H.R. 2809, section 8, codifies that no launch or reentry may be prevented under this authority on the basis of national security, foreign policy, or international obligations of the United States if the payload has received a certification to operate as a space object under chapter 801.

*Federal Communications Commission authority*

The Committee believes that since an effective regulatory process already exists for communications satellites, a duplicative process exercised by the Department of Commerce would be unnecessary and unjustified. H.R. 2809 is not intended to supersede the provisions of the Communications Act of 1934, as amended, or its implementing regulations or executive orders. H.R. 2809 does not grant FCC authority for the regulation of space operations beyond the purview of its existing exercised authority over space transmitting stations licensed under the Communications Act of 1934. The Committee will conduct diligent oversight to ensure that authority is interpreted in a manner to expand the FCC's authority in space beyond what Congress intended.

*§ 80302 Safety consultation*

The Committee recognizes that risk of collision among space objects in a growing threat to the safety and sustainability of certain Earth orbit regimes. The Committee, informed in part by testimony provided by former Deputy Assistant Secretary of Defense for Space Policy, Mr. Doug Levero (provided on March 8th, 2017), concludes that granting legal authority to the Executive Branch to regulate the operation of space objects for the purposes of collision avoidance is premature at this time and would not be in the national interests. However, the Committee believes that establishing a consultation forum between space object operators, certified pursuant to H.R. 2809, and federal government space object operators, is warranted at this time and will be useful to mitigate substantial risks of collision between such operators.

§ 80302 grants the Secretary of Commerce the authority to require U.S. entity participation in the consultation. However, any

outcome of the consultation is voluntary and § 80302 does not grant the Secretary of Commerce the authority to regulate, or place conditions on, any activity for which a certification or permit is required under H.R. 2809.

The Committee purposely chose to time this consultation to occur after a certification under chapter 801 is issued. Allowing this consultation to occur during the adjudication of a certification application would create a chilling effect on the applicant and undermine the voluntary nature of the consultation. Similarly, it is not logical to require consultation on proposed operations that have not yet received authorization, unless such proposed operations are authorized to be conditioned or denied on the basis of risks of collisions.

The Committee emphasizes that § 80302 consultations carry the force of law and the Secretary can require a U.S. entity to participate. This legal authority does not stop the Executive Branch or U.S. entities from engaging in other communications or consultations, on a voluntary basis, outside the scope of § 80302. If, after the § 80302 consultation, a U.S. entity voluntarily chooses to change their proposed operations, H.R. 2809 allows such changes to be made and if material, to be subject to additional administrative review by the Secretary of Commerce. The Committee is also aware of how this authority could be abused, and will closely monitor its use.

*§ 80111 Protecting the interests of United States entity space objects*

The intent of this provision is to direct the President to use, within reasonable means, the power of the Executive Branch, particularly diplomatic and economic, to protect the interests of United States entity space objects. This provision is not intended to create new requirements for the President to train, fund, or equip armed forces. It is also not intended to bind the President's discretion to use force to protect U.S. national interests.

§ 80111(3) is intended to direct the President to take a leadership role in developing the normative understanding of due regard under Article IX of the Outer Space Treaty and to ensure U.S. entities operating in outer space are given such due regard. Article IX of the Outer Space Treaty states that: “[States Party] shall conduct all their activities in outer space, including the moon and other celestial bodies, with due regard to the corresponding interests of all other States Parties to the Treaty.” However, there is no definition and little State practice to inform how this principle should be developed and applied, particularly as it relates to substantive legal obligations of other States Party to the Outer Space Treaty. It is in the interest of the United States to take a leadership role, along with U.S. private sector stakeholders, in developing an understanding of due regard that is in the interests of the United States, including its commercial and private space actors.

*§ 80309 Global commons*

The Committee is aware that space is sometimes referred to as a “global commons.” The Committee believes this is legally inaccurate and undermines the national interests of the United States. The Committee specifically drafted this language to prohibit the application of extraneous statutes such as the National Environmental Policy Act to outer space.

*Need to address space situational awareness and related policy issues*

The Committee is aware that there are outstanding policy issues involving space situational awareness and the safety of space operations on orbit. The Committee specifically chose not to address these policy issues in this bill because the Committee does not believe that sufficient due diligence has been conducted to warrant addressing these policy issues in an authorization and supervision mechanism. This does not preclude the Committee addressing these policy issues in future legislation.

*Harmful interference to U.S. entity space objects*

The Act recognizes that harmful interference is an issue and addresses it in a number of ways. For foreign harmful interference, the Act directs the President to protect U.S. entities interests. The Act also provides that Federal courts shall have jurisdiction over any civil action resulting from operating a certificated space object. This allows U.S. entities to seek judicial remedy, including civil suits, on the basis of common law torts, to protect against and end harmful interference. The Act directs the Secretary to report on the certification of space objects. Part of this report assesses how certification could be improved to enable U.S. leadership in commercial space activities. This may include an examination of how registration can be used to mitigate or prevent harmful interference. FCC currently has legal authority to address harmful interference caused by electromagnetic spectrum usage. FCC's authority stands and is untouched by the Act.

However, the Committee is aware that as private space activities develop, there may be a need to more comprehensively address concerns of harmful interference. H.R. 2809 directs the Private Space Activity Advisory Committee to report annually on challenges the private sector is experiencing with harmful interference to private sector activities in outer space. The Committee intends to follow these reports carefully and address such concerns as necessary in future legislation.

*Claims of sovereignty*

This title does not grant the Secretary the authority to authorize U.S. entities to claim sovereignty over outer space or any celestial bodies.

*Federal court jurisdiction*

Federal courts are granted original jurisdiction of any civil action resulting from the operation of a space object for which certification or permit is required under H.R. 2809. Federal courts are not granted jurisdiction over outer space, the Moon, or other celestial bodies.

SECTION-BY-SECTION

*Section 1. Short title; table of contents*

The "American Space Commerce Free Enterprise Act."

*Section 2. Findings; policy; purposes*

This Act resolves and curtails authorities regarding private exploration and use of outer space and streamlines existing processes. This Act enhances compliance with international obligations, removes regulatory barriers, and improves U.S. competitiveness.

In addition, this Act updates and reforms the regulatory regime governing space-based remote sensing space systems. The existing regime, established under the 1992 Land Remote Sensing Act, is outdated and broken. American industry is not able to receive authorizations for space-based remote sensing space systems in a timely fashion. This section establishes a streamlined and improved process for both general space operators and remote sensing operators. It also allows the Act to address threats to U.S. national security that may arise due to the operations of space objects that include remote sensing systems.

*Section 3. Certification to operate space objects*

This section amends Title 51 to include authorization and supervision of nongovernmental space activities. Certification authority is granted to the Secretary of Commerce one year after enactment to issue certifications for the operations of a U.S. space object.

The Act provides certification conditions in legislation. Industry will know exactly what is required to satisfy a certification application. Supervision of certified activities is satisfied by filing updates on material changes.

The Act assures conformity with the Outer Space Treaty, providing that the U.S. is the appropriate State Party to authorize and continually supervise U.S. entity space object operations, unless another State Party to the Treaty has authorized such operations. U.S. obligations under the Outer Space Treaty are responsibilities of the U.S. government, not its private citizens.

The Secretary of Commerce and the Office of Space Commerce (DOC/OSC) have the responsibility to certify and permit operations, not DOT.

The Act recognizes that space debris and on-orbit collision are concerns and established a number of practical mechanisms to address space debris and on-orbit collision. The Act requires space debris operations to be conducted under a debris mitigation and disposal plan. This plan is to take into account Inter-Agency Space Debris Coordination Committee (IADC) and U.S. space debris mitigation guidelines. For avoiding collisions on-orbit, the Act establishes a consultation for certificated space operators and federal operators to address risks of collisions on-orbit. The Assistant Secretary for Space Commerce is also directed to facilitate and promote the development of best practices to address substantial risks to the physical safety of certificated space operators and federal operators.

This Act only affects DOT authority to license launch and re-entry activities in the payload review of authorized U.S. entity payloads. The Act provides that a space object whose operations are certificated by DOC/OSC is not subject to a payload review for national security, foreign policy, or international obligations by DOT. DOT retains the authority to conduct a payload review for public health and safety and the safety of property.

FCC authority to license telecommunication satellites remains unaffected. This section provides an exception specifically to protect existing telecommunication satellite operators licensed by FCC and to allow FCC to maintain its existing authority. Telecommunication satellite operators will not need to register with the Office of Space Commerce.

Under this section, the Secretary of Commerce is directed to establish a Private Space Activity Advisory Committee of 15 appointed members. This Committee will oversee nongovernmental space activities, certification processes, and promote private sector investment and development in operating space objects. An annual report is due from the Committee regarding their duties and recommendations. The Committee will be terminated 10 years after establishment.

Existing payloads approved under a DOT license are grandfathered into the new system. Existing DOT licenses and associated payload approvals remain in force. Payloads approved under an existing license have the right to apply for an authorization under the new registration and permitting process at DOC/OSC.

The Act recognizes that harmful interference is an issue and addresses it in a number of ways. The Act directs the President to protect U.S. entities interests and provides that Federal courts shall have jurisdiction over any civil action resulting from operating a certificated space object. This allows U.S. entities to seek judicial remedy, including civil suits, on the basis of common law torts, to protect against harmful interference. FCC currently has legal authority to address harmful interference caused by electromagnetic spectrum usage. FCC's authority stands and is untouched by the Act.

#### *Section 4. Permitting of space-based remote sensing systems*

The Act improves U.S. international competitiveness by reforming burdensome and inefficient space-based remote sensing regulatory system.

The Act provides a clear and narrow definition of space-based remote sensing space systems, creates a presumption of approval, provides a streamlined permitting process, refines authority of DOC/OSC to place conditions for national security, and requires adjudication of permit applications within 90 days.

The Act allows identified national security risks to be addressed by conditioning space-based remote sensing operations. However, the Act requires the Federal government to first attempt to mitigate these national security risks before placing any such conditions on private actors.

This section amends Title 51 to permit space-based remote sensing systems, no later than one year after enactment.

Existing licensees at NOAA (National Oceanic and Atmospheric Administration) are grandfathered into the new system. Existing NOAA licenses remain in force, which includes any associated conditions. Existing licensees have the right to re-apply for an authorization under the new certification and permitting process at DOC/OSC.

A report is due 180 days after enactment detailing all applications received, and all permits given, denied, and overdue. This section also requires the Secretary to establish an Advisory Committee

on Commercial Remote Sensing. This Committee will provide information, advice, and recommendations for U.S. commercial space-based remote sensing activities and industry. The Committee is required to submit a report including their information, analysis, findings, and recommendations. The Committee will be terminated 10 years after establishment.

*Section 5. Administrative provisions related to certification and permitting*

This section amends Title 51 to add administrative provisions related to certification and permitting. This includes restricting civil penalties to \$10,000 each day of violation, and to \$500,000 in total for noncompliance. This section also outlines an appeals process for certification of permits and establishes regulatory authority. Outer space is not to be considered a global commons.

For avoiding collisions on-orbit, the Act establishes a consultation for registered space operators and federal operators to address substantial risks of collisions on-orbit. The Secretary is granted enforcement authority. There is no cost for a certification or permit. Existing regulatory authority from DOT and FCC for determinations of international obligations are granted to DOC/OSC.

The Secretary shall undertake appropriate consultations with other Federal agencies in carrying out the duties of the Secretary under this Act.

The Secretary of Commerce will have one year to implement the law and promulgate appropriate regulations.

The Act authorizes to be appropriated \$5 million to the Office of Space Commerce for fiscal year 2018.

*Section 6. Technical and conforming amendments*

This section amends Title 51 to accommodate for the Act's changes.

*Section 7. Office of space commerce*

This section amends Section 50702 of Title 51 to create an Assistant Secretary of Space Commerce to authorize and supervise the operations of U.S. nongovernmental entities in outer space.

The Office of Space Commerce, which will be located within the Office of the Secretary of Commerce, is the administrative unit responsible for certificating space operations and permitting space-based remote sensing systems. This section consolidates existing offices, thereby creating operational efficiencies.

*Section 8. Restriction on preventing launches and reentries of certified space objects*

This section amends Section 50904(c) of Title 51 to remove existing DOT authority to regulate space activities of U.S. entities for national security, foreign policy, or international obligation purposes for any space object authorized under this Act, except in the case of U.S. launch public safety and property protection authority.

*Section 9. Report on registration of space objects*

This Act directs the Secretary of Commerce to report to Congress within one year on how the registration of space objects under the U.S. domestic registry or under the United Nations registry could

be improved to benefit the U.S., including enabling U.S. leadership in commercial space activities.

*Section 10. Comptroller general report*

The Act recognizes FAA AST’s growing importance to the commercial space industry. In that light, the Act directs the Government Accountability Office to submit a report on removing AST from the FAA and elevating it to the jurisdiction of the Secretary of Transportation. A report is due 180 days after enactment on removing the Office of Commercial Space Transportation from under the jurisdiction of the FAA and reestablishing it under the jurisdiction of the Secretary of Transportation.

*Section 11. Radiofrequency mapping report*

This section requires a report due 180 days after enactment on space-based radiofrequency mapping.

EXPLANATION OF AMENDMENTS

An amendment offered by Mr. Smith made technical corrections to the bill. Among these, the amendment extended the time the Secretary of Commerce has to adjudicate certificate and permit applications from “60” to “90” days. The amendment also expresses that the Secretary of Commerce “shall” consult, as the Secretary considers necessary, with the heads of other relevant agencies. The amendment was adopted.

An amendment offered by Mr. Bridenstine added a section requiring the Government Accountability office to report on the costs and benefits of elevating FAA’s Office of Commercial Space Transportation within DOT. The amendment was adopted.

An amendment offered by Mr. Perlmutter required the Private Sector Advisory Committee to identify any challenges the U.S. private sector experiences with access to adequate, predictable and reliable radio frequency spectrum. The amendment was adopted.

COMMITTEE CONSIDERATION

On June 8, 2017, the Committee met in open session and ordered reported favorably the bill, H.R. 2809, as amended, by voice vote, a quorum being present.

APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104–1 requires a description of the application of this bill to the legislative branch where the bill relates to the terms and conditions of employment or access to public services and accommodations. This bill assures conformity with international obligations of the United States, pursuant to Article VI of the Outer Space Treaty. As such this bill does not relate to employment or access to public services and accommodations.

STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF  
THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause (2)(b)(1) of rule X of the Rules of the House of Representatives, the Commit-

tee's oversight findings and recommendations are reflected in the descriptive portions of this report.

#### STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

H.R. 2809, the American Space Commerce Free Enterprise Act, assures conformity with international obligations of the United States, pursuant to Article VI of the Outer Space Treaty.

#### DUPLICATION OF FEDERAL PROGRAMS

No provision of H.R. 2809 establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

#### DISCLOSURE OF DIRECTED RULE MAKINGS

H.R. 2809 assures conformity with international obligations of the United States, pursuant to Article VI of Outer Space Treaty. It does so by establishing an authorization and supervision certification authority at the Department of Commerce that can condition or deny space operations to prevent violations of United States international obligations under the Outer Space Treaty.

Further, H.R. 2809 reforms provisions of the 1992 Land Remote Sensing Act governing the regulation of space-based remote sensing systems. The current regulatory system provides applicants with very little transparency or appeal process. Despite a statutory 120-day deadline for application adjudication, some applications have been not been adjudicated for years. The current process harms the national security of the United States by forcing companies and technologies overseas, inhibiting insight into the capabilities and operations of those departing companies, stifling innovation and the commensurate workforce, jobs, and economic benefits, and limiting the domestic capabilities that can be shared with allies, and utilized by combatant commanders.

#### FEDERAL ADVISORY COMMITTEE ACT

The Committee finds that the legislation does not establish or authorize the establishment of an advisory committee within the definition of 5 U.S.C. App., Section 5(b).

#### UNFUNDED MANDATE STATEMENT

Section 423 of the Congressional Budget and Impoundment Control Act (as amended by Section 101(a)(2) of the Unfunded Mandate Reform Act, P.L. 104-4) requires a statement as to whether the provisions of the reported include unfunded mandates. In compliance with this requirement the Committee has received a letter from the Congressional Budget Office included herein.

#### EARMARK IDENTIFICATION

H.R. 2809 does not include any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

## COMMITTEE ESTIMATE

Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs that would be incurred in carrying out H.R. 2809. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act.

## BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause (3)(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 2809 from the Director of Congressional Budget Office:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, July 7, 2017.*

Hon. LAMAR SMITH,  
*Chairman, Committee on Science, Space, and Technology,  
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2809, the American Space Commerce Free Enterprise Act of 2017.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Janani Shankaran.

Sincerely,

KEITH HALL,  
*Director.*

Enclosure.

*H.R. 2809—American Space Commerce Free Enterprise Act of 2017*

H.R. 2809 would expand the authorities of the Office of Space Commerce (OSC) within the Department of Commerce (DOC) to include supervision of commercial space activity. The private sector is increasingly investing in and developing spacecraft, satellites, and other technologies for nongovernmental exploration of outer space. H.R. 2809 would establish a certification process for the private sector to operate those objects in outer space. The bill also would eliminate the Office of Commercial Remote Sensing Regulatory Affairs (CRSRA) within the National Oceanic and Atmospheric Administration and transfer some of its responsibilities to the OSC. H.R. 2809 would authorize the appropriation of \$5 million in 2018 for the OSC to undertake those activities.

Assuming appropriation of the authorized amounts, CBO estimates that implementing H.R. 2809 would cost \$5 million over the 2018–2019 period. In fiscal year 2017, the CRSRA and the OSC each received an appropriation of about \$1 million. Under current

law, no specific sums are authorized to be appropriated to the CRSRA after 2017.

The bill also would direct the President to maintain a database of commercially available capabilities for space-based remote sensing, for example, satellites; require DOC to undertake activities related to international treaty compliance; and have the Government Accountability Office submit a report to the Congress about the Office of Commercial Space Transportation. Based on the costs to undertake similar activities, CBO estimates that implementing those provisions would cost less than \$500,000 each year; such spending would be subject to the availability of appropriated funds.

Enacting the bill would affect direct spending and revenues; therefore, pay-as-you-go procedures apply. CBO expects that some CRSRA employees could retire earlier than they otherwise would, which would increase direct spending over the 2017–2027 period. However, CBO estimates that those increases would not be significant. The bill also would repeal certain penalties, which are recorded in the budget as revenues, and authorize new ones. On net, CBO estimates that those changes would not significantly affect revenues.

CBO estimates that enacting H.R. 2809 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

H.R. 2809 would impose intergovernmental and private-sector mandates, as defined in the Unfunded Mandates Reform Act (UMRA). The bill would require entities that launch and operate spacecraft, satellites, or other objects in outer space to submit information about their planned launch operations, as well as a plan to mitigate space debris, to DOC when applying for certification to operate those objects. The requirements would affect both private space companies, such as Moon Express and SpaceX, as well as public entities, such as universities conducting research. After receiving certification, those entities also would be required to inform DOC about any material changes to the space object or the planned operations. In addition, the bill would require entities that apply for a permit to operate a space-based remote sensing system to provide specific information about the project to DOC. Based on information from companies in the space industry about the costs of complying with current regulations, CBO estimates that the total cost of complying with the mandates would fall well below the annual thresholds for intergovernmental and private-sector mandates established in UMRA (\$78 million and \$156 million in 2017, respectively, adjusted annually for inflation).

The CBO staff contacts for this estimate are Janani Shankaran (for federal costs), Jon Sperl (for intergovernmental mandates), and Paige Piper/Bach (for private-sector mandates). The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

#### CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic,

and existing law in which no change is proposed is shown in roman):

**TITLE 51, UNITED STATES CODE**

Subtitle I—General

Chap		Sec.
101.	Definitions .....	10101
	* * * * *	

Subtitle V—Programs Targeting Commercial Opportunities

	* * * * *	
<b>513.</b>	Space resource commercial exploration and utilization .....	<b>51301</b>
<i>513.</i>	<i>Space Resource Commercial Exploration and Utilization .....</i>	<i>51301</i>
	* * * * *	

Subtitle VII—Access to Space

<b>701.</b>	Use of space launch system or alternatives .....	<b>70101</b>
<i>701.</i>	<i>Use of Space Launch System or Alternatives .....</i>	<i>70101</i>
	* * * * *	

*Subtitle VIII—Authorization and Supervision of Nongovernmental Space Activities*

<i>801.</i>	<i>Certification to Operate Space Objects .....</i>	<i>80101</i>
<i>802.</i>	<i>Permitting of Space-Based Remote Sensing Systems .....</i>	<i>80201</i>
<i>803.</i>	<i>Administrative Provisions Related to Certification and Permitting .....</i>	<i>80301</i>
	* * * * *	

**SUBTITLE II—GENERAL PROGRAM AND POLICY PROVISIONS**

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**CHAPTER 203—RESPONSIBILITIES AND VISION**

\* \* \* \* \*

**§ 20302. Vision for space exploration**

(a) IN GENERAL.—The Administrator shall establish a program to develop a sustained human presence in cis-lunar space or on the Moon, including a robust precursor program, to promote exploration, science, commerce, and United States preeminence in space, and as a stepping-stone to future exploration of Mars and other destinations. The Administrator is further authorized to develop and conduct appropriate international collaborations in pursuit of these goals.

(b) FUTURE EXPLORATION OF MARS.—The Administrator shall manage human space flight programs, including the Space Launch System and Orion, to enable humans to explore Mars and other destinations by defining a series of sustainable steps and conducting mission planning, research, and technology development on a timetable that is technically and fiscally possible, consistent with section 70504.

(c) DEFINITIONS.—In this section:

(1) ORION.—The term “Orion” means the multipurpose crew vehicle described under section 303 of the National Aeronautics and Space Administration Authorization Act of 2010 (42 U.S.C. 18323).

(2) SPACE LAUNCH SYSTEM.—The term “Space Launch System” **means** **has the meaning** *has the meaning* given the term in section 3 of the National Aeronautics and Space Administration Authorization Act of 2010 (42 U.S.C. 18302).

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## SUBTITLE V—PROGRAMS TARGETING COMMERCIAL OPPORTUNITIES

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### CHAPTER 507—OFFICE OF SPACE COMMERCE

\* \* \* \* \*

#### § 50702. Establishment

(a) IN GENERAL.—There is established within the Department of Commerce an Office of Space Commerce, *which shall be located in the principal physical location of the Office of the Secretary of Commerce.*

(b) DIRECTOR.—The Office shall be headed by a Director, who shall be **a senior executive and shall be compensated at a level in the Senior Executive Service under section 5382 of title 5 as determined by the Secretary of Commerce** *appointed by the President and confirmed by the Senate. The Director shall be the Assistant Secretary of Commerce for Space Commerce and shall report directly to the Secretary of Commerce.*

(c) FUNCTIONS OF OFFICE.—The Office shall be the principal unit for the coordination of space-related issues, programs, and initiatives within the Department of Commerce, including—

(1) to foster the conditions for the economic growth and technological advancement of the United States space commerce industry;

(2) to coordinate space commerce policy issues and actions within the Department of Commerce;

(3) to represent the Department of Commerce in the development of United States policies and in negotiations with foreign countries to promote United States space commerce;

(4) to promote the advancement of United States geospatial technologies related to space commerce, in cooperation with relevant interagency working groups; **and**

(5) to provide support to Federal Government organizations working on Space-Based Positioning Navigation, and Timing policy, including the National Coordination Office for **Space-Based Position** *Space-Based Positioning, Navigation, and Timing*; **and**

(6) to *authorize and supervise the operations of United States nongovernmental entities in outer space, pursuant to chapter 801 of this title;*

(7) to *authorize and supervise the operations of space-based remote sensing systems pursuant to chapter 802 of this title;* *and*

(8) to *facilitate and promote the development of best practices among operators of space objects and space-based remote sensing systems under this subtitle to address substantial risks to*

*the physical safety of Federal Government space objects, including the risk of on-orbit collisions.*

(d) DUTIES OF DIRECTOR.—The primary responsibilities of the Director in carrying out the functions of the Office shall include—

(1) promoting commercial provider investment in space activities by collecting, analyzing, and disseminating information on space markets, and conducting workshops and seminars to increase awareness of commercial space opportunities;

(2) assisting United States commercial providers in the efforts of those providers to conduct business with the United States Government;

(3) acting as an industry advocate within the executive branch of the Federal Government to ensure that the Federal Government meets the space-related requirements of the Federal Government, to the fullest extent feasible, using commercially available space goods and services;

(4) ensuring that the United States Government does not compete with United States commercial providers in the provision of space hardware and services otherwise available from United States commercial providers;

(5) promoting the export of space-related goods and services;

(6) representing the Department of Commerce in the development of United States policies and in negotiations with foreign countries to ensure free and fair trade internationally in the area of space commerce; and

(7) seeking the removal of legal, policy, and institutional impediments to space commerce.

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**CHAPTER 509—COMMERCIAL SPACE LAUNCH ACTIVITIES**

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**§ 50904. Restrictions on launches, operations, and reentries**

(a) REQUIREMENT.—A license issued or transferred under this chapter, or a permit, is required for the following:

(1) for a person to launch a launch vehicle or to operate a launch site or reentry site, or to reenter a reentry vehicle, in the United States.

(2) for a citizen of the United States (as defined in section 50902(1)(A) or (B) of this title) to launch a launch vehicle or to operate a launch site or reentry site, or to reenter a reentry vehicle, outside the United States.

(3) for a citizen of the United States (as defined in section 50902(1)(C) of this title) to launch a launch vehicle or to operate a launch site or reentry site, or to reenter a reentry vehicle, outside the United States and outside the territory of a foreign country unless there is an agreement between the United States Government and the government of the foreign country providing that the government of the foreign country has jurisdiction over the launch or operation or reentry.

(4) for a citizen of the United States (as defined in section 50902(1)(C) of this title) to launch a launch vehicle or to operate a launch site or reentry site, or to reenter a reentry vehicle,

in the territory of a foreign country if there is an agreement between the United States Government and the government of the foreign country providing that the United States Government has jurisdiction over the launch or operation or reentry. Notwithstanding this subsection, a permit shall not authorize a person to operate a launch site or reentry site.

(b) COMPLIANCE WITH PAYLOAD REQUIREMENTS.—The holder of a license or permit under this chapter may launch or reenter a payload only if the payload complies with all requirements of the laws of the United States related to launching or reentering a payload.

(c) PREVENTING LAUNCHES AND REENTRIES.—The Secretary of Transportation shall establish whether all required licenses, authorizations, and permits required for a payload have been obtained. If no license, authorization, or permit is required, the Secretary may prevent the launch or reentry if the Secretary decides the launch or reentry would jeopardize the public health and safety, safety of property, or national security or foreign policy interest of the United States. *No launch or reentry may be prevented under this authority on the basis of national security, foreign policy, or international obligations of the United States, including under the covered treaties on outer space (as defined in section 80101) if the payload has received a certification to operate as a space object under chapter 801.*

(d) SINGLE LICENSE OR PERMIT.—The Secretary of Transportation shall ensure that only 1 license or permit is required from the Department of Transportation to conduct activities involving crew, government astronauts, or space flight participants, including launch and reentry, for which a license or permit is required under this chapter. The Secretary shall ensure that all Department of Transportation regulations relevant to the licensed or permitted activity are satisfied.

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**SUBTITLE VI—EARTH OBSERVATIONS**

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**CHAPTER 601—LAND REMOTE SENSING POLICY**

SUBCHAPTER I—GENERAL

Sec.  
60101. Definitions.

\* \* \* \* \*

**[SUBCHAPTER SUBCHAPTER III—LICENSING OF PRIVATE REMOTE SENSING SPACE SYSTEMS**

- [60121. General licensing authority.**
- [60122. Conditions for operation.**
- [60123. Administrative authority of Secretary.**
- [60124. Regulatory authority of Secretary.**
- [60125. Agency activities.**
- [60126. Annual reports.]**

SUBCHAPTER V—GENERAL PROVISIONS

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【60147. Consultation.】

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【SUBCHAPTER III—LICENSING OF PRIVATE REMOTE SENSING SPACE SYSTEMS

【§ 60121. General licensing authority

【(a) LICENSING AUTHORITY OF SECRETARY.—

【(1) IN GENERAL.—In consultation with other appropriate United States Government agencies, the Secretary is authorized to license private sector parties to operate private remote sensing space systems for such period as the Secretary may specify and in accordance with the provisions of this subchapter.

【(2) LIMITATION WITH RESPECT TO SYSTEM USED FOR OTHER PURPOSES.—In the case of a private space system that is used for remote sensing and other purposes, the authority of the Secretary under this subchapter shall be limited only to the remote sensing operations of such space system.

【(b) COMPLIANCE WITH LAW, REGULATIONS, INTERNATIONAL OBLIGATIONS, AND NATIONAL SECURITY.—

【(1) IN GENERAL.—No license shall be granted by the Secretary unless the Secretary determines in writing that the applicant will comply with the requirements of this chapter, any regulations issued pursuant to this chapter, and any applicable international obligations and national security concerns of the United States.

【(2) LIST OF REQUIREMENTS FOR COMPLETE APPLICATION.—The Secretary shall publish in the Federal Register a complete and specific list of all information required to comprise a complete application for a license under this subchapter. An application shall be considered complete when the applicant has provided all information required by the list most recently published in the Federal Register before the date the application was first submitted. Unless the Secretary has, within 30 days after receipt of an application, notified the applicant of information necessary to complete an application, the Secretary may not deny the application on the basis of the absence of any such information.

【(c) DEADLINE FOR ACTION ON APPLICATION.—The Secretary shall review any application and make a determination thereon within 120 days of the receipt of such application. If final action has not occurred within such time, the Secretary shall inform the applicant of any pending issues and of actions required to resolve them.

【(d) IMPROPER BASIS FOR DENIAL.—The Secretary shall not deny such license in order to protect any existing licensee from competition.

【(e) REQUIREMENT TO PROVIDE UNENHANCED DATA.—

【(1) DESIGNATION OF DATA.—The Secretary, in consultation with other appropriate United States Government agencies and pursuant to paragraph (2), shall designate in a license issued pursuant to this subchapter any unenhanced data re-

quired to be provided by the licensee under section 60122(b)(3) of this title.

[(2) PRELIMINARY DETERMINATION.—The Secretary shall make a designation under paragraph (1) after determining that—

[(A) such data are generated by a system for which all or a substantial part of the development, fabrication, launch, or operations costs have been or will be directly funded by the United States Government; or

[(B) it is in the interest of the United States to require such data to be provided by the licensee consistent with section 60122(b)(3) of this title, after considering the impact on the licensee and the importance of promoting widespread access to remote sensing data from United States and foreign systems.

[(3) CONSISTENCY WITH CONTRACT OR OTHER ARRANGEMENT.—A designation made by the Secretary under paragraph (1) shall not be inconsistent with any contract or other arrangement entered into between a United States Government agency and the licensee.

#### **[(§ 60122. Conditions for operation**

[(a) LICENSE REQUIRED FOR OPERATION.—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 pursuant to section 60121 of this title.

[(b) LICENSING REQUIREMENTS.—Any license issued pursuant to this subchapter shall specify that the licensee shall comply with all of the requirements of this chapter and shall—

[(1) operate the system in such manner as to preserve the national security of the United States and to observe the international obligations of the United States in accordance with section 60146 of this title;

[(2) make available to the government of any country (including the United States) unenhanced data collected by the system concerning the territory under the jurisdiction of such government as soon as such data are available and on reasonable terms and conditions;

[(3) make unenhanced data designated by the Secretary in the license pursuant to section 60121(e) of this title available in accordance with section 60141 of this title;

[(4) upon termination of operations under the license, make disposition of any satellites in space in a manner satisfactory to the President;

[(5) furnish the Secretary with complete orbit and data collection characteristics of the system, and inform the Secretary immediately of any deviation; and

[(6) notify the Secretary of any significant or substantial agreement the licensee intends to enter with a foreign nation, entity, or consortium involving foreign nations or entities.

[(c) ADDITIONAL LICENSING REQUIREMENTS FOR LANDSAT 6 CONTRACTOR.—In addition to the requirements of subsection (b), any license issued pursuant to this subchapter to the Landsat 6 contractor shall specify that the Landsat 6 contractor shall—

[(1) notify the Secretary of any value added activities (as defined by the Secretary by regulation) that will be conducted by the Landsat 6 contractor or by a subsidiary or affiliate; and

[(2) if such activities are to be conducted, provide the Secretary with a plan for compliance with section 60141 of this title.

### **[§ 60123. Administrative authority of Secretary**

[(a) FUNCTIONS.—In order to carry out the responsibilities specified in this subchapter, the Secretary may—

[(1) grant, condition, or transfer licenses under this chapter;

[(2) seek an order of injunction or similar judicial determination from a district court of the United States with personal jurisdiction over the licensee to terminate, modify, or suspend licenses under this subchapter and to terminate licensed operations on an immediate basis, if the Secretary determines that the licensee has substantially failed to comply with any provisions of this chapter, with any terms, conditions, or restrictions of such license, or with any international obligations or national security concerns of the United States;

[(3) provide penalties for noncompliance with the requirements of licenses or regulations issued under this subchapter, including civil penalties not to exceed \$10,000 (each day of operation in violation of such licenses or regulations constituting a separate violation);

[(4) compromise, modify, or remit any such civil penalty;

[(5) issue subpoenas for any materials, documents, or records, or for the attendance and testimony of witnesses for the purpose of conducting a hearing under this section;

[(6) seize any object, record, or report pursuant to a warrant from a magistrate based on a showing of probable cause to believe that such object, record, or report was used, is being used, or is likely to be used in violation of this chapter or the requirements of a license or regulation issued thereunder; and

[(7) make investigations and inquiries and administer to or take from any person an oath, affirmation, or affidavit concerning any matter relating to the enforcement of this chapter.

[(b) REVIEW OF AGENCY ACTION.—Any applicant or licensee that makes a timely request for review of an adverse action pursuant to paragraph (1), (3), (5), or (6) of subsection (a) shall be entitled to adjudication by the Secretary on the record after an opportunity for any agency hearing with respect to such adverse action. Any final action by the Secretary under this subsection shall be subject to judicial review under chapter 7 of title 5.

### **[§ 60124. Regulatory authority of Secretary**

[The Secretary may issue regulations to carry out this subchapter. Such regulations shall be promulgated only after public notice and comment in accordance with the provisions of section 553 of title 5.

### **[§ 60125. Agency activities**

[(a) LICENSE APPLICATION AND ISSUANCE.—A private sector party may apply for a license to operate a private remote sensing space system which utilizes, on a space-available basis, a civilian United

States Government satellite or vehicle as a platform for such system. The Secretary, pursuant to this subchapter, may license such system if it meets all conditions of this subchapter and—

[(1) the system operator agrees to reimburse the Government in a timely manner for all related costs incurred with respect to such utilization, including a reasonable and proportionate share of fixed, platform, data transmission, and launch costs; and

[(2) such utilization would not interfere with or otherwise compromise intended civilian Government missions, as determined by the agency responsible for such civilian platform.

[(b) ASSISTANCE.—The Secretary may offer assistance to private sector parties in finding appropriate opportunities for such utilization.

[(c) AGREEMENTS.—To the extent provided in advance by appropriation Acts, any United States Government agency may enter into agreements for such utilization if such agreements are consistent with such agency’s mission and statutory authority, and if such remote sensing space system is licensed by the Secretary before commencing operation.

[(d) APPLICABILITY.—This section does not apply to activities carried out under subchapter IV.

[(e) EFFECT ON FCC AUTHORITY.—Nothing in this subchapter shall affect the authority of the Federal Communications Commission pursuant to the Communications Act of 1934 (47 U.S.C. 151 et seq.).

### **16 § 60126. Annual reports**

[(a) IN GENERAL.—The Secretary shall submit a report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology of the House of Representatives not later than 180 days after the date of enactment of the U.S. Commercial Space Launch Competitiveness Act, and annually thereafter, on—

[(1) the Secretary’s implementation of section 60121, including—

[(A) a list of all applications received in the previous calendar year;

[(B) a list of all applications that resulted in a license under section 60121;

[(C) a list of all applications denied and an explanation of why each application was denied, including any information relevant to the interagency adjudication process of a licensing request;

[(D) a list of all applications that required additional information; and

[(E) a list of all applications whose disposition exceeded the 120 day deadline established in section 60121(c), the total days overdue for each application that exceeded such deadline, and an explanation for the delay;

[(2) all notifications and information provided to the Secretary under section 60122; and

[(3) a description of all actions taken by the Secretary under the administrative authority granted by paragraphs (4), (5), and (6) of section 60123(a).

[(b) CLASSIFIED ANNEXES.—Each report under subsection (a) may include classified annexes as necessary to protect the disclosure of sensitive or classified information.]

[(c) SUNSET.—The reporting requirement under this section terminates effective September 30, 2020.]

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## SUBCHAPTER V—GENERAL PROVISIONS

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### 【§ 60147. Consultation

[(a) CONSULTATION WITH SECRETARY OF DEFENSE.—The Secretary and the Landsat Program Management shall consult with the Secretary of Defense on all matters under this chapter affecting national security. The Secretary of Defense shall be responsible for determining those conditions, consistent with this chapter, necessary to meet national security concerns of the United States and for notifying the Secretary and the Landsat Program Management promptly of such conditions.]

[(b) CONSULTATION WITH SECRETARY OF STATE.—

[(1) IN GENERAL.—The Secretary and the Landsat Program Management shall consult with the Secretary of State on all matters under this chapter affecting international obligations. The Secretary of State shall be responsible for determining those conditions, consistent with this chapter, necessary to meet international obligations and policies of the United States and for notifying promptly the Secretary and the Landsat Program Management of such conditions.]

[(2) INTERNATIONAL AID.—Appropriate United States Government agencies are authorized and encouraged to provide remote sensing data, technology, and training to developing nations as a component of programs of international aid.]

[(3) REPORTING DISCRIMINATORY DISTRIBUTION.—The Secretary of State shall promptly report to the Secretary and Landsat Program Management any instances outside the United States of discriminatory distribution of Landsat data.]

[(c) STATUS REPORT.—The Landsat Program Management shall, as often as necessary, provide to Congress complete and updated information about the status of ongoing operations of the Landsat system, including timely notification of decisions made with respect to the Landsat system in order to meet national security concerns and international obligations and policies of the United States Government.]

[(d) REIMBURSEMENTS.—If, as a result of technical modifications imposed on a licensee under subchapter III on the basis of national security concerns, the Secretary, in consultation with the Secretary of Defense or with other Federal agencies, determines that additional costs will be incurred by the licensee, or that past development costs (including the cost of capital) will not be recovered by the licensee, the Secretary may require the agency or agencies requesting such technical modifications to reimburse the licensee for such additional or development costs, but not for anticipated profits. Reimbursements may cover costs associated with required

changes in system performance, but not costs ordinarily associated with doing business abroad.】

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## SUBTITLE VII—ACCESS TO SPACE

### CHAPTER 711—NEAR-EARTH OBJECTS

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#### § 71102. Requests for information

The Administrator shall issue requests for information on—

(1) a low-cost space mission with the purpose of rendezvousing with, attaching a tracking device to, and characterizing the Apophis asteroid; and

(2) a medium-sized space mission with the purpose of detecting near-Earth objects equal to or greater than 140 meters in diameter.

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## ***Subtitle VIII—AUTHORIZATION AND SUPERVISION OF NONGOVERNMENTAL SPACE ACTIVITIES***

### ***CHAPTER 801—CERTIFICATION TO OPERATE SPACE OBJECTS***

Sec.

80101. *Definitions.*

80102. *Certification authority.*

80103. *Certification application and requirements.*

80104. *Mitigation of space debris.*

80105. *Continuing certification requirements.*

80106. *Certification transfer.*

80107. *Certification expiration and termination.*

80108. *Existing license or pending application for launch or reentry.*

80109. *Private Space Activity Advisory Committee.*

80110. *Exemptions.*

80111. *Protecting the interests of United States entity space objects.*

#### **§ 80101. Definitions**

*In this subtitle:*

(1) **AGENCY.**—*The term “agency” has the meaning given the term Executive agency in section 105 of title 5.*

(2) **AGREEMENT ON THE RESCUE OF ASTRONAUTS AND THE RETURN OF SPACE OBJECTS.**—*The term “Agreement on the Rescue of Astronauts and the Return of Space Objects” means the Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space (signed at Washington, Moscow, and London on April 22, 1968, ratified by the United States on December 3, 1968; 19 UST 7570).*

(3) **CONVENTION ON REGISTRATION OF SPACE OBJECTS.**—*The term “Convention on Registration of Space Objects” means the Convention on Registration of Objects Launched into Outer*

*Space* (signed at New York on January 14, 1975, ratified by the United States on September 15, 1976; 28 UST 695).

(4) COVERED TREATIES ON OUTER SPACE.—The term “covered treaties on outer space” means—

(A) the Outer Space Treaty;

(B) the Agreement on the Rescue of Astronauts and the Return of Space Objects;

(C) the Convention on Registration of Space Objects; and

(D) the Liability Convention.

(5) LIABILITY CONVENTION.—The term “Liability Convention” means the Convention on the International Liability for Damage Caused by Space Objects (signed at Washington, Moscow, and London on March 29, 1972, ratified by the United States on October 9, 1973; 24 UST 2389).

(6) NATIONAL OF THE UNITED STATES.—The term “national of the United States” has the meaning given such term in section 101(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)).

(7) OUTER SPACE TREATY.—The term “Outer Space Treaty” means the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (signed at Washington, Moscow, and London on January 27, 1967, ratified by the United States on October 10, 1967; 18 UST 2410).

(8) SECRETARY.—The term “Secretary” means, except as otherwise provided in this subtitle, the Secretary of Commerce, acting through the Office of Space Commerce.

(9) SPACE-BASED REMOTE SENSING SYSTEM.—The term “space-based remote sensing system” means a space object in Earth orbit that is—

(A) designed to image the Earth; or

(B) capable of imaging a space object in Earth orbit operated by the Federal Government.

(10) SPACE DEBRIS MITIGATION.—The term “space debris mitigation” means efforts to—

(A) prevent on-orbit break-ups;

(B) remove spacecraft that have reached the end of their mission operation from useful densely populated orbit regions; and

(C) limit the amount of debris released during normal operations of a space object.

(11) SPACE OBJECT.—

(A) IN GENERAL.—The term “space object” means—

(i) a human-made object located in outer space, including on the Moon and other celestial bodies, with or without human occupants, that was launched from Earth, such as a satellite or a spacecraft, including component parts of the object; and

(ii) all items carried on such object that are intended for use in outer space outside of, and independent of, the operation of such object.

(B) INCLUSION.—Such term includes any human-made object that is—

(i) manufactured or assembled in outer space; and

(ii) intended for operations in outer space outside of, and independent of, the operations of such object in which the manufacturing or assembly occurred.

(C) *EXCLUSIONS.*—Such term does not include—

(i) an article on board a space object that is only intended for use inside the space object;

(ii) an article manufactured or processed in outer space that is a material; or

(iii) an article intended for use outside of a space object as part of the certified operations of the space object.

(12) *STATE.*—The term “State” means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any other commonwealth, territory, or possession of the United States.

(13) *UNITED STATES.*—The term “United States” means the States, collectively.

(14) *UNITED STATES ENTITY.*—The term “United States entity” means—

(A) an individual who is a national of the United States;

or

(B) a nongovernmental entity organized or existing under, and subject to, the laws of the United States or a State.

### **§ 80102. Certification authority**

(a) *IN GENERAL.*—Not later than 1 year after the date of enactment of the American Space Commerce Free Enterprise Act of 2017, the Secretary shall begin issuing certifications for the operation of a space object to any United States entity who submits an application for a certification in satisfaction of the requirements of this chapter.

(b) *CONSULTATION.*—The Secretary shall, as the Secretary considers necessary, consult with the heads of other relevant agencies in carrying out the requirements of this chapter, pursuant to section 80311.

(c) *CERTIFICATION REQUIRED FOR OPERATION.*—Beginning on the date that is 1 year after the date of enactment of the American Space Commerce Free Enterprise Act of 2017, a United States entity may not operate a space object unless the entity holds a certification issued under this chapter for the operation of such object or the entity holds a valid payload approval for launch or reentry under section 50904 as part of a license issued under chapter 509, and that satisfies the requirements of section 80108(a).

(d) *FOREIGN ENTITIES PROHIBITED.*—The Secretary may not issue a certification under this chapter to any person who is not a United States entity.

(e) *COVERAGE OF CERTIFICATION.*—The Secretary shall, to the maximum extent practicable, require only 1 certification under this chapter for a United States entity to—

(1) conduct multiple operations carried out using a single space object;

- (2) operate multiple space objects that carry out substantially similar operations; or
- (3) use multiple space objects to carry out a single space operation.

**§ 80103. Certification application and requirements**

(a) **APPLICATION PROCESS.**—

(1) **IN GENERAL.**—To be eligible for a certification or transfer of a certification to operate a space object under this chapter, a United States entity shall submit an application to the Secretary as provided in paragraph (2). Such application shall include, for each required item or attestation, sufficient evidence to demonstrate each fact or assertion.

(2) **CONTENTS.**—An application described in paragraph (1) shall include only the following information, with respect to each space object and the operations proposed to be certified:

(A) The name, address, and contact information of one or more nationals of the United States designated by the applicant as responsible for the operation of the space object.

(B) An affirmation, and a document of proof, that the applicant is a United States entity.

(C) If available at the time of submission of the application, the planned date and location of the launch of the space object, including the identity of the launch provider.

(D) The general physical form and composition of the space object.

(E) A description of the proposed operations of the space object that includes—

- (i) when and where the space object will operate; and
- (ii) when and where the operation of the space object will terminate.

(F) A description of how the space object will be operated and disposed of in a manner to mitigate the generation of space debris.

(G) Information about third-party liability insurance obtained, if any, by the applicant for operations of the space object, including the amount and coverage of such liability insurance.

(H) Whether the space object will include a space-based remote sensing system.

(3) **ATTESTATIONS.**—An application described in paragraph (1) shall contain an attestation by the applicant of each the following:

(A) The space object is not a nuclear weapon or a weapon of mass destruction.

(B) The space object will not carry a nuclear weapon or weapon of mass destruction.

(C) The space object will not be operated or used for testing of any weapon on a celestial body.

(D) All information in the application and supporting documents is true, complete, and accurate.

(b) **REVIEW OF APPLICATION.**—

(1) **VERIFICATION OF INFORMATION AND ATTESTATIONS.**—Not later than 90 days after receipt of an application under this section, the Secretary shall verify that—

(A) the application is complete, including any required supporting documents;

(B) the application does not contain any clear indication of fraud or falsification; and

(C) the application contains each attestation required under subsection (a)(3).

(2) DETERMINATION.—Not later than 90 days after receipt of an application under this section—

(A) if the Secretary verifies that the applicant has met the application requirements described in paragraph (1), the Secretary shall approve the application and issue a certification to the applicant with or without conditions on the proposed operation of the space object pursuant to subsection (c)(1)(A); or

(B) if the Secretary cannot verify that the applicant has met the application requirements described in paragraph (1) or if the Secretary determines it is necessary to deny the application pursuant to subsection (c)(1)(B), the Secretary—

(i) shall issue a denial of the application signed by the Secretary (a duty that may not be delegated, including to the Office of Space Commerce); and

(ii) shall, not later than 10 days after the decision to deny the certification—

(I) provide the applicant with a written notification containing a clearly articulated rationale for the denial that provides, to the maximum extent practicable, guidance to the applicant as to how such rationale for denial could be addressed in a subsequent application; and

(II) notify the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology of the House of Representatives of such rationale.

(3) AUTOMATIC APPROVAL.—If the Secretary has not approved or denied the application before the deadline under paragraph (2), the certification shall be approved without condition. The Secretary may not allow tolling of the 90-day period under such paragraph.

(4) IMPROPER BASIS FOR DENIAL.—The Secretary may not deny an application for a certification under this section in order to protect an existing certification holder from competition.

(5) SUBSEQUENT REVIEW.—The Secretary may not prejudice a new application for the proposed operations denied pursuant to paragraph (2)(B) if such new application contains remedies addressing the rationale for such denial.

(c) COMPLIANCE WITH THE OUTER SPACE TREATY.—

(1) IN GENERAL.—If the Secretary determines, with clear and convincing evidence, that the proposed operation of a space object under an application for a certification under this chapter is a violation of an international obligation of the United States pertaining to a nongovernmental entity of the United States under the Outer Space Treaty—

(A) the Secretary may condition the proposed operation covered by the certification only to the extent necessary to prevent a violation of such international obligation; or

(B) if the Secretary determines that there is no practicable way to condition such certification to prevent such a violation, the Secretary may deny the application.

(2) *LIMITATION FOR DETERMINATIONS.*—A determination under paragraph (1) shall be limited as follows:

(A) The Federal Government shall interpret and fulfill its international obligations under the Outer Space Treaty in a manner that minimizes regulations and limitations on the freedom of United States nongovernmental entities to explore and use space.

(B) The Federal Government shall interpret and fulfill its international obligations under the Outer Space Treaty in a manner that promotes free enterprise in outer space.

(C) The Federal Government shall not presume all obligations of the United States under the Outer Space Treaty are obligations to be imputed upon United States nongovernmental entities.

(D) Guidelines promulgated by the Committee on Space Research may not be considered international obligations of the United States.

(3) *PRESUMPTIONS.*—In making a determination under paragraph (1), the Secretary shall presume, absent clear and convincing evidence to the contrary, that—

(A) any attestation made by an applicant pursuant to subsection (a)(3) is sufficient to meet the international obligations of the United States pertaining to nongovernmental entities of the United States under the Outer Space Treaty addressed by such attestation; and

(B) reasonably commercially available efforts are sufficient to be in conformity with the international obligations of the United States pertaining to nongovernmental entities of the United States under the Outer Space Treaty.

(4) *PROHIBITION ON RETROACTIVE CONDITIONS.*—No other modifications may be made, or additional conditions placed, on a certification after the date on which the certification is issued (except to account for a material change as provided in section 80105(c) or the removal of a condition pursuant to subsection (d)).

(5) *NONDELEGABLE.*—The responsibilities of the Secretary under this subsection may not be delegated, including to the Office of Space Commerce.

(d) *AUTHORITY TO REMOVE CONDITIONS.*—The Secretary, as determined appropriate, may remove a condition placed on a certification pursuant to subsection (c).

#### **§ 80104. Mitigation of space debris**

(a) *PLAN SUBMISSION.*—To be eligible for a certification under this chapter, each application shall include a space debris mitigation plan for the space object. Such plan—

(1) shall take into account best practice guidelines promulgated by the United States and the Interagency Debris Coordinating Committee; and

(2) may take into account that a space object may end certified operations and be stored in a safe manner until such time as the space object is permanently disposed of or certified for further operations.

(b) **IMPLEMENTATION.**—To the maximum extent practicable, a holder of a certification under this chapter shall notify the Secretary not later than 30 days before beginning to implement the disposal phase of a space debris mitigation plan described in subsection (a). Such certification holder shall, not later than 30 days after completing implementation of such phase, update the Secretary of the results of any space debris mitigation efforts.

#### **§ 80105. Continuing certification requirements**

(a) **NOTIFICATION REQUIREMENT.**—A certification holder shall, in a timely manner, notify the Secretary if—

(1) a certified space object has terminated operations; or

(2) a catastrophic event has occurred to a certified space object, such as the unplanned destruction of a space object.

(b) **MATERIAL CHANGE.**—The Secretary shall require certification holders to inform the Secretary of—

(1) any material changes to the space object or the planned operations of the space object prior to launch; and

(2) any material anomalies or departures from the planned operations during the course of operations.

(c) **UPDATE TO CERTIFICATION.**—Not later than 14 days after the date of receipt of information regarding a material change pursuant to subsection (b), the Secretary shall make a determination of whether such material change is substantial enough to warrant additional review under section 80103(b). Not later than 90 days after a determination that such review is warranted, the Secretary shall complete a similar such review process for such material change as is required for a certification applicant under such section.

#### **§ 80106. Certification transfer**

(a) **IN GENERAL.**—Subject to subsections (b) and (c), the Secretary shall provide for the transfer of a certification under this chapter from the certification holder to another United States entity to continue the operations allowed under such certification.

(b) **TRANSFER REQUEST REQUIREMENTS.**—To be eligible for a transfer under subsection (a), the certification holder shall submit to the Secretary a request that includes—

(1) any identifying information regarding the proposed transferee, including accompanying supporting documents, that would be required under an initial application under section 80103; and

(2) each attestation required under section 80103(a)(3), including accompanying supporting documents, completed by the proposed transferee.

(c) **DETERMINATION.**—Not later than 90 days after a certification holder submits a request under subsection (b), the Secretary shall complete a similar review process for the request for transfer as required for a certification applicant under section 80103(b).

**§ 80107. Certification expiration and termination**

(a) *CERTIFICATION EXPIRATION.*—A certification issued under this chapter shall expire on the earlier of—

(1) the date on which all operations approved under such certification cease, including carrying out a space debris mitigation plan of any space object approved under such certification;

(2) the date on which all space objects approved under the certification no longer exist; or

(3) the date that is 5 years after the date on which the certification was approved, if no operations approved under the certification have commenced by such date.

(b) *CERTIFICATION TERMINATION.*—

(1) *IN GENERAL.*—The Secretary shall terminate a certification under this chapter if an applicant or certification holder is convicted of a violation of section 1001 of title 18 related to the certification process under this chapter.

(2) *ELIGIBILITY.*—A certification holder whose certification is terminated under this subsection shall be ineligible to apply for or receive a certification under this chapter.

(3) *SPACE DEBRIS MITIGATION PLAN.*—Upon termination of a certification under paragraph (1), the Secretary may require the certification holder to carry out the space debris mitigation plan submitted by the certification holder under section 80104.

**§ 80108. Existing license or pending application for launch or reentry**

(a) *CONTINUATION OF EXISTING LICENSE.*—Any United States entity for whom a payload has been approved (and not subject to an exemption under section 80110) on or before the effective date of this section for launch or reentry under section 50904 as part of a license issued under chapter 509 may—

(1) elect to be immediately considered certified for operation under this chapter on such effective date, in which case all terms and conditions applicable to the payload as approved for launch or reentry as part of a license issued under chapter 509 shall apply for the duration of the operation of the payload; or

(2) apply for a certification under this chapter for the operation of the licensed activities and may continue to operate pursuant to such license until such time as such certification is issued.

(b) *RESCINDING OR TRANSFER OF PENDING LICENSE.*—A payload of a United States entity that, on the effective date of this section, is pending approval under section 50904 as part of a launch or reentry license issued under chapter 509 may be, at the election of the applicant for payload approval—

(1) rescinded without prejudice; or

(2) transferred to the Office of Space Commerce and deemed to be a pending application for certification under this chapter.

(c) *EFFECTIVE DATE.*—This section shall take effect on the date that is 1 year after the date of enactment of the American Space Commerce Free Enterprise Act of 2017.

**§ 80109. Private Space Activity Advisory Committee**

(a) *ESTABLISHMENT.*—The Secretary shall establish a Private Space Activity Advisory Committee (in this section referred to as the

“Committee”) consisting of 15 members who shall be appointed by the Secretary.

(b) CHAIR.—The Committee shall designate one member as the chair of the Committee.

(c) MEMBERSHIP.—

(1) LIMITATION.—Members of the Committee may not be Federal Government employees or officials.

(2) TRAVEL EXPENSES.—Members of the Committee shall receive travel expenses, including per diem in lieu of subsistence, in accordance with the applicable provisions under subchapter I of chapter 57 of title 5.

(3) QUALIFICATIONS.—Members of the Committee shall include a variety of space policy, engineering, technical, science, legal, and finance professionals. Not less than 3 members shall have significant experience working in the commercial space industry.

(d) TERMS.—Each member of the Committee shall serve for a term of 4 years and may not serve as a member for the 2-year period following the date of completion of each such term.

(e) DUTIES.—The duties of the Committee shall be to—

(1) analyze the status and recent developments of nongovernmental space activities;

(2) analyze the effectiveness and efficiency of the implementation of the certification process under this chapter;

(3) provide recommendations to the Secretary and Congress on how the United States can facilitate and promote a robust and innovative private sector that is investing in, developing, and operating space objects;

(4) identify any challenges the United States private sector is experiencing—

(A) with the authorization and supervision of the operation of space objects under this chapter;

(B) more generally, with international obligations of the United States relevant to private sector activities in outer space;

(C) with harmful interference to private sector activities in outer space; and

(D) with access to adequate, predictable, and reliable radio frequency spectrum;

(5) review existing best practices for United States entities to avoid the harmful contamination of the Moon and other celestial bodies;

(6) review existing best practices for United States entities to avoid adverse changes in the environment of the Earth resulting from the introduction of extraterrestrial matter;

(7) provide information, advice, and recommendations on matters relating to United States private sector activities in outer space; and

(8) provide information, advice, and recommendations on matters related to the authority of the Secretary under this chapter or to private sector space activities authorized pursuant to this chapter that the Committee determines necessary.

(f) ANNUAL REPORT.—The Committee shall submit to Congress, the President, and the Secretary an annual report that includes the

information, analysis, findings, and recommendations described in subsection (e).

(g) *SUNSET.*—The Committee shall terminate on the date that is 10 years after the date on which the Committee is established.

#### **§ 80110. Exemptions**

(a) *IN GENERAL.*—A certification is not required under this chapter for any of the following operations:

(1) Space object activities authorized by another country that is a party to the Outer Space Treaty.

(2) Launch or reentry vehicle operations licensed by the Department of Transportation under chapter 509.

(3) Space stations licensed by the Federal Communications Commission under the Communications Act of 1934 (47 U.S.C. 151 et seq.).

(b) *RULE OF CONSTRUCTION.*—Nothing in this section shall be construed to exempt any entity from the requirement to obtain a permit to operate a space-based remote sensing system under chapter 802.

#### **§ 80111. Protecting the interests of United States entity space objects**

The President shall—

(1) protect the interests of United States entity exploration and use of outer space, including commercial activity and the exploitation of space resources, from acts of foreign aggression and foreign harmful interference;

(2) protect ownership rights of United States entity space objects and obtained space resources; and

(3) ensure that United States entities operating in outer space are given due regard.

### **CHAPTER 802—PERMITTING OF SPACE-BASED REMOTE SENSING SYSTEMS**

Sec.

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#### **§ 80201. Permitting authority**

(a) *IN GENERAL.*—Not later than 1 year after the date of enactment of the American Space Commerce Free Enterprise Act of 2017, the Secretary is authorized to permit persons to operate space-based remote sensing systems.

(b) *CONSULTATION.*—The Secretary shall, as the Secretary considers necessary, consult with the heads of other relevant agencies in carrying out the requirements of this chapter, pursuant to section 80311.

(c) *LIMITATION WITH RESPECT TO SYSTEM USED FOR OTHER PURPOSES.*—In the case of a space object that is used for remote sensing

and other purposes, the authority of the Secretary under this chapter shall be limited to the remote sensing operations of such space object.

(d) *DE MINIMIS EXCEPTION.*—

(1) *WAIVER.*—The Secretary may waive the requirement for a permit for a space-based remote sensing system that the Secretary determines is—

(A) ancillary to the primary design purpose of the space object; or

(B) too trivial to require a determination under section 80202(c) relating to national security.

(2) *GUIDANCE.*—Not later than 1 year after the date of enactment of this subsection, the Secretary shall issue guidance providing a clear explanation of the criteria used by the Secretary to grant a de minimis waiver under paragraph (1)(B) for a space-based remote sensing system that is too trivial to require a determination under section 80202(c).

(e) *COVERAGE OF PERMIT.*—The Secretary shall, to the maximum extent practicable, ensure that only one permit is required under this chapter to—

(1) conduct multiple operations carried out using a space-based remote sensing system;

(2) operate multiple space-based remote sensing systems that carry out substantially similar operations; or

(3) use multiple space-based remote sensing systems to carry out a single remote sensing operation.

(f) *PROHIBITION ON OPERATION.*—Not later than 1 year after the date of enactment of the American Space Commerce Free Enterprise Act of 2017, no person may, directly or through any subsidiary or affiliate, operate any space-based remote sensing system without a permit issued under this chapter.

(g) *RESPONSIBLE PARTY.*—In any case in which the applicant for a permit under this chapter is not a United States entity, the applicant shall identify a United States entity that consents to be responsible for the permitted operation of the space-based remote sensing system.

(h) *OPERATION OF SPACE-BASED REMOTE SENSING SYSTEM.*—For purposes of this chapter, the operation of a space-based remote sensing system—

(1) begins when the system—

(A) is located in outer space; and

(B) can meet the minimum threshold and objective capabilities for the system's stated need; and

(2) shall not cover the acts of distribution, sale, or transfer of data, information, or services to persons, foreign or domestic, including any such acts taken pursuant to an agreement with such persons.

## **§ 80202. Application for permit**

(a) *APPLICATION PROCESS.*—

(1) *IN GENERAL.*—To receive a permit to operate a space-based remote sensing system under this chapter, a person shall submit an application to the Secretary as provided in paragraph (2). Such application shall include, for each required item, sufficient evidence to demonstrate each fact or assertion.

(2) *CONTENTS.*—An application described in paragraph (1) shall include only the following information, with respect to each space-based remote sensing system and the operations proposed to be permitted:

(A) The name, address, and contact information of one or more United States entity identified by the applicant, pursuant to section 80201(g), as responsible for the operation of the space-based remote sensing system.

(B) If available at the time of submission of the application, the planned date and location of the launch of the applicable space object, including the identity of the launch provider.

(C) The general physical form and composition of the space-based remote sensing system.

(D) A description of the proposed operations of the space-based remote sensing system that includes—

(i) when and where the space-based remote sensing system will operate;

(ii) when and where the operation of the space-based remote sensing system will terminate; and

(iii) any additional information necessary to make a determination under subsection (c) regarding a significant threat to national security, as prescribed in advance in regulation by the Secretary.

(E) A description of how the space-based remote sensing system will be operated and disposed of in a manner to mitigate the generation of space debris.

(F) Information about third-party liability insurance obtained, if any, by the applicant for operations of the space-based remote sensing system, including the amount and coverage of such liability insurance.

(b) *REVIEW OF APPLICATION.*—

(1) *VERIFICATIONS.*—Not later than 90 days after receipt of an application under this section, the Secretary shall verify that—

(A) the application is complete pursuant to subsection (a); and

(B) the application does not contain any clear indication of fraud or falsification.

(2) *DETERMINATION.*—Not later than 90 days after receipt of an application under this section—

(A) if the Secretary verifies that the applicant has met the application requirements described in paragraph (1), the Secretary shall approve the application and issue a permit to the applicant with or without conditions on the proposed operation of the space-based remote sensing system pursuant to subsection (c)(1)(A); or

(B) if the Secretary cannot verify that the applicant has met the application requirements described in paragraph (1) or if the Secretary makes a determination to deny the application under subsection (c)(1)(B), the Secretary—

(i) shall issue a denial of the application signed by the Secretary (a duty that may not be delegated, including to the Office of Space Commerce); and

(ii) shall, not later than 10 days after the decision to deny the application—

(I) provide the applicant with a written notification containing a clearly articulated rationale for the denial that, to the maximum extent practicable—

(aa) provides guidance to the applicant as to how the articulated rationale for denial could be addressed in a subsequent application; and

(bb) includes all classified information included in such rationale for which the applicant has the required security clearance; and

(II) submit a notification of the denial to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology of the House of Representatives that—

(aa) contains the clearly articulated rationale for the denial; and

(bb) in the case of a denial pursuant to a national security determination under subsection (c)—

(AA) includes an explanation of how, and clear and convincing evidence that, to the maximum extent practicable, the Federal Government took steps to mitigate a significant threat to the national security of the United States posed by the operation of the applicant's space-based remote sensing system by changing Federal Government activities and operations; and

(BB) may contain classified information.

(3) **AUTOMATIC APPROVAL.**—If the Secretary has not approved or denied the application before the deadline under paragraph (2), the application shall be approved without condition. The Secretary may not allow tolling of the 90-day period under such paragraph.

(4) **IMPROPER BASIS FOR DENIAL.**—The Secretary may not deny an application for a permit under this section in order to protect an existing permit holder from competition.

(5) **SUBSEQUENT REVIEW.**—The Secretary may not prejudice a new application for the proposed operations denied pursuant to paragraph (2)(B) if such new application contains remedies addressing the rationale for such denial.

(c) **ADDRESSING NATIONAL SECURITY THREAT.**—

(1) **IN GENERAL.**—If the Secretary determines, with clear and convincing evidence, that the proposed operation of a space-based remote sensing system under an application for a permit under this chapter poses a significant threat to the national security of the United States as provided in paragraph (2)—

(A) the Secretary may condition the proposed operation covered by the permit only to the extent necessary to address such threat; or

(B) if the Secretary determines that there is no practicable way to condition such permit to address such threat, the Secretary may deny the application.

(2) *SIGNIFICANT THREAT TO NATIONAL SECURITY.*—For purposes of a determination under paragraph (1), a significant threat to the national security of the United States is a threat—

(A) that is imminent; and

(B) that cannot practicably be mitigated through changes to Federal Government activities or operations.

(3) *REASONABLY COMMERCIALY AVAILABLE EFFORTS.*—To the maximum extent practicable, the Secretary shall only place a condition on a permit that is achievable using reasonably commercially available efforts.

(4) *NOTIFICATION.*—Not later than 10 days after the decision to condition the proposed operation covered by a permit pursuant to this subsection, the Secretary shall—

(A) provide the applicant with a written notification containing a clearly articulated rationale for the condition that, to the maximum extent practicable—

(i) provides guidance to the applicant as to how the articulated rationale for condition could be addressed in a subsequent application; and

(ii) includes all classified information included in such rationale for which the applicant has the required security clearance; and

(B) submit a notification of the condition to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology of the House of Representatives that—

(i) contains the clearly articulated rationale for the condition;

(ii) includes an explanation of how, and clear and convincing evidence that, to the maximum extent practicable, the Federal Government took steps to mitigate a significant threat to the national security of the United States posed by the operation of the applicant's space-based remote sensing system by changing Federal Government activities and operations; and

(iii) may contain classified information.

(5) *PROHIBITION ON RETROACTIVE CONDITIONS.*—No other modifications may be made, or additional conditions placed, on a permit after the date on which the permit is issued except to account for a material change as provided in section 80203(c).

(6) *NONDELEGABLE.*—The responsibilities of the Secretary under this subsection may not be delegated, including to the Office of Space Commerce.

(d) *LIMITATIONS ON CONDITIONS.*—

(1) *SAME OR SIMILAR CAPABILITY.*—No operational condition under subsection (c) may be placed on a space-based remote sensing system that has the same or substantially similar space-based remote sensing capabilities as another system permitted under this chapter with no such condition.

(2) *CONDITIONS THAT EXCEED PERMITTED CONDITIONS.*—The Secretary may not place a condition on a permit for a space-based remote sensing system that exceeds a condition placed on an existing permitted system that has the same or substantially similar capabilities.

(e) *COMMERCIALY AVAILABLE CAPABILITY.*—

(1) *EXCEPTION.*—The Secretary may not deny an application for, or place a condition on, a permit for the operation of a space-based remote sensing system for which the same or substantially similar capabilities, derived data, products, or services are already commercially available or reasonably expected to be made available in the next 3 years in the international or domestic marketplace. The exception in the previous sentence applies regardless of whether the marketplace products and services originate from the operation of aircraft, unmanned aircraft, or other platforms or technical means or are assimilated from a variety of data sources.

(2) *CLEAR AND CONVINCING EVIDENCE.*—Each denial of an application for, and each condition placed on, a permit for the operation of a space-based remote sensing system, shall include an explanation of, and clear and convincing evidence that, the exception under paragraph (1) does not apply with respect to the proposed permitted operations of such system.

(3) *DATABASE.*—The President shall—

(A) maintain a database of commercially available capabilities described in paragraph (1);

(B) update such database not less than once every 3 months; and

(C) submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology of the House of Representatives a report containing the contents of the database upon each update required under subparagraph (B).

(4) *APPLICANT SUBMISSIONS.*—An applicant for, or holder of, a permit for the operation of a space-based remote sensing system may submit to the Secretary evidence of, or information regarding, a commercially available capability described in paragraph (1) for consideration for inclusion in the database.

(5) *NONAPPLICATION OF CONDITION.*—In any case in which the Secretary determines that the exception under paragraph (1) applies with respect to a permit for the operation of a space-based remote sensing system for which the Secretary has placed a condition under subsection (c), such condition shall no longer apply with respect to such permitted operations.

(f) *AUTHORITY TO REMOVE CONDITIONS.*—Nothing in this section shall be construed to prohibit the Secretary from removing a condition placed on a permit pursuant to subsection (c).

### **§ 80203. Continuing permitting requirements**

(a) *NOTIFICATION REQUIREMENT.*—A permit holder shall, in a timely manner, notify the Secretary if—

(1) a permitted space-based remote sensing system has terminated operations; or

(2) a catastrophic event has occurred to a space-based remote sensing system, such as the unplanned destruction of such system.

(b) *MATERIAL CHANGE.*—The Secretary shall require permit holders to inform the Secretary of—

(1) any material changes to the space-based remote sensing system or the planned operations of such system prior to launch; and

(2) any material anomalies or departures from the planned operations during the course of operations.

(c) *UPDATE TO PERMIT.*—Not later than 14 days after the date of receipt of information regarding a material change pursuant to subsection (b), the Secretary shall make a determination of whether such material change is substantial enough to warrant additional review under section 80202(b). Not later than 90 days after a determination that such review is warranted, the Secretary shall complete a similar such review process for such material change as is required for a permit applicant under such section.

#### **§ 80204. Permit transfer**

(a) *IN GENERAL.*—Subject to subsections (b) and (c), the Secretary shall provide for the transfer of a permit under this chapter from the permit holder to another person to continue the operations allowed under such permit.

(b) *TRANSFER REQUEST REQUIREMENTS.*—To be eligible for a transfer under subsection (a), the permit holder shall submit to the Secretary a request that includes any identifying information regarding the transferee that would be required under an initial application under section 80202.

(c) *DETERMINATION.*—Not later than 14 days after the date on which the Secretary receives a transfer request pursuant to subsection (b), the Secretary shall make a determination of whether such material change is substantial enough to warrant additional review under section 80202(b). Not later than 90 days after a determination that such review is warranted, the Secretary shall complete a similar such review process for such transferee as is required for a permit applicant under such section.

(d) *MATERIAL CHANGE.*—Any transfer of a permit under this chapter constitutes a material change under section 80203(b).

#### **§ 80205. Agency activities**

(a) *UTILIZATION OF FEDERAL GOVERNMENT VEHICLE.*—A person may apply for a permit to operate a space-based remote sensing system that utilizes, on a space-available basis, a civilian Federal Government satellite or vehicle as a platform for such system. The Secretary, pursuant to this chapter, may permit such system if it meets all conditions of this chapter.

(b) *ASSISTANCE.*—The Secretary may offer assistance to persons in finding appropriate opportunities for the utilization described in subsection (a).

(c) *AGREEMENTS.*—To the extent provided in advance by appropriation Acts, an agency may enter into an agreement for the utilization described in subsection (a) if such agreement is consistent with the agency's mission and statutory authority, and if the space-based remote sensing system is issued a permit by the Secretary under this chapter before commencing operation.

#### **§ 80206. Annual reports**

(a) *IN GENERAL.*—The Secretary shall submit a report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology of the House of Representatives not later than 180 days after the date of enactment

of the American Space Commerce Free Enterprise Act of 2017, and annually thereafter, on—

(1) the Secretary's implementation of this chapter, including—

(A) a list of all applications received in the previous calendar year;

(B) a list of all applications that resulted in a permit;

(C) a list of all applications denied and an explanation of why each application was denied, including any information relevant to the adjudication process of a request for a permit;

(D) a list of all applications that required additional information; and

(E) a list of all applications whose disposition exceeded the 90-day deadline, the total days overdue for each application that exceeded such deadline, and an explanation for the delay; and

(2) a description of all actions taken by the Secretary under the administrative authority granted by section 80301.

(b) **CLASSIFIED ANNEXES.**—Each report under subsection (a) may include classified annexes as necessary to protect the disclosure of sensitive or classified information.

#### **§ 80207. Advisory Committee on Commercial Remote Sensing**

(a) **ESTABLISHMENT.**—The Secretary shall establish an Advisory Committee on Commercial Remote Sensing (in this section referred to as the “Committee”) consisting of 15 members who shall be appointed by the Secretary.

(b) **CHAIR.**—The Committee shall designate one member as the chair of the Committee.

(c) **MEMBERSHIP.**—

(1) **LIMITATION.**—Members of the Committee may not be Federal Government employees or officials.

(2) **TRAVEL EXPENSES.**—Members of the Committee shall receive travel expenses, including per diem in lieu of subsistence, in accordance with the applicable provisions under subchapter I of chapter 57 of title 5.

(d) **TERMS.**—Each member of the Committee shall serve for a term of 4 years and may not serve as a member for the 2-year period following the date of completion of each such term.

(e) **DUTIES.**—The duties of the Committee shall be to—

(1) provide information, advice, and recommendations on matters relating to the United States commercial space-based remote sensing industry;

(2) analyze the effectiveness and efficiency of the implementation of the space-based remote sensing system permitting process under this chapter;

(3) provide recommendations to the Secretary and Congress on how the United States can facilitate and promote a robust and innovate private sector that is investing in, developing, and operating space-based remote sensing systems;

(4) identify any challenges the United States private sector is experiencing with the authorization and supervision of the operation of space-based remote sensing systems under this chapter; and

(5) provide information, advice, and recommendations on matters related to the authority of the Secretary under this chapter or to private sector space activities authorized pursuant to this chapter that the Committee determines necessary.

(f) **ANNUAL REPORT.**—The Committee shall submit to Congress, the President, the Secretary, and the Director of the Office of Space Commerce, an annual report that includes the information, analysis, findings, and recommendations described in subsection (e).

(g) **SUNSET.**—The Committee shall terminate on the date that is 10 years after the date on which the Committee is established.

**§ 80208. Continuation of existing license or pending application**

(a) **CONTINUATION OF EXISTING LICENSE.**—Any United States entity for whom a license for the operation of a space-based remote sensing system issued under subchapter III of chapter 601 that is valid on the effective date of this section may—

(1) elect to be immediately considered permitted for operation under this chapter, in which case all terms and conditions of a license issued under such subchapter with respect to the operation of such system shall apply for the duration of the license; or

(2) apply for a permit for operation under this chapter and may continue to operate pursuant to such license until such time as such permit is issued.

(b) **RESCIND OR TRANSFER OF PENDING LICENSE.**—An applicant with an application for a remote sensing license under subchapter III of chapter 601 that is pending on the effective date of this section may be, at the election of the applicant—

(1) rescinded without prejudice; or

(2) transferred to the Office of Space Commerce and deemed to be a pending application for a permit under this chapter.

(c) **EFFECTIVE DATE.**—This section shall take effect on the date that is 1 year after the date of enactment of the American Space Commerce Free Enterprise Act of 2017.

**§ 80209. Commercial Remote Sensing Regulatory Affairs Office**

On the date that is 1 year after the date of enactment of the American Space Commerce Free Enterprise Act of 2017, the Commercial Remote Sensing Regulatory Affairs Office of the National Oceanic and Atmospheric Administration is abolished.

**CHAPTER 803—ADMINISTRATIVE PROVISIONS RELATED TO CERTIFICATION AND PERMITTING**

Sec.

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**§ 80301. Administrative authority**

(a) *FUNCTIONS.*—In order to carry out the responsibilities specified in this subtitle, the Secretary may—

(1) seek an order of injunction or similar judicial determination from a district court of the United States with personal jurisdiction over the certification or permit holder to terminate certifications or permits under this subtitle and to terminate certified or permitted operations on an immediate basis, if the Secretary determines that the certification or permit holder has substantially failed to comply with any provisions of this subtitle, or with any terms of a certification or permit;

(2) provide for civil penalties not to exceed \$10,000 (each day of operation constituting a separate violation) and not to exceed \$500,000 in total, for—

(A) noncompliance with the certification or permitting requirements or regulations issued under this subtitle; or

(B) the operation of a space object or space-based remote sensing system without the applicable certification or permit issued under this subtitle;

(3) compromise, modify, or remit any such civil penalty;

(4) seize any object, record, or report, or copies of materials, documents, or records, pursuant to a warrant from a magistrate based on a showing of probable cause to believe that such object, record, or report was used, is being used, or is likely to be used in violation of this subtitle or the requirements of a certification or permit or regulation issued thereunder; and

(5) make investigations and inquiries concerning any matter relating to the enforcement of this subtitle.

(b) *REVIEW OF AGENCY ACTION.*—Any holder of, or applicant for, a certification or a permit who makes a timely request for review of an adverse action pursuant to paragraph (2) or (4) of subsection (a) shall be entitled to adjudication by the Secretary on the record after an opportunity for any agency hearing with respect to such adverse action. Any final action by the Secretary under this subsection shall be subject to judicial review under chapter 7 of title 5, as provided in section 80303 of this chapter.

(c) *NO COST FOR CERTIFICATION OR PERMIT.*—The Secretary may not impose a fee or other cost on a holder of, or applicant for—

(1) a certification under chapter 801; or

(2) a permit under chapter 802.

(d) *NO AUTHORITY TO SET CONDITIONS.*—The Secretary may not impose a substantive condition on, or any other requirement for, the issuance of a certification or permit except as specifically provided in this subtitle.

(e) *FOIA EXEMPTION.*—Paragraph (3) of section 552(b) of title 5 shall apply with respect to any filing relating to a certification or a permit under this subtitle.

(f) *LIMITATION ON EXCEPTIONS TO ADMINISTRATIVE PROCEDURES.*—The exceptions under section 553(a)(1), section 553(b)(B), or section 554(a)(4) of title 5 shall not apply with respect to a certification or permit under this subtitle.

**§ 80302. Consultation**

(a) *SENSE OF CONGRESS.*—It is the sense of the Congress that—

(1) the United States Government has assets in Earth orbit critical to national security, scientific research, economic growth, and exploration;

(2) such assets represent a considerable investment of United States taxpayers; and

(3) it is in the national interest of the United States to facilitate opportunities to provide for the protection of such assets.

(b) *REVIEW.*—Not later than 30 days after the Secretary issues a certification under chapter 801, the Secretary shall review the operations of any space objects covered by the certification to determine whether the interaction between such operations and the operations of a Federal Government space object present a substantial risk to the physical safety of a space object operated by either party.

(c) *REQUIREMENT TO PARTICIPATE IN CONSULTATION.*—If the Secretary makes a determination that a substantial risk identified under subsection (b) exists, the Secretary may require that the certification holder participate in a consultation under this section.

(d) *PARTIES TO A CONSULTATION.*—

(1) *IN GENERAL.*—A consultation under this section may be held, with respect to a substantial safety risk identified under subsection (b), between—

(A) a certification holder responsible for the certified space object operations; and

(B) any entity of the Federal Government operating a potentially affected space object.

(2) *PARTICIPATION.*—The Secretary may not impose any requirement on a party pursuant to participation in the consultation.

(e) *MITIGATION OF SAFETY RISK.*—In carrying out a consultation, the Secretary shall—

(1) facilitate a discussion among the parties to the consultation;

(2) encourage a mutual understanding of the safety risk; and

(3) encourage, to the maximum extent practicable, voluntary agreements between the parties to the consultation to improve the physical safety of affected space object operations or mitigate the physical safety risk.

(f) *DURATION OF CONSULTATION; NOTICE.*—Not later than 90 days after the Secretary requires a consultation under this section, the Secretary shall—

(1) complete all activities related to the consultation; and

(2) submit to Congress a written notification with respect to such consultation, that includes—

(A) the names of each party to the consultation;

(B) a description of the physical safety risk at issue;

(C) whether any voluntary agreement was made by the parties; and

(D) the content of any such agreement.

(g) *RULE OF CONSTRUCTION.*—Nothing in this section shall be construed to grant any additional authority to the Secretary to regulate, or place conditions on, any activity for which a certification or permit is required under this subtitle.

**§ 80303. Appeal of denial or condition of certification or permit**

*An applicant who is denied a certification under section 80103(b)(2)(B), an applicant who is denied a permit under section 80202(b)(2)(B), or an applicant whose certification or permit is conditioned pursuant to section 80103(c) or section 80202(c), respectively, may appeal the denial or placement of a condition to the Secretary. The Secretary shall affirm or reverse the denial or placement of a condition after providing the applicant notice and an opportunity to be heard. The Secretary shall dispose of the appeal not later than 60 days after the appeal is submitted. If the Secretary denies the appeal, the applicant may seek review in the United States Court of Appeals for the District of Columbia Circuit or in the court of appeals of the United States for the circuit in which the person resides or has its principal place of business.*

**§ 80304. Exclusive authority for determination of international obligations**

*Except for the Secretary as authorized by this subtitle, no agency may impose a requirement or make a finding with regard to an international obligation of the United States pertaining to a non-governmental entity of the United States under the Outer Space Treaty relating to—*

- (1) the operation of a space object certified under chapter 801; and*
- (2) the carrying out of a space debris mitigation plan of a space object for which a certification was issued under chapter 801.*

**§ 80305. Limitation on certain agency supervision**

*(a) IN GENERAL.—Not later than 1 year after the date of enactment of the American Space Commerce Free Enterprise Act of 2017, no other agency shall have the authority to authorize, place conditions on, or supervise the operation of space objects required to be certified under chapter 801 or space-based remote sensing systems required to be permitted under chapter 802 except—*

- (1) the Department of Transportation with respect to launch or reentry vehicle operations licensed under chapter 509; and*
- (2) the Federal Communications Commission with respect to space stations licensed under the Communications Act of 1934 (47 U.S.C. 151 et seq.).*

*(b) AGREEMENT LIMITATIONS.—Nothing in this section shall be construed to prevent an agency from including additional terms, conditions, limitations, or requirements, consistent with applicable provisions of law, beyond those required in this subtitle in a contract or other agreement with—*

- (1) the holder of a certification under chapter 801 for the operation of the applicable space object; or*
- (2) the holder of a permit under chapter 802 for the operation of the applicable space-based remote sensing system.*

**§ 80306. Commercial exploration and use of outer space**

*To the maximum extent practicable, the President, acting through appropriate Federal agencies, shall interpret and fulfill international obligations, including under the covered treaties on outer*

space, to minimize regulations and limitations on the freedom of United States nongovernmental entities to explore and use space.

**§ 80307. Rule of construction on concurrent application submission**

*Nothing in this subtitle shall be construed to prevent an applicant from submitting to the Secretary concurrent applications for a certification under chapter 801 and a permit under chapter 802. The Secretary shall provide for applications under chapter 801 and chapter 802 to be filed concurrently or at different times, at the discretion of the applicant. To the maximum extent practicable, the Secretary shall avoid duplication of information required in concurrently filed applications.*

**§ 80308. Federal jurisdiction**

*The district courts shall have original jurisdiction, exclusive of the courts of the States, of any civil action resulting from the operation of a space object for which a certification or permit is required under this subtitle.*

**§ 80309. Global commons**

*Notwithstanding any other provision of law, outer space shall not be considered a global commons.*

**§ 80310. Regulatory authority**

(a) *IN GENERAL.*—The Secretary shall issue such regulations as are necessary to carry out this subtitle.

(b) *REDUCING REGULATORY BURDEN.*—In issuing regulations to carry out this subtitle, the Secretary shall avoid, to the maximum extent practicable, the placement of inconsistent, duplicative, or otherwise burdensome requirements on the operations of United States nongovernmental entities in outer space.

**§ 80311. Consultation with relevant agencies**

(a) *IN GENERAL.*—Subject to subsection (b), the Secretary shall, as the Secretary considers necessary, consult with the heads of other relevant agencies in carrying out this subtitle.

(b) *EXCLUSIVE AUTHORITY OF THE SECRETARY.*—The consultation authority provided by subsection (a) shall not be interpreted to alter the exclusive authority of the Secretary to authorize, place conditions on, and supervise the operation of space objects under chapter 801 and space-based remote sensing systems under chapter 802, as provided in and subject to the limitations of section 80305.

**§ 80312. Authorization of appropriations**

*There are authorized to be appropriated \$5,000,000 to the Office of Space Commerce for fiscal year 2018 to carry out this subtitle.*