

Congress of the United States

House of Representatives

COMMITTEE ON SCIENCE, SPACE, AND TECHNOLOGY

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March 5, 2021

The Honorable Lloyd J. Austin III
Secretary of Defense
U.S. Department of Defense
1000 Defense Pentagon
Washington, D.C. 20301

Dear Secretary Austin:

The House Science, Space, and Technology Committee has been, and remains, significantly involved in the development of rules of behavior in space. The committee held numerous hearings, passed several laws, and considered numerous other legislative provisions related to norms of behavior in space (See attachment A). We write regarding reports that the Department of Defense may be considering actions that will have a significant impact on not only the future of U.S. government activities in space, but also the U.S. private space sector's ability to continue to prosper.

On February 24, 2021, SpaceNews published an article featuring an interview with Maj Gen DeAnna Burt, Commander, Combined Force Component Command, U.S. Space Command, and Deputy Commander, Space Operations Command, U.S. Space Force, about U.S. efforts to adopt rules of behavior in space.¹ The article states,

“Burt said a team of Defense and State Department officials is drafting language on the U.S. position on a resolution approved in December by the United Nations General Assembly which calls for ‘norms, rules and principles of responsible behaviors’ in space.” The article continued, “[t]he problem with previous UN resolutions is that they were non binding, said Burt. ‘We’re going to prepare what we believe will be proposal language that will go to the UN and hopefully result in a binding resolution,’ she said.”

On March 3, 2021, the Administration released its “Interim National Security Strategic Guidance,” which outlines a strategy to promote “...shared norms and forge new agreements on emerging technologies, space, cyberspace, health and biological threats, climate and the environment, and human rights.”² Recommendations presented to the United Nations related to

¹ Erwin, Sandra, “U.S. to support international effort to set rules of behavior in space,” SpaceNews, February 24, 2021. Accessed at <https://spacenews.com/u-s-to-support-international-effort-to-set-rules-of-behavior-in-space/>

² <https://www.whitehouse.gov/wp-content/uploads/2021/03/NSC-1v2.pdf>

norms of behavior in space could implicate Congress's Article 1 responsibilities. Without coordination with the Congress and specifically the House Committee on Science, Space, and Technology, any proposal offered to the United Nations could create confusion, complicate the enactment of statutes implementing such proposals, and conflict with existing statutes, policies, and constitutional rights. Failure to keep Congress informed could also be viewed as an attempt to limit private sector activities and undermine the rights of U.S. citizens by using treaties to circumvent Congress's Article 1 prerogatives.

The House Science, Space, and Technology Committee was created following the Soviet launch of the Sputnik spacecraft in 1958. Since its inception, the Committee has maintained jurisdiction over not only the National Aeronautics and Space Administration, but also "[o]uter space, including exploration and **control thereof**" (emphasis added).³ The Committee has tasked the Space and Aeronautics Subcommittee with,

"All matters relating to astronautical and aeronautical research and development; **national space policy**, including access to space; suborbital access and applications; National Aeronautics and Space Administration and its contractor and government-operated labs; **space commercialization**, including commercial space activities relating to the Department of Transportation and the Department of Commerce; exploration and **use of outer space**; **international space cooperation**; **the National Space Council**; **space applications**, space communications and related matters; Earth remote sensing policy; civil aviation research, development, and demonstration; research, development, and demonstration programs of the Federal Aviation Administration; **space law**; other appropriate matters as referred by the Chair; and relevant oversight" (emphasis added).

In order to help the Committee understand the proposals being considered for submission to the United Nations for adoption, please provide the U.S. government's current proposed language for submission to the United Nations, including any and all drafts and all documents and communications (as defined by attachment B) referring or related to its development, as well as any future drafts leading up to its formal presentation to the United Nations.

Please provide two copies of all documents (one for the Majority and one for the Minority) by March 12, 2021. If any documents are created after this date and related to this request, please coordinate with Committee staff on prompt delivery. Please contact Mr. Tom Hammond of the committee minority staff with any questions related to this inquiry.

Sincerely,



Rep. Frank Lucas
Ranking Member



Rep. Brian Babin
Ranking Member
Space and Aeronautics

³ Rules of the House of Representatives, One Hundred Seventeenth Congress, February 2, 2021; Rule X(1)(p).

Subcommittee

CC: Rep. Eddie Bernice Johnson
Chair

Rep. Donald Beyer
Chair
Space and Aeronautics
Subcommittee

During the 113th, 114th, 115th, and 116th Congresses, the House Committee on Science, Space, and Technology held several hearings and considered numerous pieces of legislation related to norms of behavior in space.

On Wednesday, November 20, 2013, the Subcommittee on Space held a hearing titled, "Commercial Space," to examine ways in which companies are utilizing federal support and government policies to grow their commercial business in space launch, communications, GPS, remote sensing, weather monitoring, suborbital tourism, scientific research, and human spaceflight. The witnesses discussed policies contained in H.R. 3038, the "Suborbital and Orbital Advancement and Regulatory Streamlining Act," or "SOARS Act." The Subcommittee heard testimony from the Honorable Kevin McCarthy, Member and Majority Whip of the U.S. House of Representatives; Ms. Patricia Cooper, President of the Satellite Industry Association; Mr. Stuart Witt, Chief Executive Officer and General Manager of the Mojave Air and Space Port; and Mr. Dennis Tito, Chairman of the Inspiration Mars Foundation.

On Tuesday, February 4, 2014, the Subcommittee on Space held a hearing titled, "Necessary Updates to the Commercial Space Launch Act," to discuss the growth of the commercial space industry since the passage of the Commercial Space Launch Act (CSLA) of 1984. The CSLA provided authority to the Federal Aviation Administration (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 regulatory authority. The hearing examined the various changes in the industry and what, if any, accompanying changes to the CSLA may be needed going forward. The Subcommittee heard testimony from 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 Friday, May 9, 2014, the Subcommittee on Space held a hearing titled, "Space Traffic Management: How to Prevent a Real Life 'Gravity'," to explore the roles and responsibilities of the Department of Defense, FAA, and the Federal Communications Commission (FCC) in policing orbital debris, what authorities are currently granted by Congress to federal agencies, and how to coordinate these activities. The Subcommittee heard testimony from Lt. Gen. John "Jay" Raymond, Commander of the 14th Air Force of the Air Force Space Command, and Commander of the Joint Functional Component Command for Space of the U.S. Strategic Command; Mr. George Zamka, Deputy Associate Administrator of the Office of Commercial Space Transportation at the Federal Aviation Administration; Mr. Robert Nelson, Chief Engineer at the International Bureau of the Federal Communications Commission; Mr. P.J. Blount, Adjunct Professor of Air and Space Law at the University of Mississippi School of Law; and Mr. Brian Weeden, Technical Advisor at the Secure World Foundation.

On Wednesday, May 13, 2015, the Committee met to consider H.R. 2262, the "Spurring Private Aerospace Competitiveness and Entrepreneurship Act of 2015." H.R. 2262 facilitates a pro-growth environment for the developing commercial space industry by encouraging private sector investment and creating more stable and predictable regulatory conditions. Several reporting requirements were due under this Act regarding licensing of space vehicles. This Act became law on November 25, 2015 (P.L. 114-90).

On Tuesday, April 19, 2016, the Subcommittee on Space held a hearing titled, "The Commercial Space Launch Industry: Small Satellite Opportunities and Challenges," to examine the current state of the small satellite commercial launch industry. The hearing highlighted the contributions and impacts of the commercial space launch industry, as well as NASA's Launch Services Program for the acquisition and program management of expendable launch vehicle (ELV) missions. Service providers and small satellite launch vehicles, including the use of reusable vehicles, were also discussed. The Subcommittee heard testimony from Mr. Elliot Pulham, Chief Executive Officer of the Space Foundation; and Mr. Eric Stallmer, President of the Commercial Spaceflight Federation.

On Friday, September 16, 2016, the Committee received from the Department of Transportation the report due pursuant to Section 110 of H.R. 2262, the "U.S. Commercial Space Launch Competitiveness Act," on the feasibility of processing space situational awareness data and information. The report included findings on the expanded demand for SSA data, and the recommendation that a civil agency should process and release such data.

On Wednesday, March 8, 2017, the Subcommittee on Space held a hearing titled, "Regulating Space: Innovation, Liberty, and International Obligations," to examine U.S. international obligations in light of new and innovative space activities. The hearing reviewed the authorization and continued supervision of non-governmental activities in space per the Outer Space Treaty. The licensing of launch and re-entry vehicles and sites by the FAA was also discussed. The Subcommittee heard testimony from Ms. Laura Montgomery, Attorney and Sole Proprietor of Ground Based Space Matters, LLC; Dr. Eli Dourado, Senior Research Fellow and Director of the Technology Policy Program at the Mercatus Center at George Mason University; Mr. Doug Loverro, Former Deputy Assistant Secretary of Defense for Space Policy; Mr. Dennis J. Burnett, Adjunct Professor of Law at the University of Nebraska--Lincoln College of Law; and Dr. Henry B. Hogue, Specialist in American National Government at the Congressional Research Service.

On Thursday, June 8, 2017, the Committee met to consider H.R. 2809, the "American Space Commerce Free Enterprise Act of 2017." H.R. 2809 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 disruptive way possible. H.R. 2809 also improves the international competitiveness of the U.S. by reforming the burdensome and inefficient space-based remote sensing regulatory system.

On Monday, July 10, 2017, the Committee received from NASA the report due pursuant to Section 839(b)(1) of P.L. 115-10, the "NASA Transition Authorization Act of 2017," regarding the status of efforts to coordinate with foreign countries within the Inter-Agency Space Debris Coordination Committee (IADC) to mitigate the effects and growth of orbital debris. The report included existing orbital debris mitigation guidelines derived from the 2001 U.S. Government Orbital Debris Mitigation Standard Practices (ODMSP), as well as recent efforts by the Department of Defense to improve its SSA capabilities.

On Monday, August 14, 2017, the Committee received from the Office of Science and Technology Policy (OSTP) the report due pursuant to Section 839(b)(2) of P.L. 115-10, the "NASA Transition Authorization Act of 2017," regarding the status of an orbital debris mitigation strategy. The report included orbital debris mitigation efforts in the United States and the IADC, as well as NASA's recent efforts to coordinate with the IADC member agencies to mitigate the effects and growth of orbital debris.

On Friday, October 20, 2017, the Committee received from the Department of Transportation and NASA the report due pursuant to Section 113 of H.R. 2262, the "U.S. Commercial Space Launch Competitiveness Act," regarding the streamlining of commercial space launch activities. The report included a description of the process for the application and approval of a permit or license, current efforts to coordinate across executive agencies, and recommendations for legislation to improve efficiency in the licensing of space launch activities.

On Friday, June 22, 2018, the Subcommittee on Space of the Committee on Science, Space, and Technology with the Subcommittee on Strategic Forces of the Committee on Armed Services held a hearing titled, "Space Situational Awareness: Whole of Government Perspectives on Roles and Responsibilities." The hearing assessed and reviewed the roles and responsibilities of the particular departments and agencies that execute SSA missions, the growing role of civil and commercial actors as they impact future SSA missions, and the Administration's new Space Traffic Management Policy laid out in Space Policy Directive-3 (SPD-3). The Subcommittees heard testimony from the Honorable Wilbur Ross, Secretary of Commerce at the Department of Commerce; the Honorable Jim Bridenstine, Administrator of NASA; and General John Hyten, Commander of U.S. Strategic Command.

On Wednesday, June 27, 2018, the Committee met to consider H.R. 6226, the "American Space SAFE Management Act."

On Wednesday, March 13, 2019, the Committee received testimony on orbital debris, space traffic management, international obligations, and cooperation with China at a hearing titled, "America in Space: Future Visions, Current Issues."

On July 25, 2019, the Space and Aeronautics Subcommittee held a hearing titled "The Commercial Space Landscape: Innovation, Market, and Policy." The Committee received testimony from Dr. Bhavya Lal, Research Staff Member, IDA Science and Technology Policy Institute; Ms. Carissa Christensen, Chief Executive Officer, Bryce Space and Technology; Mr. Eric W. Stallmer, President, Commercial Spaceflight Federation; Mr. Mike French, Vice President, Space Systems, Aerospace Industries Association; Ms. Laura Montgomery, Proprietor, Ground Based Space Matters, Professor, Catholic University's Columbus School of Law

On February 11, 2020, the Space subcommittee held a hearing titled, "Space Situational Awareness: Key Issues in an Evolving Landscape." The Subcommittees heard testimony from Dr. Brian Weeden, Director of Program Planning, Secure World Foundation ; Mr. Daniel Oltrogge, AIAA Space Traffic Management Space Governance Task Force Chair, Founder and Administrator, Space Safety Coalition, Official International Standards Organization (ISO) representative to the United Nations Committee for the Peaceful Use of Outer Space (UNCOPUOS); Professor Joanne Gabrynowicz, Professor Emerita of Space Law, University of Mississippi Law Center; Professor Danielle Wood, Director of the Space Enabled Research Group, Assistant Professor of Media Arts & Sciences and Aeronautics & Astronautics, Massachusetts Institute of Technology; Dr. Ruth Stilwell, Adjunct Professor, Norwich University, Senior Non-Resident Scholar, Space Policy Institute, George Washington University.

Prior to these activities, the Committee drafted the first legislation related to outer space, the National Aeronautics and Space Act, informed the negotiations of the Outer Space Treaty, and spend over 50 years conducting oversight of space issues.

Responding to Committee Document Requests

1. In complying with this request, you are required to produce all responsive documents, in unredacted form, that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Requested records, documents, data or information should not be destroyed, modified, removed, transferred or otherwise made inaccessible to the Committees.
2. In the event that any entity, organization or individual denoted in this request has been, or is also known by any other name than that herein denoted, the request shall be read also to include that alternative identification.
3. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, or thumb drive) in lieu of paper productions.
4. Documents produced in electronic format should also be organized, identified, and indexed electronically.
5. Electronic document productions should be prepared according to the following standards:
 - (a) The production should consist of single page Tagged Image File ("TIF"), or PDF files.
 - (b) Document numbers in the load file should match document Bates numbers and TIF or PDF file names.
 - (c) If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, box or folder is produced, each CD, hard drive, memory stick, thumb drive, box or folder should contain an index describing its contents.
7. Documents produced in response to this request shall be produced together with copies of file labels, dividers or identifying markers with which they were associated when the request was served.
8. When you produce documents, you should identify the paragraph in the Committee's schedule to which the documents respond.
9. It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same documents.

10. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), you should consult with the Committee staff to determine the appropriate format in which to produce the information.
11. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production. Failure to provide an explanation constitutes a waiver of any objections to the subpoena (if one was issued).
12. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.
13. In complying with this request, be apprised that the U.S. House of Representatives and the Committee on Science, Space, and Technology do not recognize: any of the purported non-disclosure privileges associated with the common law including, but not limited to, the deliberative process privilege, the attorney-client privilege, and attorney work product protections; any purported privileges such as privileges over law-enforcement sensitive disclosures; or protections from disclosure under the Freedom of Information Act; or any purported contractual privileges, such as non-disclosure agreements.
14. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.
15. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you are required to produce all documents which would be responsive as if the date or other descriptive detail were correct.
16. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been located or discovered by the return date, shall be produced immediately upon subsequent location or discovery.
17. All documents shall be Bates-stamped sequentially and produced sequentially.
18. Two sets of documents shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee on Science, Space, and Technology, production sets shall be delivered to the Majority Staff in Room 2321 of the Rayburn House Office Building and the Minority Staff in Room 324 of the Ford House Office Building. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could

contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committees.

19. When representing a witness or entity before the Committee in response to a document request, request for transcribed interview, or subpoena from the Committee, or in connection with testimony before the Committee at a hearing, counsel for the witness or entity must promptly submit to the Committee a notice of appearance specifying the following: (a) counsel's name, firm or organization, and contact information; and (b) each client represented by the counsel in connection with the proceeding. Submission of a notice of appearance constitutes acknowledgement that counsel is authorized to accept service of process by the Committee on behalf of such client(s), and that counsel is bound by and agrees to comply with all applicable House and Committee rules and regulations.

Schedule Definitions

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term "communication" means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, email (desktop or mobile device), text message, instant message, MMS or SMS message, regular mail, telexes, releases, or otherwise.
3. The terms "and" and "or" shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.

4. The terms “person” or “persons” mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.
5. The term “identify,” when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.
6. The term “referring or relating,” with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.