

Congress of the United States

House of Representatives

COMMITTEE ON SCIENCE, SPACE, AND TECHNOLOGY

2321 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6301

(202) 225-6371

www.science.house.gov

August 30, 2016

The Honorable Penny Pritzker
Secretary
U.S. Department of Commerce
1401 Constitution Avenue, N.W.
Washington, D.C. 20230

Dear Secretary Pritzker,

P.L. 114-90, the *U.S. Commercial Space Launch Competitiveness Act*, passed with unanimous consent in the Senate and broad bipartisan support in the House. The President of the United States signed P.L. 114-90 into law on November 25th, 2015. Section 201 of P.L. 114-90 directs the Secretary of Commerce, no later than 180 days after the date of enactment (May 23rd, 2016), and annually thereafter, to 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 on the Secretary's implementation of 51 U.S.C. §60121 and all notifications and information provided to the Secretary under 51 U.S.C. §60122.

The Committee on Science, Space, and Technology of the House of Representatives has not yet received this report. This report is overdue by more than three months. This report is a necessary part of continued oversight efforts of the House Committee on Science, Space, and Technology and follows previous letters sent to you regarding the licensing of private space-based remote sensing systems. (Please see attached previous letters dated February 17th, 2016, June 6th, 2016, and June 30th, 2016, as well as responses received by the Committee).

Please respond to this inquiry and deliver the report, as required by law, immediately, as the statutorily required report is already past due. After the delivery of the report, please provide a briefing to House Science, Space, and Technology Committee staff on these issues. As appropriate, House Committee on Science, Space, and Technology members and staff are available to receive a classified briefing on this issue.

If you have any questions related to this request, please contact Dr. Michael Mineiro, Counsel, Subcommittee on Space, at 202-226-0354.

Sincerely,



Lamar Smith
Chairman



Brian Babin
Chairman
Subcommittee on Space



Jim Bridenstine
Chairman
Subcommittee on Environment

cc:

Eddie Bernice Johnson
Ranking Member

Donna Edwards
Ranking Member
Subcommittee on Space

Suzanne Bonamici
Ranking Member
Subcommittee on Environment

Congress of the United States

House of Representatives

COMMITTEE ON SCIENCE, SPACE, AND TECHNOLOGY

2321 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6301

(202) 225-6371

www.science.house.gov

February 17, 2016

The Honorable Penny Pritzker
Secretary
U.S. Department of Commerce
1401 Constitution Avenue, N.W.
Washington, D.C. 20230

Dear Secretary Pritzker,

The House Committee on Science, Space, and Technology, as part of our oversight responsibility, is concerned that the Department of Commerce may be considering changing the composition of members of the National Oceanic and Atmospheric Administration (NOAA) Advisory Committee on Commercial Remote Sensing (ACCRES).

The purpose of ACCRES is to “provide information, advice, and recommendations to the Under Secretary of Commerce for Oceans and Atmosphere on matters relating to the U.S. commercial remote sensing space industry and NOAA’s activities to carry out the responsibilities of the Department of Commerce set forth in the National and Commercial Space Programs Act of 2010 (51 U.S.C. §60101 *et seq.*).”¹ The composition of ACCRES, according to its charter, “will have a fairly balanced membership consisting of approximately 9 to 15 members serving in a representative capacity.”² Today, ACCRES has 14 members, representing a cross-section of industry and academia, meeting the intent and purpose of the advisory committee. It has come to the attention of the House Science, Space, and Technology Committee that Department of Commerce officials may be considering changing the composition of ACCRES.

In order to assist the Committee in its oversight responsibilities, please address the following:

- Are Department of Commerce officials considering removing industry and academic members and replacing them with government officials from other Federal agencies?

¹ ACCRES Charter (March 3rd, 2014), available online at: http://www.nesdis.noaa.gov/CRSRA/files/ACCRES_Charter_3-13-14.pdf (last accessed January 14th, 2016).

² *Id.*

- If Department of Commerce officials are considering removing industry and academic members and replacing them with government officials from other Federal agencies, please explain why NOAA/NESDIS is not able to communicate with and receive such information from other government agencies without going through a Federal advisory committee.
- In addition, please inform the Committee of any activities the Department is undertaking to change the Charter of ACCRES or the composition of its members to include government officials.

The Committee appreciates your consideration of this important issue. ACCRES serves an important role in providing advice to the Under Secretary of Commerce for Oceans and Atmosphere on matters relating to the U.S. commercial remote sensing space industry and the Committee supports the Department of Commerce's decision to reconstitute ACCRES in 2012.

Please respond to these inquiries by January 29, 2016. If you have any questions related to this request, please contact Dr. Michael Mineiro, Counsel, Subcommittee on Space, at 202-226-0354.

Sincerely,



Lamar Smith
Chairman



Brian Babin
Chairman
Subcommittee on Space



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Washington, D.C. 20230
OFFICE OF LEGISLATIVE AFFAIRS

March 3, 2016

The Honorable Lamar Smith
Chairman
Committee on Science, Space, and Technology
U.S. House of Representatives
Washington, DC 20515

The Honorable Brian Babin
Chairman, Subcommittee on Space
Committee on Science, Space, and Technology
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Smith and Chairman Babin:

Thank you for your February 17, 2016 letter regarding the Advisory Committee on Commercial Remote Sensing (ACCRES or committee). ACCRES, established by the Department of Commerce (Department) in 2002, provides invaluable information, advice, and recommendations on matters relating to the U. S. commercial remote sensing industry as the Department implements its responsibilities as set forth in the National and Commercial Space Programs Act, 51 U.S.C. § 60101 et seq. The Department remains committed to a diverse and balanced membership of ACCRES, which provides a unique forum for the discussion of issues involving the relationship between industry activities and Government policies, programs, and regulatory requirements. Current membership includes representatives of industry, the research community and other interests.

The Department manages the ACCRES through biennial Charters that comply with the General Service Administration's authorities for Federal Advisory Committee Act groups. Your letter refers to discussions that are ongoing as the Department develops the 2016 ACCRES Charter. While final action has not been taken, the Department intends to authorize an increase of the number of members from no more than 15 to no more than 20. In particular, this increase will allow inclusion of approximately three federal agency representatives on the committee.

The Department believes these changes will allow ACCRES to better achieve its purpose of providing advice to help the Department address increasingly challenging regulatory and policy issues with this dynamic industry. We believe that ACCRES can be most effective by facilitating meaningful interaction between government experts, knowledgeable industry representatives, and representatives of other interests. This kind of interaction is likely to yield consensus advice that is useful to the Department, as was our experience when government agencies were represented on the committee in years past.



To answer your specific questions in its February 17, 2016 correspondence: Although ACCRES membership is rolling, the Department is not considering removing industry and academic members and replacing them with government officials. As noted above, the Department intends to change the 2016 ACCRES Charter to expand ACCRES membership from no more than 15 members, to no more than 20 members. This will enable the addition of approximately three representatives from government agencies who will provide expert advice concerning regulatory and policy matters to be addressed by the committee.

We appreciate your inquiry and thank you for your continued support of ACCRES. If you have any questions, please contact me at 202-482-5448.

Sincerely,

A handwritten signature in cursive script that reads "Coby Dolan".

Coby Dolan
Director
Office of Legislative and
Intergovernmental Affairs

Congress of the United States

House of Representatives

COMMITTEE ON SCIENCE, SPACE, AND TECHNOLOGY

2321 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6301

(202) 225-6371

www.science.house.gov

June 6, 2016

The Honorable Penny Pritzker
Secretary
U.S. Department of Commerce
1401 Constitution Avenue, N.W.
Washington, D.C. 20230

Dear Secretary Pritzker,

The House Committee on Science, Space, and Technology, requires information on your obligation to review and make timely determinations on space-based remote sensing applications in accordance with the Land Remote Sensing Policy Act of 1992. This inquiry is part of continued oversight efforts of the House Committee on Science, Space, and Technology and follows previous letters sent to you regarding the licensing of private space-based remote sensing systems. (Please see attached previous letters dated June 10th, 2015, and February 17th, 2016, as well as responses received by the Committee).

Title 51 U.S.C §60121 states that, "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."

According to recent press reports, commercial satellite imagery provider DigitalGlobe is still awaiting a license approval to sell high-definition infrared imagery data from its Worldview-3 satellite almost three years after submitting the initial request,¹ well beyond the 120 day requirement. NOAA regulations state that the agency must give a reason for the delay and an estimate of when its review will be completed.² While the law states that applicants shall be informed of any pending issues and of actions required to resolve them, the Committee would

¹ Gruss, Mike, "DigitalGlobe: No clarity on 2013 request to NOAA to sell high-res imagery." *SpaceNews*. May 18, 2016. Retrieved at: <http://spacenews.com/digitalglobe-no-clarity-on-2013-request-to-noaa-to-sell-high-res-imagery/> (Last accessed May 20, 2016).

² 15 CFR Section 960.4. Retrieved at: <http://www.nesdis.noaa.gov/CRSRA/files/15%20CFR%20Part%20960%20Regs%202006.pdf>.

also like to know what has caused the delay in this application and when NOAA anticipates this licensing action will be closed out.

In order to assist the Committee in its oversight responsibilities, under House Rule X(1)(p), X(2)(b)(1)(A), and X(3)(k) please address the following:

1. Please confirm the date at which DigitalGlobe applied for a license to operate the shortwave infrared sensor (SWIR) on Worldview-3.
2. Please confirm the date at which DigitalGlobe first requested permission to sell SWIR data at 3.7 meter resolution.
3. Please provide a copy of DigitalGlobe Worldview-3 license and any materials relevant to the SWIR and DigitalGlobe's request to sell SWIR data, either at 7.5 or 3.7 meter resolution.
4. Please provide a copy of any communications provided to DigitalGlobe, pursuant to 15 C.F.R Part 960.6.
5. Please explain why NOAA is still adjudicating DigitalGlobe's request.
6. Please provide legal justification for the tolling of the 120 day statutory requirement to hundreds, if not thousands, of days.
7. Please provide the Committee with a timeline describing any and all actions performed by NOAA regarding the license application, starting with when the agency received the application to when it plans to approve or deny the application.
8. Please provide the names of the individuals in the inter-agency clearance process responsible for representing their respective department or agency positions on the determination of DigitalGlobe's request to sell SWIR data at 3.7 meter and identify which individuals have not yet made a determination to NOAA on the request.

As appropriate, House Committee on Science, Space, and Technology members and staff are available to receive a classified briefing on this issue.

Please respond to these inquiries by June 24, 2016. If you have any questions related to this request, please contact Dr. Michael Mineiro, Counsel, Subcommittee on Space, at 202-226-0354.

Sincerely,



Lamar Smith
Chairman



Brian Babin
Chairman
Subcommittee on Space

Cc: Eddie Bernice Johnson
Ranking Member

Donna Edwards
Ranking Member
Subcommittee on Space

Congress of the United States
House of Representatives

COMMITTEE ON SCIENCE, SPACE, AND TECHNOLOGY

2321 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20516-6301

(202) 225-6371

www.science.house.gov

June 10, 2015

The Honorable Penny Pritzker
Secretary
U.S. Department of Commerce
1401 Constitution Avenue, N.W.
Washington, D.C. 20230

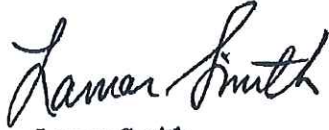
Dear Secretary Pritzker,

The House Committee on Science, Space, and Technology, as part of our oversight responsibility, recently requested information from your Department to assist our Committee in understanding the capacity and capabilities of the Office of Space Commercialization. The Committee appreciates your Department partially responding to our request on December 1, 2014. However, the Committee requested your assistance in answering the following inquiries and these inquiries have not been answered.

- 1) Please list the names, positions, and dates of all SES positions filled within the Department of Commerce since the Director's position of the Office of Space Commercialization was vacated.
- 2) Please list any and all SES positions created in the Department since the position of Director, Office of Space Commercialization, was vacated.
- 3) Please list any and all SES positions created in the National Oceanic and Atmospheric Administration (NOAA) since the position of Director, Office of Space Commercialization, was vacated.
- 4) Please list any and all SES positions created related to climate change, the Climate Program Office, the proposed Climate Service, or any other climate function at NOAA, since the position of Director, Office of Space Commercialization was vacated.

Furthermore, the Committee would like to be informed of any activities the Department is undertaking to address the absence of a Director's position or to strengthen the Office of Space Commercialization.

Please respond to these inquiries by June 17, 2015. If you have any questions related to this request, please contact Dr. Michael Mineiro, Counsel, Subcommittee on Space, at 202-226-0354.



Lamar Smith
Chairman

Sincerely,



Brian Babin
Chairman
Subcommittee on Space

Attachments (2): Letter dated October 1, 2014; letter dated December 2, 2014

CC: Rep. Eddie Bernice Johnson
Ranking Member

Rep. Donna Edwards
Ranking Member
Subcommittee on Space



UNITED STATES DEPARTMENT OF COMMERCE
Assistant Secretary for Legislative
and Intergovernmental Affairs
Washington, D.C. 20230

August 24, 2015

The Honorable Lamar Smith
Chairman
Committee on Science, Space and Technology
U.S. House of Representatives
Washington, DC 20515

The Honorable Brian Babin
Chairman, Subcommittee on Space
Committee on Science, Space and Technology
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Smith and Chairman Babin:

Thank you for your June 10, 2015 letter regarding the Department of Commerce's Office of Space Commercialization, which is a part of the National Oceanic and Atmospheric Administration (NOAA). The request asks about recent activities undertaken by the Department to address the absence of a permanent Director of the Office of Space Commercialization or to strengthen the Office. As noted in our December 2, 2014 letter, Acting Director Mark Paese is leading the Office of Space Commercialization in the absence of a permanent Director. In addition, NOAA has taken a number of steps with respect to the Office. For example, NOAA has designated the Office of Space Commercialization as the single NOAA entry point for commercial sector engagement, providing a U.S. Government-wide perspective on potential commercial space business and partnership arrangements. NOAA also has arranged for the Office of Space Commercialization to attend the NOAA Observing Systems Council, which endorses data requirement validation processes. The Office is continuing to work on business models for NOAA to leverage industry data, and joining the Observing Systems Council will aid the Office as it guides commercial data suppliers in their proposals.

The request also asks about Senior Executive Service (SES) positions within the Department and NOAA since the Office of Space Commercialization's Director position was vacated. As noted in our December 2, 2014 letter, the Office's Director position was last filled on a permanent basis by Edward Morris, who led the Office from January 2006 to November 2008. Accordingly, our response below, which is based on our available records, focuses on SES positions within the Department and NOAA since the end of 2008.

The Honorable Lamar Smith
The Honorable Brian Babin
Page 2

As of June 2015, our records reflect that approximately 400 of approximately 475 SES positions within the Department were filled.¹ Of those approximately 400 SES members, our records indicate that approximately 290 had been appointed to an SES position within the Department since December 2008. The Department currently has approximately 25 more SES positions than it had in December 2008. As reflected in the attached lists of Department SES positions as of December 2008 and June 2015, the increase is attributable in part to the growth of the United States Patent and Trademark Office (*e.g.*, new administrative judgeships, patent executives, and patent examination group directors).

With regard to NOAA, as of June 2015, our records reflect that approximately 103 of approximately 130 SES positions within NOAA were filled. Of those approximately 103 SES members, our records indicate that approximately 84 had been appointed to an SES position within NOAA since December 2008. NOAA currently has approximately 2 fewer SES positions than it had in December 2008. A number of SES positions within NOAA have changed in title and substance since December 2008, as reflected in the attached lists. A number of these positions support a variety of functions across NOAA. To the best of our knowledge, no SES positions have been added within the Climate Program Office since December 2008.

If we can be of further assistance, please do not hesitate to contact me at (202) 482-3663.

Sincerely,



Jim Stowers
Acting Assistant Secretary for
Legislative and Intergovernmental Affairs

Enclosures

cc: The Honorable Eddie Bernice Johnson
Ranking Member
Committee on Homeland Security and Governmental Affairs

The Honorable Donna F. Edwards
Ranking Member, Subcommittee on Space
Committee on Commerce, Science, and Transportation

¹ These figures include the Department's Office of Inspector General and the United States Patent and Trademark Office, which are sometimes considered separately from the rest of the Department for purposes of SES positions.



UNITED STATES DEPARTMENT OF COMMERCE
Office of Legislative and
Intergovernmental Affairs
Washington, D.C. 20230

July 8, 2016

The Honorable Lamar Smith
Chairman
Committee on Science, Space and Technology
U.S. House of Representatives
Washington, DC 20515

The Honorable Brian Babin
Chairman
Subcommittee on Space
Committee on Science, Space and Technology
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Smith and Chairman Babin:

Thank you for your June 6, 2016 letter requesting information related to a license amendment request from the commercial satellite imagery provider DigitalGlobe to authorize it to sell high-definition infrared data from its Worldview-3 satellite.

The Department of Commerce and the National Oceanic and Atmospheric Administration (NOAA) take seriously their responsibilities under the National and Commercial Space Programs Act of 2010. As our staffs have agreed, on July 13, 2016, NOAA will provide a briefing to the committee staff on this matter in a secure location.

If you have any questions, please contact me, at 202-482-3663.

Sincerely,

Steve Haro

Assistant Secretary of Commerce
for Legislative and Intergovernmental Affairs

Congress of the United States

House of Representatives

COMMITTEE ON SCIENCE, SPACE, AND TECHNOLOGY

2321 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6301

(202) 225-6371

www.science.house.gov

June 30, 2016

The Honorable Penny Pritzker
Secretary
U.S. Department of Commerce
1401 Constitution Avenue, N.W.
Washington, D.C. 20230

Dear Secretary Pritzker,

I am writing you to express deep concern that for over one year, the Department of Commerce, National Oceanic and Atmospheric Administration (NOAA), has not held any meetings of its Advisory Committee on Commercial Remote Sensing (ACCRES). Furthermore, I am deeply concerned that NOAA intends to reconstitute ACCRES membership to include federal agency representation. I am also concerned that ACCRES may not be able to provide, as required by law, in a timely fashion and without undue influence from federal agency representatives, consultation on the Section 202 of P.L. 114-90 report.

P.L.114-90, the *U.S. Commercial Space Launch Competitiveness Act*, is a bipartisan bill that passed with unanimous consent in the Senate and by voice vote in the House of Representatives. The President of the United States signed P.L.114-90 into law on November 25th, 2015. Section 202 of P.L. 114-90 directs the Secretary of Commerce, in consultation with the heads of other appropriate Federal agencies and the NOAA's Advisory Committee on Commercial Remote Sensing (ACCRES), to submit a report on statutory updates necessary to license private remote sensing space systems.

The House Committee on Science, Space, and Technology requires information on the obligation of the Secretary of Commerce under Section 202 of P.L. 114-90, in consultation with the heads of other appropriate Federal agencies and ACCRES, to submit a report on statutory updates necessary to license private remote sensing space systems. This inquiry is part of continued oversight efforts of the House Committee on Science, Space, and Technology and follows previous letters sent to you regarding the licensing of private space-based remote sensing systems. (Please see attached previous letters dated February 17th, 2016 and June 6th, 2016, as well as responses received by the Committee).

The *1992 Land Remote Sensing Act Policy Act* is the Department of Commerce's current legislative authority to license private sector parties to operate private remote sensing space systems. No substantial modifications have been made to this authority since 1992. However, since 1992, the space-based remote sensing industry has changed greatly. In 1992, the industry was in its infancy, with no major commercial operators in the United States. CubeSats had not yet been invented and standardized, and the technological state of computers, sensors, and other relevant technologies were orders of magnitudes more expensive and less capable. As part of these changes, NOAA's Office of Commercial Remote Sensing has an exponential increase in licensing applications, new and novel space-based remote sensing applications and services, and a substantial increase in private sector investment and innovation.

However, ACCRES has conveyed to you, via written correspondence, concerns that existing statutory and regulatory authorities may be insufficient and that existing authorities may need to be updated (see attached memo dated February, 2015).¹ In this same memo, ACCRES offered to engage with you and your staff to develop ACCRES position papers on why and how to regulate space-based private remote sensing systems. Unfortunately, the Department of Commerce has failed to follow up with ACCRES. Indeed, the last time an ACCRES meeting was organized by the Department of Commerce was in June, 2015, over one year ago. In addition, existing ACCRES membership was dissolved in April, 2016.² Moreover, NOAA has told the Committee on Science, Space, and Technology that their intent is to increase the number of ACCRES members from 15 to no more than 20, and to allow inclusion of approximately three federal agency representatives on ACCRES (see attached letter dated March 3rd, 2016).

Congress specifically directed the Department of Commerce to consult with ACCRES because Congress needs to be fully informed when considering the possible update of the *1992 Land Remote Sensing Policy Act*. However, given that fact that ACCRES has not met in over a year and that ACCRES existing membership was dissolved in April, 2016, it raises serious question(s) as to whether the Department will be able to consult with ACCRES and incorporate their feedback on the Section 202 report due November 25th, 2016, in a timely fashion, and without undue influence from federal agency representatives. It also raises the question of whether the Department of Commerce has purposefully not held ACCRES meetings, dissolved ACCRES, and planned to include federal agency representation so that ACCRES is not able to provide substantive consultation on the Section 202 report.

In order to assist the Committee in its oversight responsibilities, under House Rule X(1)(p), X(2)(b)(1)(A), and X(3)(k) please address the following:

¹ This memo was submitted for the record on May 20th, 2015, Congressional hearing, House Committee on Science, Space, and Technology, testimony of Dr. Scott Pace, *Weather Data: Collaborative Efforts to Improve Forecasts*. 2015. Retrieved at: <https://science.house.gov/sites/republicans.science.house.gov/files/documents/HHRG-114-SY18-WState-SPace-20150520.pdf> (Last Accessed on June 21, 2016)

² *Notice Requesting Nominations for the Advisory Committee on Commercial Remote Sensing (ACCRES)*. Federal Register. April, 15, 2016. Retrieved at: <https://www.federalregister.gov/articles/2016/04/15/2016-08693/notice-requesting-nominations-for-the-advisory-committee-on-commercial-remote-sensing-accres> (Last Accessed on June 21, 2016)

1. Please provide a written explanation of why the Secretary of Commerce is unable to elicit input from other agencies through the interagency process, and why federal agency representation on ACCRES necessary.
2. Please provide all records (as defined by attachment A) related to the consideration of including government membership on ACCRES.
3. Please provide all records (as defined by attachment A) associated with the Secretary of Commerce asking for and receiving federal agency advice regarding the licensing of private space-based remote sensing space systems through inter-agency channels, dated from January 1st, 2014, to June 24th, 2016.
4. Please describe, in detail, the current inter-agency processes for the Department of Commerce to request and receive federal agency advice regarding the licensing of private space-based remote sensing space systems.
5. Please identify any and all federal agencies, departments, offices, and officers responsible for responding to a Department of Commerce request for federal agency advice regarding the licensing of private space-based remote sensing space systems.
6. Please provide the email, telephone, and address for all officers identified as responsible for responding to a Department of Commerce request for federal agency advice regarding the licensing of private space-based remote sensing space systems.
7. Please provide a written explanation of why the Department of Commerce did not hold an ACCRES meeting for over one year, from June 2015 to today.
8. What, if any, formal written response did the Department of Commerce provide ACCRES to their February, 2015, memorandum on perspectives and outlooks on U.S. commercial remote sensing?
9. Please provide all records (as defined by attachment A) involving the memorandum from ACCRES to the Department of Commerce dated February, 2015, including any written responses from the Department of Commerce to ACCRES.
10. Please provide all correspondence to ACCRES from the Department of Commerce, dated from January, 1st, 2014, to June 24th, 2016.
11. Please provide all records (as defined by attachment A) related to ACCRES, dated from January, 1st, 2014, to June 24th, 2016.
12. Please provide a detailed written explanation of all actions the Department of Commerce has taken to develop the Section 202 report.
13. Please provide a schedule and timeline for developing and delivering the Section 202 report.
14. Please provide a schedule for when the Department of Commerce will consult with ACCRES on the Section 202 report.

Please respond to these inquiries by July 14th, 2016. Within one week after the delivery of the requested documents, please provide a briefing to House Science, Space, and Technology Committee staff on these issues. As appropriate, House Committee on Science, Space, and Technology members and staff are available to receive a classified briefing on this issue.

If you have any questions related to this request, please contact Dr. Michael Mineiro, Counsel, Subcommittee on Space, at 202-226-0354.

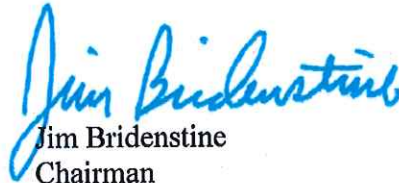
Sincerely,



Lamar Smith
Chairman



Brian Babin
Chairman
Subcommittee on Space



Jim Bridenstine
Chairman
Subcommittee on Environment

cc:

Eddie Bernice Johnson
Ranking Member

Donna Edwards
Ranking Member
Subcommittee on Space

Suzanne Bonamici
Ranking Member
Subcommittee on Environment

Attachment A – Letter from ACCRES to the Secretary of Commerce

February 2015

Memorandum to: The Secretary of Commerce
Administrator, NOAA
Assistant Administrator for Satellites and Information Services, NOAA

From: Advisory Committee on Commercial Remote Sensing (ACCRES)

Subject: Perspectives and Outlook on U.S. Commercial Remote Sensing

The purpose of this memorandum is to convey the Committee's perspectives and outlook on U.S. commercial remote sensing, consistent with our charter under the Federal Advisory Committee Act (5 U.S.C. 5). It also details the Committee's projected work plans, with NOAA's endorsement. The ideas offered here are for your general consideration; most importantly, a number of them pertain to expected U.S. national security decision meetings that you will be invited to participate in over the next few months.

In sum, we are concerned that a combination of factors puts U.S. leadership in commercial remote sensing at risk. We have not yet adapted our mindset to the shift of these capabilities from an aerospace technology to an information technology, and how that should affect policy and regulation. We are also concerned that the deep national security legacy often creates an imbalanced view of the wide range of impacts created by commercial remote sensing, which also undermines U.S. policy goals.

BACKGROUND AND CONTEXT

The world of satellite remote sensing is changing dynamically, with important consequences for U.S. commercial, foreign policy and national security interests. U.S. policy needs to be able to respond quickly to such change, lest there be unintended consequences for these interests. NOAA bears important licensing, compliance monitoring, enforcement and other regulatory responsibilities on behalf of the U.S. government, as well as coordination of inputs provided by other U.S. government agencies. NOAA also plays an important role in helping shape national policy related to commercial remote sensing, and by extension on global developments.

ACCRES is chartered to provide information, advice and recommendations to the Under Secretary of Commerce for Oceans and Atmosphere on matters related to the U.S. commercial remote sensing space industry, and on NOAA's activities to carry out the responsibilities of the Department of Commerce set forth in the National and Commercial Space Programs Act of 2010 (51 U.S.C. 60101 *et seq.*). The perspectives shared here are based on our decades of broad and deep experience with remote sensing issues that include detailed study of global remote sensing markets, involvement in a wide range of national security activities, and commercial industry practice.

In many ways, the United States has achieved the bold bipartisan vision laid out for leadership in commercialization of remote sensing satellites since the 1970s and reasserted in national space policy in 1994 (PDD-23) and again in 2003 (NSPD-27). While current national policy affirms U.S. intent to lead in this area, that goal is often undermined by a failure to fully implement policy guidance, due to agency mindsets and actions. These drag heavily on U.S. interests in a dynamically changing global satellite remote sensing market and an expanding global geospatial ecosystem that includes terrestrial, airborne and space components.

It is the view of this Committee that a combination of internal NOAA issues, external U.S. national security perspectives and a variety of other issues have put U.S. leadership in commercial remote sensing at risk. We detail some of those issues here, along with some ideas on how to bring agency actions into better compliance with national policy directions.

CHANGING OUR MINDSET

The United States has an extraordinary legacy in the use of satellite remote sensing for military and intelligence purposes, and increasingly for civil, environmental and commercial purposes. The nation's use of satellite remote sensing for security, public safety and scientific purposes remains unparalleled today. However, this great accomplishment is sometimes overshadowed by concerns over how information generated by remote sensing satellites is used by others. While countries like Canada, France, Israel and Japan have well-established satellite capabilities, countries like Azerbaijan, Egypt and Vietnam are taking advantage of fast-moving satellite technology and processing developments to become new entrants in the market. A country no longer needs its own domestic space industry to have access to world-class space-based information capabilities. Emerging space powers represent sources of technology, learning, business models and innovation that challenge U.S. interests.

In order to maintain leadership and U.S. strength in this area, the Committee believes that a fundamental rethinking about satellite remote sensing –and especially commercial remote sensing –is necessary as the driver of the U.S. government's approach to policy and regulation. Agencies continue to think about remote sensing as a traditional aerospace technology when, in fact, it is increasingly an information technology, requiring a different regulatory philosophy and regulatory actions. Increasingly, U.S. firms are shifting from the traditional business model of selling images to one of conveying information from satellite imagery combined with a number of sources. Agencies also continue to harbor a view that space-based assets should be considered differently from a wide range of emerging sensors – such as drones – within a rapidly changing geospatial ecosystem. While historically understandable, this perspective is increasingly obsolete. We submit that U.S. government stakeholders must tailor policy and regulations to reflect the fact that remote sensing is no longer a U.S.-only, exclusively satellite-based effort, but is instead a global information technology that relies on a wide range of platforms.

INTERNAL NOAA ISSUES

The Committee recognizes NOAA's daily efforts to perform a wide range of regulatory functions on behalf of the Department, especially with respect to licensing, license follow-up actions, compliance monitoring and enforcement. One of the most important challenges, as with most technologies, is that effective regulation is often slowed down by outdated law, policy, regulatory requirements or practice, thereby hindering the effective application of limited agency resources from the areas most needed or of greatest risk.

The Committee finds NOAA's resources to be inadequate to the tasks that it has to perform in support of U.S. interests. Over 40 licenses have been issued in the five years since FY 2010, as compared to 26 between FY 1996 - 2010. There has also been an explosion in the numbers of foreign and domestic ground stations for NOAA/NESDIS to inspect - which it is required to do each year by law - with an estimated 100 sites in over 20 countries expected by FY 2016. A corresponding increase in foreign agreements is expected to be required in the coming years.

Technical and business model innovations by current and prospective U.S. licensees push the regulatory envelope: developments involving smaller satellites, new sensor types (e.g., video, hyperspectral) and U.S. satellite companies participating on foreign platforms or in foreign constellations require careful consideration from a regulatory perspective. Herein lies an important paradox: we have a U.S. policy that directs us to lead, yet because of restrictive thinking, U.S. firms are unable to exploit our own technology to directly compete with foreign competitors. The Committee believes that NOAA needs a new approach to receive, process, and respond quickly to its constituents, given this astonishingly fast-paced remote sensing environment.

We also believe that NOAA and the Department have the authorities to create relief from impractical regulatory enforcement actions, such as the need to visit ground stations. Today, a smart phone or tablet could effectively function as a ground station; and thus as a practical matter, NOAA should be allowed to shift the enforcement and inspection missions to a verification and complaint-driven inspection system to better manage compliance risks.

WORK OF THE NOAA INTELLIGENCE TASK GROUP

Last month, NOAA created an Intelligence Task Group to consider the classified viewpoints of the Department of State, the Department of Defense and the Intelligence Community. This Task Group was given only a very short period of time to interact with NOAA and other U.S. government colleagues. Yet this discussion is vitally important, both to the Committee's efforts as well as to the broader U.S. government conversation that must take place, as soon as possible. Security considerations have added both time and complexity to NOAA's regulatory requirements, as noted above.

The work of the Task Group is classified, so we can only share general observations here. The Committee is very concerned that the security perspectives on U.S. commercial remote sensing remain locked in an anachronistic and outdated mindset, especially with regard to

attempts to limit collection or commercial sale of imagery data (known also as “shutter control” or more recently as “modified operations”).

Current security assessments, in the opinion of the Task Group, do not reflect an objective understanding of the uniqueness of U.S. commercial satellite imagery in supporting a variety of missions. U.S. capabilities are looked at overwhelmingly through the lens of how they are aiding our adversaries in achieving their aims. The assessments tend to amplify potential threats to U.S. security interests from commercial satellite imagery while downplaying the benefits of them, such as in their role supporting humanitarian operations, providing shareable information to diplomatic and military allies, or as sources of innovation. Assessments also frequently neglect to mention the many other ways in which an adversary can gain information even if U.S. systems are restricted, such as from foreign commercial satellites, or even how U.S. security aims might be reached without restrictions. They also fail to recognize the decades of trust, in practice, between U.S. industry and the U.S. government on security matters. Most importantly, they tend to value short-term, parochial considerations over longer-term, strategic interests of the United States. In short, the current approach is creating greater risks for the United States than is necessary or desirable.

Further, these assessments often fail to recognize the real world blending of many other technologies that are, in effect, creating both spatial and temporal transparency. Many advanced capabilities such as GPS, data from cell phones, UAVs, social media and others are being merged with U.S. and foreign commercial satellite imagery in geographic information systems in order to create extremely sophisticated and high value information. Consequently, treating commercial satellite imagery as though it were the only means of gathering information is ineffective in managing national security risk. Ultimately, the Committee is concerned that our failure to take a holistic view of these capabilities could create conditions that damage U.S. industry and U.S. security at the same time.

The Task Group’s discussions with government officials about “modified operations” reflected an improved government understanding of the impact of such actions and the absolute need to limit the area and the time of such actions, consistent with a compelling national security case. Here the bar is set appropriately high: requests for such modified operations must be requested by the Secretary of State or the Secretary of Defense and made by the Secretary of Commerce. The Committee has offered to review specifically a set of criteria from the Department of Defense to U.S. combatant commands for initiation of modified operations. We strongly encourage the U.S. government to fully train and exercise around these ideas to understand the practical effects and outcomes.

But other ideas that the Task Group has heard – such as the creation of non-image/non-commercial sale “blackout” lists and technical downgrading of imagery – fail to recognize the significant economic and non-economic costs of regulation in a very competitive global environment. Finally, any regulatory action that looks like extensive “prior restraint” (more technically described as a “preempted commercial transaction”) will likely require new legislative authority that inevitably would be challenged in court.

MOVING AHEAD

The Committee would be pleased to engage you and your staff on additional details not conveyed in this memorandum. Given the ACCRES meetings held to date, and the broad experience and perspective we bring, we can serve as a resource for the Department and others on the future of U.S. commercial remote sensing issues. We have asked NOAA to lay out a schedule for future meetings so that the Committee can organize our workload, including the role of public input within the spirit of the Federal Advisory Committee Act.

Consistent with the ACCRES Charter and the support of NOAA, the Committee proposes a number of short follow-on papers for your consideration:

-- **Why and How to Regulate?** We recognize that regulation exists to ensure compliance with U.S. law as well as foreign policy and national security objectives. Given the rapid shift away from an aerospace model to an information model, and given the reality of imagery as information, what are the purposes and parameters of regulation of commercial remote sensing companies? How can we reevaluate regulation of commercial remote sensing satellites to avoid unintended harm to U.S. foreign policy, national security, and economic interests? What areas beyond frequency allocation and orbital management require regulation, and why?

-- **NOAA internal review:** We wish to continue to help NOAA streamline their own internal licensing, license follow-up, compliance monitoring and enforcement activities, consistent with existing authorities. We do believe that NOAA has a number of existing authorities to do this. We also believe that there may be ways to facilitate licensing actions by creating templates for existing and new capabilities, such as the establishment of "safe harbor" provisions to protect past decisions.

--**Review of other U.S. government activities, including NSPD-27 review:** NOAA has requested that the Committee provide input on other U.S. government efforts regarding commercial remote sensing, including the proposed National Security Council review.

Points of contact: NOAA/NESDIS at NOAA and Chair, ACCRES.



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Washington, D.C. 20230
OFFICE OF LEGISLATIVE AFFAIRS

August 12, 2016

The Honorable Lamar Smith
Chairman
Committee on Science, Space, and Technology
U.S. House of Representatives
Washington, DC 20515

The Honorable Brian Babin
Chairman, Subcommittee on Space
Committee on Science, Space, and Technology
U.S. House of Representatives
Washington, DC 20515

The Honorable Jim Bridenstine
Chairman, Subcommittee on Environment
Committee on Science, Space, and Technology
U.S. House of Representatives
Washington, D.C. 20515

Dear Messrs. Chairmen:

This responds to your June 30, 2016 letter regarding the Department of Commerce's Advisory Committee on Commercial Remote Sensing (ACCRES). We appreciate the Committee's interest in ACCRES, and wish to assure you that we have been working diligently, utilizing all available resources, to satisfy the requirements of the National and Commercial Space Programs Act, 51 U.S.C. §§ 60101 *et seq.* In 2002, the Department of Commerce (Department) established ACCRES under the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2. Since then ACCRES has provided the Department with invaluable information, advice, and recommendations on matters relating to the U.S. commercial remote sensing industry and the Department's responsibilities. As further detailed below, the Department has recently renewed the ACCRES charter pursuant FACA procedures, and are working towards the goal of holding a meeting of the reconstituted ACCRES as soon as possible.

Your letter seeks information concerning the membership and meetings of ACCRES. The ACCRES charter was most recently renewed on March 9, 2016. As a Federal Advisory Committee, ACCRES is governed by FACA and operates according to a charter, which by law must be renewed every two years.¹ However, the appointment or reappointment of ACCRES members is a separate process from the charter renewal. By charter,² ACCRES members serve

¹ 5 U.S.C. App. 2, § 14; 41 C.F.R. § 102-3.55

² This charter is available online at http://www.nesdis.noaa.gov/CRSRA/files/accres_charter_3_09_16.pdf.



two-year terms, although members may serve additional terms if reappointed.³ Both reappointments and new membership must be approved by the Under Secretary of Commerce for Oceans and Atmosphere. Accordingly, on April 15, 2016, the Department issued a notice in the Federal Register seeking applications for ACCRES membership.⁴ Based on the responses received, seven current ACCRES members are applying for reappointment, while nine new applications for membership were received.

ACCRES' membership has not been dissolved, as suggested in your letter. Since the charter was renewed, we have worked to appoint and reappoint ACCRES members. Currently, membership is being finalized, and we are working to schedule an ACCRES meeting. As required by the FACA, that meeting notice will be publicly announced in the *Federal Register*.⁵

Your letter also references an increase in the number of Federal representatives in ACCRES. As we noted in our March 3, 2016 letter to this Committee, the Department will not be removing industry and academic members and replacing them with government officials. The Department believes that including Federal representatives in ACCRES' membership facilitates meaningful interaction among government experts, knowledgeable industry representatives, and other critical stakeholders to provide advice to the Department to address increasingly challenging regulatory and policy issues presented by this dynamic and unique industry.

Dialogue with our Federal agency partners is also critical to facilitate licensing decisions that are "consistent with the national security interest, foreign policy and international obligations of the United States."⁶ Pursuant to our regulations, we consult on any license application with the Departments of Defense, State, the Interior, "and any other Federal agencies determined to have a substantial interest in the license application." *Id.*

Finally, your letter asks about the report required under section 202 of the *U.S. Commercial Space Launch Competitiveness Act*, Pub. L. 114-90. The Department is actively working on this reporting requirement. Section 202 of that Act specifically requires that, in compiling the report, the Department consult with other Federal Agencies as well as with ACCRES. The Department is consulting with other agencies – including the Department of Defense, the National Aeronautics and Space Administration, the Federal Aviation Administration, the Federal Communications Commission, and other appropriate Federal agencies. The Department intends to solicit input from the reconstituted ACCRES at the next ACCRES meeting. Input received here will augment the February 2015 ACCRES memorandum. The Department is working towards delivery of the report as requested.

Enclosed with this letter please find documents responsive to your request. The documents include the latest renewed ACCRES charter, pertinent *Federal Register* notices regarding membership and meetings, ACCRES meeting minutes describing its discussion of the February 2015 memorandum cited in your letter, along with various presentations from ACCRES

³ *Notice Requesting Nominations for the Advisory Committee on Commercial Remote Sensing*, 81 Fed. Reg. 22232 (Apr. 15, 2016).

⁴ *Id.*

⁵ 41 C.F.R. § 102-3.150.

⁶ 15 C.F.R. § 960.6.

meetings discussing licensing issues and relevant email correspondence between NOAA and the ACCRES Committee. We will work with your staff to provide a briefing, if necessary, and appreciate your inquiry and thank you for your continued support of ACCRES. If you have any questions, please contact me at 202-482-5448.

Sincerely,



Coby Dolan
Director
Office of Legislative and
Intergovernmental Affairs

Enclosures