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PROGRESSIVE POLICY INSTITUTE'S FILING WITH THE DEPARTMENT OF COMMERCE'S OFFICE OF SPACE COMMERCE REGARDING THE DRAFT MISSION AUTHORIZATION PROPOSAL

The Progressive Policy Institute (PPI) is pleased to provide comments to the Department of Commerce's Office of Space Commerce (OSC) on its draft mission authorization proposal. PPI is a catalyst for policy innovation and political reform headquartered in Washington, D.C., with offices in the United Kingdom, the European Union, and Ukraine. PPI's mission is to generate radically pragmatic ideas for governing. PPI advocates for economic policies that are pro-worker, pro-business, pro-free trade, and pro-innovation.

EXECUTIVE SUMMARY

OSC is prudent to propose standing up a mission authorization regime, as it's clear that the commercial space industry's expanding mission set is taxing the existing regulatory regime for space. There needs to be a clear, transparent, and light-touch process for missions not covered by existing regulatory processes to ensure the commercial space industry has the regulatory certainty it needs to continue growing. China's space sector is gaining capabilities rapidly and, if our domestic industry has any hope of maintaining leadership, the regulatory system for commercial space must carefully balance the need for competitiveness with the need to protect national objectives.

The space community has had near-consensus on what an optimal mission authorization regime should look like for years now via the proposal put forward by the National Space Council's User Advisory Group (UAG), but governmental proposals to date have not passed muster. Thankfully, the draft proposal put forward by OSC in response to Executive Order 14335 is a strong step forward that largely comports with the near-consensus recommendations. The regime set forth needs a few small tweaks, such as:

1. Clarifying timelines
2. Avoiding requirements specific to given mission types
3. Minding the push/pull commercial space regulatory regimes have with the national security community
4. Laying out the process for ongoing supervision, preferably on a self-certification basis

Beyond specific tweaks to the proposal, OSC will also have to be cautious about implementation processes and will require additional funding and staffing to carry out this regime should it move forward. However, on the whole, this is a strong proposal that should move forward toward implementation.

BACKGROUND

The Outer Space Treaty, which the United States is a party to, states that all signatory nations must "require authorization and continuing supervision" by their government for space activities in article six.[1] In the United States, that responsibility is primarily executed by: (1) the Federal Aviation Administration (FAA) for launch and reentry licenses; (2) the National Oceanic and Atmospheric Administration (NOAA) for commercial remote sensing licenses; and (3) the Federal Communications Commission (FCC) for spectrum licensing. This tripartite regime has faithfully served the American space industry and the public for decades. However, as non-governmental space activities ramp up, more and more missions are being proposed that fall outside of these narrowly defined regulatory regimes. Today, missions of that nature can receive authorization via an ad hoc process administered by any of those three space regulatory agencies, but the ad hoc process lacks timelines, evaluation criteria, transparency, and more. An ad hoc process makes sense if there are only a handful of these "novel" missions annually, but it is clear that the volume of these missions is rapidly increasing, which points to a need for a formalized mission authorization regime that gives industry clarity.

The space policy community has had near-consensus on what a mission authorization regime should look like for some time, as evidenced by the 2023 comments put forward by the National Space Council's User Advisory Group (UAG), a government advisory committee composed of leading industry, civil society, and other space experts.[2]

The UAG called for a mission authorization regime based on 12 principles. These include:

1. Public review and comment prior to implementation
2. No duplication of existing regulatory regimes
3. Presumption of authorization
4. Strict timeline — specifically, no more than 60 days
5. Transparency throughout the process
6. Technical support along the way for applicants, including a single point of contact and a concise process roadmap
7. No new information required beyond what is already provided to the government
8. Mission-level authorization should apply to the full scope of activities

[1] https://www.unoosa.org/oosa/en/ourwork/spacelaw/treaties/outerspacetreaty.html
[2] https://spacepolicyonline.com/news/uag-endorses-single-agency-for-mission-authorization/

9. Protect proprietary information
10. Continued validity of existing authorizations and licenses — e.g., grandfathering
11. Ongoing supervision should be conducted via self-certification
12. Process should be managed by a single agency

Any governmental proposal should largely comport with the principles laid out by the UAG. Prior government proposals, including the 2023 Biden Administration proposal[3] and the 2016 Obama Administration proposal,[4] have not passed muster and rightfully have not moved forward.

FEEDBACK

The draft put forward by OSC is a strong step forward. While it does not perfectly align with the 12 criteria put forward by the UAG, it clearly reflects most of the intent of those principles and is the best proposal put forward by government to date. There are still a few areas for improvement and things to consider moving forward, outlined below.

Clear, Firm Deadlines
The new process outlined in the feedback questionnaire simplifies the process for license-seekers, which will be particularly helpful for smaller companies looking to break into the market and secure funding.

However, while the slides published note there will be firm timelines for both interagency review and final authorization, which is a great step, it is unclear what that timeline will be. OSC should push to keep those timelines as short as feasible and ideally no longer than 60 days for the full process. A fast no with a clear explanation and ability to resubmit is a better outcome than a slow, drawn-out yes over the course of years. The commercial space market is fast-moving, and this process cannot be the long pole that slows innovative companies down solely for bureaucratic reasons. There should be thoughtful consideration of how to determine whether to send an applicant back to the starting point of the "traditional" existing regulatory process, which will likely be necessary at times, versus allowing the applicant to resubmit with modifications responding to elucidated concerns from OSC.

That does not mean there shouldn't be an opportunity for companies to "cure" defects in their authorization application, especially if the problem is relatively minor. There should be a clear process — with firm timelines for both government and the applicant — for this purpose,

[3] https://bidenwhitehouse.archives.gov/wp-content/uploads/2023/12/Novel-Space-Activities-Framework-2023.pdf
[4] https://obamawhitehouse.archives.gov/sites/default/files/microsites/ostp/csla_report_4-4-16_final.pdf

separate from the ability to resubmit or go through the "traditional" existing regulatory process. The degree of modification required will likely point to which path forward is most practical.

Caution Warranted for Mission-Specific Requirements

OSC has previously noted it is considering having mission-specific requirements for certain types of missions — e.g., requirements specific to commercial space stations or to in-space servicing and manufacturing missions. It is smart to lay out a process whereby OSC walks before it runs by focusing initially on one or two mission types as a demonstration to work out any process kinks in this new authorization regime, but having requirements specific to types of missions significantly waters down the benefits of regulatory clarity expected from this regime and adds bureaucratic burden. Mission-type specific criteria should only be considered when it is absolutely necessary for compliance with international treaty requirements or to avoid significant harm to national security.

Push/Pull with National Security Apparatus

We have seen time and time again — within the remote sensing licensing regime in particular[5] - that the intelligence community (IC) and Department of Defense (DoD) have sought to be overly restrictive of commercial space activities, with negative consequences for the global competitiveness of the American commercial space sector. That is not to say that there are not legitimate reasons to restrict the commercial space industry in the name of national security, but it does point to a need to learn from past issues in existing regulatory regimes. Accordingly, the bar for objections or mission adjustments on the basis of national security should be set at "significant harm" to national security rather than allowing for blanket national security objections at any threshold in this new regime. This will allow substantive national security concerns to be addressed while taking into account the national and economic security benefits of a thriving domestic commercial space sector. Implementing this will likely require either legislation or a strong commitment to this principle by the Secretary of Commerce, the Secretary of Defense, and the President.

Supervision Requirements Unclear

This proposal lays out a relatively clear process for mission authorization, but does not address the process for ongoing supervision. This hints at supervision conducted via self-certification by the licensee that they are complying, which is positive if that is in fact the intent of OSC. An ideal supervision regime would involve self-certification that the licensee is conducting their mission as described in their application on an annual or biannual basis.

OSC would benefit from having penalty authority if it determines that the licensee has strayed from its certified activities — at present, most of the Department of Commerce's penalty

[5] https://spacenews.com/noaa-eliminates-restrictive-operating-conditions-from-commercial-remote-sensing-satellite-licenses/

authorities are provided to bureaus like NOAA, not the Department as a whole. OSC may be able to utilize penalty authorities provided by the Program Fraud Civil Remedies Act of 1986, but those authorities would not cover the breadth of what OSC could plausibly require and would likely require OSC to establish that the government has experienced a "loss" as a result of non-compliance, which would be difficult to establish in most cases.[6] Legislation would be necessary for OSC to receive penalty authority right-sized for this regime.

Implementation Will Be Key

As with most government regimes, implementation is key. In this circumstance, it will be vital for OSC to establish that this new process eliminates bureaucracy rather than adds to it. For example, OSC will need to balance its interagency convening role with the need for subject matter experts to speak directly at times, such as when a concern is flagged. The timeline for resolving issues should be short, as established above, and OSC will need to ensure that it is a value-add in that process by either aiding in funding a resolution or allowing for the agency and applicant to connect directly, rather than slowing the process down by mediating communications back and forth. Luckily, OSC is tasked with promoting the American commercial space industry, so the Office is already primed to implement this efficiently.

Funding and Legislation Will Be Required

OSC is the correct entity to administer mission authorization, however, OSC requires funding and staffing to successfully implement this regime. In the House and Senate appropriations committees' conference report for FY26, OSC's funding is cut,[7] which is unwise for a host of reasons. Putting that aside, establishing a new regime for certifying missions requires at least a modest funding and staffing increase, even for a light-touch regime like this one. In the upcoming President's Budget Request for FY27, OSC should request a funding increase for this purpose.

Authorizing legislation is also necessary, particularly for right-sized penalty authorizing and ensuring the national security communities' inputs are adequately balanced with the incredible benefits that come with the growth of the commercial space industry. While OSC is planning to move forward with a voluntary process at this time to get the ball rolling on this important authorization regime, the regime will need to be formalized in short order and become mandatory, which requires statutory direction.

[6] https://www.govinfo.gov/content/pkg/USCODE-2023-title31/pdf/USCODE-2023-title31-subtitleIII-chap38-sec3802.pdf

[7] https://rules.house.gov/sites/evo-subsites/rules.house.gov/files/documents/cds92500.PDF