

# 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](http://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 25<sup>th</sup>, 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 17<sup>th</sup>, 2016 and June 6<sup>th</sup>, 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).<sup>1</sup> 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.<sup>2</sup> 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 3<sup>rd</sup>, 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 25<sup>th</sup>, 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:

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<sup>1</sup> This memo was submitted for the record on May 20<sup>th</sup>, 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)

<sup>2</sup> *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 documents (as defined by attachment A) related to the consideration of including government membership on ACCRES.
3. Please provide all documents (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 1<sup>st</sup>, 2014, to June 24<sup>th</sup>, 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 documents (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, 1<sup>st</sup>, 2014, to June 24<sup>th</sup>, 2016.
11. Please provide all documents (as defined by attachment A) related to ACCRES, dated from January, 1<sup>st</sup>, 2014, to June 24<sup>th</sup>, 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 14<sup>th</sup>, 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

# Congress of the United States

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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.*).”<sup>1</sup> 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.”<sup>2</sup> 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?

<sup>1</sup> ACCRES Charter (March 3<sup>rd</sup>, 2014), available online at:  
<[http://www.nesdis.noaa.gov/CRSRA/files/ACCRES\\_Charter\\_3-13-14.pdf](http://www.nesdis.noaa.gov/CRSRA/files/ACCRES_Charter_3-13-14.pdf)> (last accessed January 14<sup>th</sup>, 2016).

<sup>2</sup> *Id.*

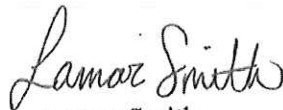


- If Department of Commerce officials are considering removing industry and academic members and replacing them with government officials from other Federal agencies, please explain why NOAA/NESDIS is not able to communicate with and receive such information from other government agencies without going 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.

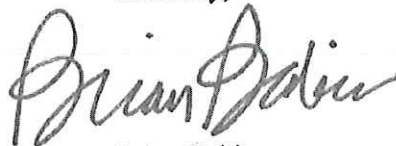
The Committee appreciates your consideration of this important issue. ACCRES serves an important role in providing advice to the Under Secretary of Commerce for Oceans and Atmosphere on matters relating to the U.S. commercial remote sensing space industry and the Committee supports the Department of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



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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, appearing to read "Coby Dolan".

Coby Dolan  
Director  
Office of Legislative and  
Intergovernmental Affairs



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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 10<sup>th</sup>, 2015, and February 17<sup>th</sup>, 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,<sup>1</sup> 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.<sup>2</sup> While the law states that applicants shall be informed of any pending issues and of actions required to resolve them, the Committee would

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<sup>1</sup> 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).

<sup>2</sup> 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.

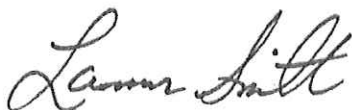
In order to assist the Committee in its oversight responsibilities, under House Rule X(1)(p), X(2)(b)(1)(A), and X(3)(k) please address the following:

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.

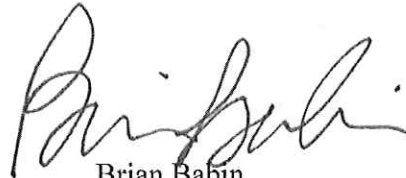
As appropriate, House Committee on Science, Space, and Technology members and staff are available to receive a classified briefing on this issue.

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



## **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.

### **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 Committee.
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.
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 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. Unless otherwise specified, the time period covered by this request is from January 1, 2000 to the present.
17. 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.
18. All documents shall be Bates-stamped sequentially and produced sequentially.
19. 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, 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.
20. 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 Committee.

### **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.