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Legal Structure for U.S. Governmental and Non-Governmental Activities in Space

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Legal Structure for U.S. Governmental and Non-Governmental Activities in Space

- Background
- National Aeronautics and Space Act of 1958
- U.S. Government Supervision of Space Activities by Non-Governmental Entities

U.S. Executive Branch Organizations Involved with Space

- White House
- NASA
- Department of Defense
- Department of Transportation
- Department of Commerce
- Department of Interior
- Department of State

Congressional Committees with Legislative/Oversight Role

- **House of Representatives**

  - Appropriations

  - Armed Services

  - Foreign Affairs

  - Science

  - Transportation

- **Senate**

  - Appropriations

  - Armed Services

  - Foreign Relations

  - Commerce, Science, and Transportation

Legal and Policy Framework

- National Aeronautics and Space Act of 1958 (Space Act)
- Licensing Laws for Commercial Space Activities
- Agency Regulations
- Formal Policy Statements
  - National Space Policy
  - Space Transportation Policy
  - Commercial Remote Sensing Policy

The Space Act

- Codified at Title 42 U.S. Code, Section 2451, *et seq.*
- Origins
- Scope
- Application

Space Act Origins –
A Civilian Space Agency

- Section 102 (a): "… [I]t is the policy of the United States that activities in space should be devoted to peaceful purposes for the benefit of all mankind"

- Section 202 (a): Congress declared NASA to be a civilian agency, "headed by an Administrator who shall be appointed from civilian life by the President"

Space Act Origins –
NASA's Early Days

- By end of 1959, NASA's long-range plan included "making feasible the manned exploration of the moon and nearby planets"
- Called for first human flight to the Moon sometime "beyond 1970"
- Broad legislative authority was essential to accomplish this objective

Scope of the Space Act

- Space Act carefully and knowingly crafted with broad powers

- Act has enabled NASA, through practice in exercising its authority, to use the lineage of such practices to help interpret the outer limits of the Act

Space Act: Objectives

- Sec. 102 (d): "The aeronautical and space activities of the United States shall be conducted so as to contribute materially to one or more of the following objectives:"

  - Expansion of human knowledge of the Earth and the phenomena in the atmosphere and space

  - Improvement of usefulness, performance, speed, safety, and efficiency of aeronautical and space vehicles

  - Establishment of studies of benefits from and problems involved in utilization of space for peaceful and scientific purposes

  - Cooperation with other nations in work done pursuant to this Act and peaceful application of results

Application of Space Act

- Pursuant to Section 203 (a), NASA shall:

  - Conduct aeronautical and space activities
  - Arrange participation by scientific community
  - Provide widest appropriate dissemination of information about its activities and results
  - Seek and encourage fullest commercial use of space
  - Encourage USG use of commercially provided services and hardware

Application of Space Act

- Section 203 (c)(3): Permits NASA to acquire (by purchase, lease or otherwise), construct, improve, operate, and maintain laboratories, research facilities, aeronautical and space vehicles, and other real and personal property, or any interest therein

Application of Space Act

- Section 203 (c)(5): Provides NASA with flexible authority to enter into “other transactions,” commonly referred to as “Space Act Agreements,” which constitute the primary instrument for NASA’s collaborative research

- Also allows NASA to retain cost reimbursements

Application of Space Act

- Section 203 (c)(5): Confers upon the Administrator the authority to execute various commitments necessary to accomplish NASA's mission, including contracts, leases, and cooperative agreements

- Section 203 (c)(6): Allows NASA to use services, equipment and personnel of "Federal and other agencies with or without reimbursement" and requires each department and agency of the Federal Government to "cooperate fully" with NASA in making its personnel available to NASA

International Cooperation

- Section 205: NASA, under foreign policy guidance of the President, “may engage in a program of international cooperation”

- President Eisenhower, upon signing the Act in 1958, stated that this section authorizes treaties as well as less formal arrangements for cooperation

Conclusions About Space Act

- Space Act well-conceived
- Agency generally has authority necessary to accomplish its mission
- When NASA requires additional authority, NASA approaches Congress with suggested amendments

Supervision of Non-Governmental Activities

- No single or primary governing authority
- Rather, governed through variety of complementary legislative and regulatory instruments

Commercial Space Launch Act (CSLA)

- Codified at Title 49 U.S. Code, Section 70101, *et seq.*
- Regulates commercial launch and re-entry operations of non-governmental entities
- Oversight and coordination by Secretary of Transportation, through Office of Commercial Space Transportation (OCST) in Federal Aviation Administration (FAA)

CSLA, cont.

License required for:

- Launch or re-entry of vehicle, or operation of launch or re-entry site, in United States
- Any of above done outside U.S. by U.S. citizen or entity organized under U.S. laws
- Any of above done outside U.S. by foreign entity in which controlling interest is held by U.S. citizen or entity organized under U.S. laws

CSLA, cont.

- Implementing regulations establish various categories of licenses, including those for launch and re-entry and operation of launch/re-entry sites
- In all cases, license applications are preceded by mandatory consultation with OCST to discuss potential issues
- Thereafter, OCST will coordinate as necessary with other U.S. Government agencies

CSLA, cont.
Other License Requirements

- Policy review: To determine, in consultation with NASA, the Departments of Defense and State, and other appropriate agencies, whether the activity would jeopardize U.S. national security or foreign policy interests or international obligations

- Safety review: To determine whether the activity will jeopardize public health and safety

- Environmental impact analysis: To ensure compliance with appropriate environmental laws, regulations, and procedures

CSLA, cont.
Other License Requirements

- Payload review: To determine, in the case of licenses for launches and/or re-entries, whether activity would jeopardize public health and safety or U.S. national security, foreign policy interests or international obligations
- Exceptions to payload review: U.S. Government payloads or those subject to licensing by other U.S. Government agencies
- Payload review demonstrates control and involvement of OCST in all activities of space objects launched or re-entered under U.S. licenses

CSLA, cont.
Post-Licensing Requirements

- Licensees must provide information to OCST to enable the U.S. Government's implementation of Article IV of Registration Convention, and to comply with financial responsibility requirements specified in their respective licenses
- Financial responsibility requirements include obtaining liability insurance or demonstrating financial responsibility to compensate for maximum probable losses
- Financial responsibility requirements do not apply to licensees for the operation of launch and re-entry sites
- Launch and re-entry licensees must also enter into reciprocal cross-waivers of claims with their contractors, subcontractors, and customers

CSLA, cont.
License Compliance Procedures

- U.S. Government observer at launch, re-entry, production, assembly, and payload integration sites
- Modification, suspension, or revocation of licenses by Secretary of Transportation where necessary to protect the public, property, and U.S. national security and foreign policy interests
- Investigative and search and seizure authority, and power to impose civil penalties residing with Secretary of Transportation

Other Agencies

Federal Communications Commission

- Authorizes use of devices for transmission of energy, communications, or signals by space or Earth stations
- Purposes: Enable domestic and international coordination of satellite communications and avoid undue interference

Department of Commerce

- Responsible for licensing of private remote sensing space systems
- Purposes: Preserve U.S. national security, observe international obligations, make available unenhanced sensing data, and notify U.S. Government of licensees' agreements with foreign nations
- Enforcement powers similar to Secretary of Transportation

"We leave as we came, and God willing, as we shall return, with peace and hope for all mankind."

— Eugene Cernan, Commander of the last Apollo mission