

Space Regulations: To Boldly Go ... Or Lightly Tread

Efforts by the federal government to develop a space regulatory framework have been delayed. The delay may prove beneficial as an ambitious timeline created by the government with the issuance of Space Policy Directive 2 (SPD-2) is already revealing cracks in the process. To effectively meet the collective goals of agency and enterprise, a more deliberative, collaborative approach could prove essential.

On May 24, 2018, President Trump signed Space Policy Directive-2 (SPD-2), an ambitious outline of regulatory goals set to an aggressive timeline suggesting that the commercial space flight industry could see significant new regulations in 2019. The stated objective was the creation of a streamlined set of regulations to facilitate the commercial space operations of U.S.-based interests. SPD-2 established a February 1, 2019, deadline for a rulemaking notice after a period of engagement by several specified agencies including the Department of Transportation (DOT), Department of Commerce (DOC), as well as the National Aeronautics and Space Administration (NASA), the Office of Management and Budget (OMB) and the Federal Communications Commission (FCC). The deadline, however, was missed primarily because of the federal government shutdown.

On June 18, 2018, SPD-3 was issued, focused on managing an increasingly crowded orbit. The directive is mostly an expression of best practices and aspirational goals. It also tasked DOT, DOC, NASA, and OMB with responsibilities and added involvement by the Department of Homeland Security, various intelligence agencies, and the joint chiefs of staff. Despite the aspirational tone, SPD-3 maintains sufficient specificity with regard to technical guidance and data management to foretell the foundation of a comprehensive regulatory framework. Reading SPD-2 and SPD-3 together, one can readily see potential conflicts between the efficiency goals of the former and the comprehensive management goals of the latter. There is likewise a tension between efficiency and the necessary involvement of so many governmental agencies.

The pause in implementing SPD-2 may prove helpful as many private stakeholders in the industry have felt left out of the process due to the aggressive deadline as well as the weight given to multiple agency involvement. SPD-2's aggressive timeline was a well-intended effort to address the rapidly growing developments in the commercial space industry. Companies that already have licenses — Blue Origin and Space X — are driven by the same competitive ambitions that drove the United States and the former Soviet Union in decades past. Neither they nor companies that are hoping to obtain licenses want to be unduly hampered by new regulations. SPD-2, in particular, sets out to appease this concern but appears to have stumbled in the execution, as the absence of private involvement in the regulatory process has been one price of an expedited timeline. As such, the industry is increasingly alarmed by what it sees from outside the process.

Many in the commercial space industry also think that the Federal Aviation Administration (FAA) is taking an overly conservative approach to the regulatory process under SPD-2. The Commercial Space Transportation Advisory Committee (COMSTAC) has been developing a collection of findings and recommendations under the auspices of SPD-2 that, predictably given the FAA's mission of aerospace safety, are largely safety-minded. For companies that view unbridled innovation as essential to success, the FAA's approach feels antithetical. While it is not hard to imagine how damaging a catastrophic accident would be to a commercial space enterprise's ambitions, the FAA should take to heart any constructive comments it receives from the industry once the rulemaking notice is issued under SPD-2, if for no other reason than to reflect the pro-U.S. policies incorporated into SPD-3.

In fact, reconciling SPD-2 and SPD-3 through the new rulemaking process could likely prove beneficial in meeting a multitude of objectives. There are many well-considered recommendations



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in SPD-3 that would serve not only the stated purpose of reducing space congestion but could also have the incidental benefits of making space safer and more profitable. As the process moves forward, at whatever pace, reconciling competing governmental objectives and public-private interests will be essential to the outcome of the current space race.
