National Aeronautics and Space Administration
**Office of the Administrator**
Washington, DC 20546-0001

June 14, 2013

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

Dear Mr. Chairman:

The National Aeronautics and Space Administration (NASA) submits the enclosed proposed amendments to the National Aeronautics and Space Act of 1958, as amended, for Congress' consideration. The purpose of each proposal is described in the accompanying analysis.

These proposals continue the commitment in the FY14 President's Budget to implement the bi-partisan program for NASA agreed to by the President and Congress in the NASA Authorization Act of 2010. This will ensure the United States continues to lead the world in space exploration, technology, innovation, and scientific discovery.

I ask that any authorization considered this year allow us to continue to advance our key priorities. These include:

- partnering with American industry to develop a U.S. commercial crew and cargo transportation capability that will eliminate our sole reliance on foreign providers, provide affordable access to the ISS through domestic competition, and enable American astronauts to expand our knowledge by living, working, and conducting research on the International Space Station;
- building the Space Launch System, and a deep space exploration crew vehicle, the Orion Multi-Purpose Crew Vehicle;
- developing and testing future technologies that will enable us to move and operate faster and more efficiently in space, land more mass accurately on another planet, improve our national capabilities, and enable exploration of new destinations, including sending humans to an asteroid by 2025 and Mars by the mid-2030s;
- extending these cutting-edge capabilities with major new developments, including the James Webb Space Telescope, the most powerful telescope in history; and
- continuing NASA earth science missions to give us a global perspective on how Earth works as a system and an accurate understanding of the future of our planet's environment.

NASA is delivering the world's preeminent space program, supporting an innovation-based economy, and broadening our understanding of the universe around us.

The Office of Management and Budget has advised that enactment of these legislative proposals would be in accord with the program of the President.

Sincerely,

Charles F. Bolden, Jr.
Administrator

Enclosure

National Aeronautics and Space Administration

**Office of the Administrator**
Washington, DC 20546-0001

June 14, 2013

The Honorable Joseph Biden, Jr.
President of the Senate
Eisenhower Executive Office Building
Washington, DC 20501

Dear Mr. President:

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Charles F. Bolden, Jr.
Administrator

Enclosure

National Aeronautics and Space Administration
**Office of the Administrator**
Washington, DC 20546-0001

June 14, 2013

The Honorable John Thune
Ranking Member
Committee on Commerce, Science,
and Transportation
United States Senate
Washington, DC 20510

Dear Senator Thune:

The National Aeronautics and Space Administration (NASA) submits the enclosed proposed amendments to the National Aeronautics and Space Act of 1958, as amended, for Congress' consideration. The purpose of each proposal is described in the accompanying analysis.

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Charles F. Bolden, Jr.
Administrator

Enclosure

National Aeronautics and
Space Administration
**Office of the Administrator**
Washington, DC 20546-0001

June 14, 2013

The Honorable John D. Rockefeller, IV
Chairman
Committee on Commerce, Science,
and Transportation
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

The National Aeronautics and Space Administration (NASA) submits the enclosed proposed amendments to the National Aeronautics and Space Act of 1958, as amended, for Congress' consideration. The purpose of each proposal is described in the accompanying analysis.

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Charles F. Bolden, Jr.
Administrator

Enclosure

National Aeronautics and
Space Administration
**Office of the Administrator**
Washington, DC 20546-0001

June 14, 2103

The Honorable John A. Boehner
Speaker of the House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

The National Aeronautics and Space Administration (NASA) submits the enclosed proposed amendments to the National Aeronautics and Space Act of 1958, as amended, for Congress' consideration. The purpose of each proposal is described in the accompanying analysis.

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Sincerely,

Charles F. Bolden, Jr.
Administrator

Enclosure

National Aeronautics and Space Administration

**Office of the Administrator**
Washington, DC 20546-0001

June 14, 2013

The Honorable Eddie Bernice Johnson
Ranking Member
Committee on Science, Space, and Technology
U.S. House of Representatives
Washington, DC 20515

Dear Congresswoman Johnson:

The National Aeronautics and Space Administration (NASA) submits the enclosed proposed amendments to the National Aeronautics and Space Act of 1958, as amended, for Congress' consideration. The purpose of each proposal is described in the accompanying analysis.

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Sincerely,

Charles F. Bolden, Jr.
Administrator

Enclosure

## Astronaut Occupational Healthcare

**STATUTORY LANGUAGE:**

SEC. XXX. The National Aeronautics and Space Act as amended (51 U.S.C. 20102, et seq.), is amended by adding a new section XXX as follows:

"Astronaut Occupational Healthcare"

"Sec. XXX.

(a) Notwithstanding any other provision of law, the Administrator may, whenever the Administrator considers it desirable, within the limits of appropriations available, cause to provide for the medical monitoring, diagnosis and treatment of current and former U.S. crewmembers of a NASA human space flight including scientific and medical tests for psychological and medical conditions deemed by NASA to be associated with human space flight. Consistent with statutory privacy protections, NASA will retain access to all medical records generated pursuant to these activities.

(b) For purposes of this section, the following definitions apply:

(1) crewmember -- The term "crewmember" means a former NASA astronaut/payload specialist who has flown on at least one space mission, management NASA astronaut who has flown at least one space mission and is currently employed by the U.S. government or active NASA astronaut/payload specialist assigned, waiting assignment, or training for an assignment to a NASA human space flight.

(c) Regulations. The Administrator shall issue regulations to carry out this section.

**SECTIONAL ANALYSIS:**

SECTION XXX. Astronaut Occupational Healthcare

The immediate and long-term responsibilities of NASA with regard to the human space flight program require that the Agency provide medical and dental care, observation, and study to crewmembers while on active duty with NASA. This care encompasses all aspects related to the mission, including certification and training, and all space flight mission phases (pre-, in-, and post-flight). NASA requirements also include a program of longitudinal health study.

This new Section XXX would provide the Administrator authority to allow NASA to perform medical monitoring and provide diagnosis and treatment for active as well as former crewmembers for medical conditions which are deemed by NASA to be associated with human space flight. Medical monitoring will focus on early detection of psychological and health related conditions that may be related to occupational exposures incurred during space flight or space flight training, such as cancers, cataracts, visual changes associated with elevated intracranial pressure, injuries resulting from training or space flight and reduced bone strength and fracture associated with loss of bone mineral. Medical treatment will be provided for medical conditions which, as deemed by NASA, may not have occurred absent space flight or may have been exacerbated by space flight. Records of medical monitoring, diagnosis and treatment will be provided to NASA.

Over the past 50 years, scientific findings have emerged which indicate that crewmembers experience increased risk of cataracts, reduced visual acuity, serious shoulder injuries and other orthopedic/musculoskeletal injuries, including bone fractures, as a result of space flight and/or space flight training. Medical experts have established that a correlation exists between human space flight, and the increased risk of developing these and other associated conditions. Several

## Astronaut Occupational Healthcare

other conditions are believed to be associated with space flight, but sufficient evidence has not yet been compiled due to small numbers of 'subjects' to prove these associations and prospective studies and medical research and medical monitoring programs are ongoing. As data emerge with ongoing long duration space flight experience, we believe that other hitherto unsuspected medical conditions associate with space flight may well become evident as well. This provision will ensure equity for the men and women who performed duties unique to NASA human space flight and will provide a process of efficient, uniform, and adequate monitoring and treatment for medical conditions which exist due to space flight.

NASA shall furnish, to an individual receiving diagnostic and therapeutic medical care under this section for their work related medical condition, the services, appliances, and supplies prescribed or recommended by a qualified physician for that condition, which the Administrator considers likely to cure, give relief, or reduce the degree or the period of that medical condition.

This evaluation and treatment plan is centered on the use of the best available, evidence-based approach to determine possible causality or association of medical conditions and human space flight and will require on-going prospective study that will involve national space flight medicine leaders to ensure uniformity of protocol, equity of access, and respect for the confidentiality and protection of medical information.

**Retention of Intellectual Property Rights by Users of the ISS National Lab**

**STATUTORY LANGUAGE:**

**Treatment of Inventions and Data Developed During ISS National Laboratory Activities**

**SEC. _____. TREATMENT OF INVENTIONS AND DATA ARISING FROM ISS NATIONAL LABORATORY ACTIVITIES**

(a) RETENTION OF RIGHTS BY USERS IN INTELLECTUAL PROPERTY ARISING FROM ISS NATIONAL LABORATORY ACTIVITIES.— Chapter 201 of Title 51, United States Code, is amended by adding the following new section at the end of Subchapter III:

**§ 20165. Intellectual Property Rights Arising from ISS National Laboratory Activities.**

**(a) Definitions.—**In this section:

(1) The term "contract" shall have the meaning set forth at Section 20135(a)(1) of this Subchapter.

(2) The term "data" means recorded information, regardless of form or the media on which it may be recorded. The term includes computer software.

(2) The term "made" shall have the meaning set forth at Section 20135(a)(2) of this Subchapter.

(3) The term "person" shall have the meaning set forth at Section 20135(a)(3) of this Subchapter.

(4) The term "ISS National Laboratory Activities" means the non-NASA utilization of the ISS as described in Section 504 of Public Law 111-267 (Oct. 11, 2010).

(4) The term "ISS National Laboratory Entity" shall mean the non-profit entity awarded the cooperative agreement for the management of the ISS national laboratory in accordance with Section 504 of Public Law 111-267 (Oct. 11, 2010).

(5) The term "ISS National Laboratory Participant" shall mean any person in privity with the ISS National Laboratory Entity or NASA for the purpose of allowing such person to conduct ISS National Laboratory Activities.

**(b) Reservation of Rights.—**Nothing in this section is intended to affect or impair the rights of the Federal Government under any procurement contract, grant, cooperative agreement, understanding, arrangement, agreement, or other transaction except for contracts between the ISS National Laboratory Entity or NASA and any ISS National Laboratory Participant.

**(c) Treatment of Inventions.—**

**(1) Relationship to Section 20135.—**Except as expressly set forth in this section, the provisions of section 20135 of this Subchapter shall not apply to any invention made by an ISS National Laboratory Participant during the conduct of ISS National Laboratory Activities.

**(2) Reporting of Inventions.—** Any contract with an ISS National Laboratory Participant for ISS National Laboratory Activities shall contain appropriate provisions to effectuate the following:

(A) That if an ISS National Laboratory Participant is obligated to disclose inventions made during the conduct of ISS National Laboratory Activities under any other contract with any Federal agency, the ISS National Laboratory Participant will concurrently provide a copy of such disclosure to the Administration.

(B) That if an ISS National Laboratory Participant is not obligated to disclose inventions made during the conduct of ISS National Laboratory Activities under any other contract with any Federal agency,

**Retention of Intellectual Property Rights by Users of the ISS National Lab**

each ISS National Laboratory Participant shall:

(i) Disclose inventions of the National Laboratory Participant made in the conduct of ISS National Laboratory Activities to the Administration within two months after it becomes known to personnel responsible for the administration of patent matters for the ISS National Laboratory Participant, and the Federal Government may receive title to any such invention not disclosed to it within such time.

(ii) Make a written election within two years after disclosure to the Administration (or such additional time as may be approved by the Administration) whether the ISS National Laboratory Participant will retain title to such invention: Provided, That in any case where the 1-year period referred to in section 102(b) of Title 35 would end before the end of that 2-year period, , the period for election may be shortened by the Administration to a date that is not more than sixty days prior to the end of that 1-year period: And provided further, That the Federal Government may receive title to any such invention in which the ISS National Laboratory Participant does not elect to retain rights or fails to elect rights within such times.

(iii) If an ISS National Laboratory Participant elects rights in such invention made during ISS National Laboratory Activities, it agrees to file a patent application on such invention prior to the expiration of the 1-year period referred to in section 102(b) of Title 35, and shall thereafter file corresponding patent applications in other countries in which it wishes to retain title within reasonable times, and that the Federal Government may receive title to any such inventions in the United States or other countries in which the ISS National Laboratory Participant has not filed patent applications on the invention within such times.

(iv) Make periodic reporting on the utilization or efforts at obtaining utilization of such invention that are being made by the ISS National Laboratory Participant or its licensees or assignees: Provided, That any such information as well as any information on utilization or efforts at obtaining utilization obtained as part of a proceeding under section 203 of title 35, United States Code, shall be treated by the Administration as commercial and financial information obtained from a person and privileged and confidential and not subject to disclosure under the Freedom of Information Act pursuant to section 552(b)(3) of title 5.

**(3) Rights to ISS National Laboratory Participant.—** Subject to the terms of section (c)(2)(B), as between the ISS National Laboratory Participant and the Federal Government, the ISS National Laboratory Participant will retain all rights in inventions made by an ISS National Laboratory Participant during the conduct of ISS National Laboratory Activities. The ISS National Laboratory Participant will retain a nonexclusive royalty-free license throughout the world in each invention to which the Federal Government obtains title.

**(4) Inventions Made by the Administration.—**The Administration may grant, or agree to grant in advance, to a ISS National Laboratory Participant, patent licenses or assignments, or options thereto, in any invention conceived and first actually reduced to practice in whole or in part by an employee of the Federal Government during the conduct of ISS National Laboratory Activities, for reasonable compensation when appropriate. The Administration shall ensure that the ISS National Laboratory Participant has the option to choose an exclusive license for a pre-negotiated field of use for any such invention or, if there is more than one ISS National Laboratory Participant collaborating to conduct a ISS National Laboratory Activity, that the collaborating parties are offered the option to hold licensing rights that collectively encompass the rights that would be held under such an exclusive license by one party. Notwithstanding the foregoing, for any invention exclusively licensed or assigned hereunder, the Federal Government shall retain a nonexclusive, nontransferable, irrevocable, paid-up license from the ISS National Laboratory Participant to practice the invention or have the invention practiced throughout the world by or on behalf of the Government.

**Retention of Intellectual Property Rights by Users of the ISS National Lab**

**(d) Data First Produced in the Conduct of ISS National Laboratory Activities.—**

**(1) No Rights to Government.**--Except as otherwise agreed in writing by the ISS National Laboratory Participant or as otherwise lawfully acquired by the Federal Government, and subject to the reservation of rights set forth in section (b) herein, the Federal Government may not reproduce or use data first produced in the performance of ISS National Laboratory Activities, and may not disclose such data outside the Federal Government, except as otherwise required by law.

**(2) Special Handling of Trade Secret or Confidential Information.—**Data first produced by the Administration in the performance of ISS National Laboratory Activities, and that would be a trade secret or commercial or financial information that is privileged or confidential under the meaning of section 552 (b)(4) of title 5 if the data had been obtained from a non-Federal party, may be appropriately protected by the Administrator against the dissemination of such information, for a period of up to 5 years after the production of such data, including exemption from subchapter II of chapter 5 of title 5.

**(3) Committees of Congress.—** Nothing in this section authorizes the withholding of information by the Administrator from the duly authorized committees of Congress.

**SECTIONAL ANALYSIS:**

NASA is currently operating a share of the United States accommodations on the International Space Station (ISS) as a National Laboratory in accordance with Section 504 of the NASA Authorization Act of 2005 (P.L. 109-155). Section 504 of the NASA Authorization Act of 2010 (P.L. 111-267), authorizes NASA to maximize the value of the investment the U.S. government has made in the ISS and demonstrate the scientific and technological productivity of the ISS over the next decade by entering into a Cooperative Agreement with a 501(c)(3) entity to support research and development and to manage the activities of the ISS National Laboratory.

NASA implemented the direction of the 2010 Authorization Act by initially funding the operation of an independent 501(c)(3) entity (the National Laboratory Entity) to manage non-NASA utilization of the ISS through the ISS National Laboratory.[1] The National Laboratory Entity is expected to capitalize on the unique venue of the ISS as a national resource to promote opportunities for advancing science and technology to other U.S. government agencies, university-based researchers and private firms for utilization of the ISS. These organizations will use the ISS as the nation's newest national laboratory to pursue basic and applied research in fields such as human health, energy, and the environment, as well as stimulate educational opportunities in science, technology, engineering and mathematics (STEM) for the next generation of U.S. scientists and engineers.

The operation of the ISS National Laboratory will open new paths for the exploration and economic development of space through opportunities to expand the US economy in space-based research, applications and operations through the use of a unique and highly visible national asset with surplus capacity available for a wide spectrum of applications. To facilitate the acceptance and use of the ISS National Laboratory as an attractive and cost-effective platform for commercial research applications, NASA will continue to cover cost of operating and maintaining the ISS, and is highly motivated to work with other agencies and organizations to

[1] The current National Laboratory Entity is the Center for the Advancement of Science in Space (CASIS) under a cooperative agreement awarded in September, 2011.

pursue applications.

Use of the ISS National Laboratory for commercial research is still perceived as a risky venture. Although NASA continues to fund the ISS and has agreed to provide transportation to and from the ISS for research activities, the conduct of microgravity research is an expensive proposition for commercial firms. In order to increase the perceived value of conducting commercial development activities in a microgravity environment, it is incumbent upon NASA to ensure that commercial firms have the maximum opportunity to leverage their investment in activities conducted on the ISS National Laboratory and remove any identified barriers to developing successful commercial applications.

**Treatment of Intellectual Property under Cooperative Agreements**:

Cooperative agreements entered into between the Federal Government and non-profit organizations are subject to a set of generally applicable government-wide statutes and regulations pertaining to rights in intellectual property (both inventions and data) arising from the work conducted under the cooperative agreement. These include, but are not limited to, the Bayh-Dole Act, 35 U.S.C. §§ 200-212; the Stevenson-Wydler Act, 15 U.S.C. § 3701, *et seq*.; and OMB Circular A-110. These requirements apply to all activities under the cooperative agreement regardless of tier. NASA also has "title taking authority" under the Space Act which provides that NASA owns any inventions made "with a contribution by the Government of the use of Government facilities, equipment, materials, allocated funds, information proprietary to the Government, or services of Government employees during working hours…." 51 U.S.C. § 20135(b)(1). NASA may waive its right to take title to inventions, but under the Space Act and under the provisions cited above, the Federal Government is required to retain the right to use data and inventions for government purposes.[2]

**Encouragement of ISS National Laboratory Activities**: NASA is concerned that the requirements under current law provide a disincentive for commercial companies to invest in microgravity research. Microgravity research activities for NASA applications are not conducted through the ISS National Lab. Therefore, any research conducted on the ISS National Lab is not being conducted to meet a NASA need or mission requirement. Because work through the ISS National Lab is not being conducted to support any NASA need, the traditional approach to intellectual property under which the government retains rights for government purposes does not directly benefit the Agency and encumbers the commercialization efforts of ISS National Laboratory users. NASA, therefore, is proposing an approach that maximizes the intellectual property rights retained by ISS National Laboratory users. This approach includes the following provisions:

- The proposed legislation does not affect or impair intellectual property rights that the Federal government may receive under other agreements. For example, if an

[2] In most cases, "government purposes" is defined as use "by or on behalf of the Federal government." These rights extend to all Federal agencies, not just NASA.

ISS National Laboratory user is working under a grant from NIH, the terms and conditions of the grant relating to intellectual property will still apply. However, the Federal government will not get rights simply because a researcher uses the ISS National Laboratory.

- The proposed legislation exempts inventions arising from use of the ISS under the ISS National Laboratory from NASA's title taking authority under the Space Act.
- The proposed legislation does include the requirements found in the Bayh-Dole Act that ISS National Laboratory users: (1) disclose inventions and elect to retain title; (2) file patents on elected inventions; and (3) provide reports on their success at commercializing the invention. These requirements are adapted from the Bayh-Dole Act at 35 USC 202(c). The purpose of these provisions is to:
    - Ensure that NASA has the opportunity to evaluate the success of the ISS National Laboratory through reporting of new inventions.
    - Collect and maintain metrics of inventions and "spinoffs" developed with NASA support through the Office of Chief Technologist.
    - Ensure that ISS National Laboratory users diligently pursue commercial applications for inventions developed on the ISS National Laboratory.
- Unlike the Bayh-Dole Act, if the ISS National Laboratory user complies with its requirement to report and patent inventions, the Federal government does not retain Government purpose rights. The user retains all rights in the inventions. If the user does not retain title or protect the invention, then NASA will have the option to step in and pursue practical use of the invention.
- The ISS National Laboratory user has the right to exclusively license any inventions created by NASA during the conduct of activities on the ISS National Laboratory. This ensures that the user has the opportunity to consolidate commercial rights in any inventions arising from its use of the ISS National Laboratory, even if the invention would otherwise belong to the Government. This provision is drawn from the CRADA authority in the Stevenson-Wydler Act at 15 USC 3710a (b)(1).
- The Government retains no right to use data created during the conduct of activities on the ISS National Laboratory and, if proprietary data would otherwise be subject to disclosure under FOIA, NASA can protect that data for up to five (5) years. The five (5) FOIA protection is identical to protection provided to Space Act Agreement partners under 51 USC 20131(b).

Through this proposed legislation, NASA believes that it strikes a balance between the legitimate commercial needs of the ISS National Laboratory users who are being asked to make investments in commercial microgravity research and the Government's interest in ensuring that inventions developed using Government resources and taxpayer-funded facilities are appropriately commercialized. This legislation does not impact NASA's research need or the rights of the Government in its own research since (1) work for NASA will be conducted outside the ISS National Laboratory and (2) other arrangements between ISS National Laboratory users and the Federal Government are not impacted by this proposal.

**Authority for Negotiated Disposal of Personal Property for Use by Commercial Space Industry**

**STATUTORY LANGUAGE:**

**Disposal of Personal Property for Use in Commercial Space Transportation Services**

**SEC. ___. DISPOSAL OF PERSONAL PROPERTY FOR USE IN COMMERCIAL SPACE TRANSPORTATION SERVICES AND SPACE-RELATED ACTIVITIES.**

(A) AUTHORITY FOR SALE OF PERSONAL PROPERTY FOR USE IN COMMERCIAL SPACE TRANSPORTATION SERVICES AND SPACE-RELATED ACTIVITIES.—Chapter 201 of title 51, United States Code, is amended –

(A) by deleting the "and" from the end of end of subsection (4) of Section 20113(c)

(B) by deleting the "," from the end of subsection (5) of Section 20113(c) and inserting ";and".

(C) by adding the following new subsection (6) to Section 20113(c):

(A) to sell or otherwise dispose of excess personal property when such sale will support the development of the United States commercial space industry. Sale of excess personal property under this subsection is authorized if —

**(i)** the Administrator determines that **(I)** the sale of said personal property will support the development and delivery of space-related activities and space transportation services by current or potential United States commercial providers; **(II)** equivalent personal property is not commercially available on reasonable terms; **(III)** the personal property has commercial value when used for its intended purpose; and **(IV)** the sale of said personal property is consistent with public safety, national security, and international treaty obligations;

(ii) the sale is subject to obtaining competition that is feasible under the circumstances;

**(iii)** the sale is accompanied by a written instrument providing that the personal property shall be used and maintained by the purchaser solely for the purpose for which it was sold, will be utilized to support the development and delivery of space-related activities and space transportation services, and shall not be further sold or transferred except as part of the sale of all or substantially all of the assets of the purchaser; and such additional terms, reservations, restrictions and conditions that the Administrator determines are necessary to ensure use of the personal property for the purposes for which it was conveyed and to safeguard the interests of the Government;

(iv) the sale includes consideration for the transfer of the personal property as determined by the Administrator to be proper,

(B) Notwithstanding any of the provision of law, the General Services Administration may act as the sales agent for sales conducted under this subsection. The expenses incurred by the Administration or its sales agent in conducting sales under this subsection may be paid from the proceeds of such sales. ”

**SECTIONAL ANALYSIS:**

This proposal would provide a mechanism for NASA to support United States commercial providers of space transportation services and space-related activities by providing a mechanism to transfer excess federal personal property directly to such providers through disposal after the personal property has been reported excess to NASA’s needs. The proposed legislation would authorize sale of personal property to support the development of the United States commercial space industry upon appropriate determination by the Administrator once the personal property has been reported excess by NASA. Any personal property subject to sale under the proposed legislation would be subject to reasonable competition and would require that the Administrator determine appropriate consideration for any sale. NASA anticipates that it will work with GSA to permit GSA to act as NASA sales agent for sales conducted under this

**Authority for Negotiated Disposal of Personal Property for Use by Commercial Space Industry**

authority.

This proposal would authorize the use of sale of excess personal property only when a determination can be made that:

- sale of said personal property will support the development and delivery of space-related activities and space transportation services by current or potential United States commercial providers;

- equivalent personal property is not commercially available on reasonable terms;

- the personal property will be used for its intended purpose and will be utilized to support the development and delivery of space-related activities and space transportation services; and

- the sale of said personal property to a commercial provider is consistent with public safety, national security, and international treaty obligations.

Many NASA Centers are exploring options for currently under-utilized equipment that could be of potential benefit to commercial industry. The proposed legislation will enable the availability of such equipment for the productive use by the commercial space industry whereas otherwise the equipment would be stored unused or potentially destroyed. NASA believes that this authority will provide industry increased benefits along with potentially reduced risks. For example, equipment sold rather than provided under a time-limited or terminable loan agreement would provide a commercial company greater certainty in developing plans and managing investments in infrastructure over time. Further, the unique equipment that once provided value to NASA would continue providing value to commercial industry without requiring NASA to maintain ownership, potential liability and administrative responsibilities for the personal property.

This proposal implements the foundational activity set forth in the 2010 National Space Policy (June 28, 2010) to:

> **Strengthen U.S. Leadership In Space-Related Science, Technology, and Industrial Bases**. Departments and agencies shall: conduct basic and applied research that increases capabilities and decreases costs, where this research is best supported by the government; *encourage an innovative and entrepreneurial commercial space sector; and help ensure the availability of space-related industrial capabilities in support of critical government functions*. (emphasis supplied)

The current proposal uses the terms “commercial provider;” “space-related activities;” “space transportation services; and “United States commercial provider.” These terms are defined elsewhere in Title 51 in the Commercial Space Act of 1998, 51 U.S.C. §§ 50101 et seq. This narrowly targets the beneficiaries of the proposed authority to those entities as required to

### Authority for Negotiated Disposal of Personal Property for Use by Commercial Space Industry

benefit the Federal Government by facilitating the availability of services from United States commercial providers so such services can be acquired by the Federal Government as required under the Commercial Space Act of 1998.

**Impacts:**

None envisioned. The proposal applies only to excess federal personal property – personal property that has been declared excess by NASA and no longer needed for Agency missions. It is anticipated the opportunity to ensure that unneeded NASA personal property is further utilized in a productive capacity will encourage the reporting of additional NASA personal property as excess. This will reduce NASA's current inventory of personal property and potential reduce the cost to maintain personal property with limited programmatic utility.

**Associated costs:**

No additional costs above those required to administer the personal property disposal process.

### Authority to Protect Certain Technical Data from Public Disclosure

## STATUTORY LANGUAGE:

SEC. XXX. 51 U.S.C. 20131 is amended by adding a new subsection (d) at the end thereof, as follows:

"(d) AUTHORITY TO PROTECT CERTAIN TECHNICAL DATA FROM PUBLIC DISCLOSURE.---

(A) Notwithstanding any other provision of law, the Administrator may withhold from public disclosure any technical data with aeronautical or space application in the possession of, or under the control of, the National Aeronautics and Space Administration, if such data may not be exported lawfully outside the United States without an approval, authorization, or license under provisions of the Export Administration Act of 1979 or the Arms Export Control Act of 1976.

(B) In this section, the term 'technical data' means any blueprints, drawings, photographs, plans, instructions, computer software, or documentation, or other technical information that can be used, or be adapted for use, to design, develop, engineer, produce, manufacture, assemble, operate, repair, test, maintain, overhaul, modify, or reproduce any aeronautical or space items, including subsystems, components, or parts therefor, or technology concerning such items.

(C) For purposes of section 552 of title 5, United States Code, this subsection shall be considered a statute described in subsection (b)(3)(B) of such section 552.

## SECTIONAL ANALYSIS:

SECTION XXX. Authority to Protect Certain Technical Data from Public Disclosure

This section would amend the National Aeronautics and Space Act (codified at 51 U.S.C. 20131) to authorize NASA to withhold from public disclosure certain technical data with aeronautical or space application, if such data may not be exported lawfully outside the United States without an approval, authorization, or license under the provisions of the Export Administration Act of 1979 (EAA) or the Arms Export Control Act of 1976 (AECA).

The "technical data" sought to be protected here is export-controlled information under the EAA and AECA. At present there is no particular exemption in the Freedom of Information Act (FOIA) that applies to all such information, nor is there any statute that specifically allows NASA to withhold it from public disclosure. In order to protect the information, NASA has been required to attempt to apply existing FOIA exemptions to requests for the technical data, a process which has often proved an extreme challenge. One such exemption on which NASA had occasionally relied, called Exemption high 2, allowed federal agencies to withhold records of "substantial internal matters, the disclosure of which would risk circumvention of a statute or agency regulation." This exemption was

disallowed by the U.S. Supreme Court, however, in a recent case (Milner v. Dept of the Navy, 131 S. Ct. 1259 (2011)), wherein it found this court-made interpretation of Exemption 2 to be "disconnected from Exemption 2's text" in the FOIA. Though the Court invited the DOJ to restore Exemption high 2 statutorily, and DOJ has in fact pursued such legislation, thus far it has not been successful. Therefore, NASA is now without a clear option for trying to protect export-controlled information from public disclosure. The statutory authority it currently seeks would fill that gap, and put it on par with DoD, which protects such information via 10 USC 130 (Authority to Withhold from Public Disclosure Certain Technical Data), on which NASA has modeled its proposal. It is relevant to point out that without the benefit of this authority, NASA may be unable to withhold the same data which DoD can withhold under 10 USC 130.

It should be noted that the FOIA does not provide for limited disclosure, e.g., to U.S. persons only. As the Supreme Court said in NARA v. Favish (541 U.S. 157, 174 (2004)), "once there is disclosure, the information belongs to the general public." Worded another way, "a release to one is a release to all," thus putting information released only to U.S. persons in the public domain and available to foreigners as well, a result that would gut the AECA and EAA of their effectiveness.

In sum, NASA needs this statutory authority in order to protect export-controlled information in its possession from public disclosure. This is particularly true today, due to heightened proliferation challenges facing the United States and the rest of the world, including risks posed by the spread of missile technology and other critical technologies.

## Detection and Avoidance of Counterfeit Electronic Parts

**STATUTORY LANGUAGE:**

SEC. XXX DETECTION AND AVOIDANCE OF COUNTERFEIT ELECTRONIC PARTS.

(a) REGULATIONS.–

(l) IN GENERAL.– Not later than 270 days after the date of the enactment of this Act, the Administrator shall revise the NASA Supplement to the Federal Acquisition Regulation to address the detection and avoidance of counterfeit electronic parts.

(2) CONTRACTOR RESPONSIBILITIES.– The revised regulations issued pursuant to paragraph (1) shall provide that–

(A) NASA contractors who supply electronic parts or products that include electronic parts are responsible for detecting and avoiding the use or inclusion of counterfeit electronic parts or suspect counterfeit electronic parts in such products and for any rework or corrective action that may be required to remedy the use or inclusion of such parts; and

(B) the cost of counterfeit electronic parts and suspect counterfeit electronic parts and the cost of rework or corrective action that may be required to remedy the use or inclusion of such parts are not allowable costs under Agency contracts, unless

(i) the covered contractor has an operational system to detect and avoid counterfeit parts and suspect counterfeit electronic parts that has been reviewed and approved by NASA or the U.S. Department of Defense and

(ii) the covered contractor provides timely notice to NASA pursuant to paragraph (a)(4) ; or

(ii) the counterfeit electronic parts or suspect counterfeit electronic parts were provided to the contractor as Government property in accordance with part 45 of the Federal Acquisition Regulation.

(3) SUPPLIERS OF ELECTRONIC PARTS.– The revised regulations issued pursuant to paragraph (1) shall –

(A) require that NASA and NASA contractors and subcontractors at all tiers –

(i) obtain electronic parts that are in production or currently available in stock from the original manufacturers of the parts or their authorized dealers, or from suppliers who obtain such parts exclusively from the original manufacturers of the parts or their authorized dealers; and

(ii) obtain electronic parts that are not in production or currently available in stock from suppliers that meet qualification requiements established per subparagraph (C);

(B) establish documented requirements consistent with published industry standards and/or Government contract requirements for:

(i) notification of the Agency; and

(ii) inspection, testing, and authentication of electronic parts that NASA or a NASA contractor or subcontractor obtains from any source other than a source described in subparagraph (A);

(C) establish qualification requirements, consistent with the requirements of section 2319 of Title 10, United States Code, pursuant to which NASA may identify suppliers that have appropriate policies and procedures in place to detect and avoid counterfeit electronic parts and suspect counterfeit electronic parts; and

(D) authorize NASA contractors and subcontractors to identify and use additional suppliers beyond those identified per subparagraph (C) above, provided that –

(i) the standards and processes for identifying such suppliers comply with established industry standards;

(ii) the contractor or subcontractor assumes responsibility for the authenticity of parts provided by such suppliers as provided in paragraph (2); and

(iii) the selection of such suppliers is subject to review and audit appropriate NASA officials.

(4) The revised regulations issued pursuant to paragraph (1) shall require that any NASA contractor or subcontractor who becomes aware, or has reason to suspect, that any end item, component, part or material contained in supplies purchased by NASA, or purchase by a contractor or subcontractor for delivery to, or on behalf of, NASA, contains counterfeit electronic parts or suspect counterfeit electronic parts, shall provide notification to the applicable NASA contracting officer within 30 calendar days.

(b) DEFINITIONS.–

The term "electronic part" means a discrete electronic component, including, but not

limited to, a microcircuit, transistor, capacitor, resistor, or diode that is intended for use in a safety/mission critical application.

## SECTIONAL ANALYSIS:

### Purpose and Need

### A. General

1. The purpose of this proposed legislation is to mitigate the growing threat that counterfeit electronic parts pose to NASA safety and mission success. The legislation would significantly reduce the risk of counterfeit electronic parts entering NASA's supply chain by ensuring that electronic components are purchased solely from trusted suppliers and by assigning NASA contractors clear and full responsibility for detecting and avoiding the supply of counterfeit product.

2. The proposed language mirrors language contained in FY 2012 NDAA, Section 818, Detection and Avoidance of Counterfeit Electronic Parts. The proposed legislation would ensure that NASA is afforded the same protections as the Department of Defense (DoD) and that common DoD and NASA contractors and suppliers are treated consistently. A summary listing of differences between NDAA and NASA proposed legislative language is provided below in a separate section.

### B. Scope and Severity of Counterfeiting

Multiple credible sources of information, including data reported by the Senate Armed Services Committee (SASC), a Department of Commerce (DoC) industrial base assessment, and the Government-Industry Data Exchange Program (GIDEP) demonstrate that counterfeit electronic parts are a severe and growing problem and that such parts have contaminated the aerospace industry supply chain.

1. The SASC reported in 2011 that it had identified 1,800 cases of counterfeiting, comprising roughly one million parts.

2. The DoC reported in 2010 that 9,356 suspected cases of counterfeiting in the aerospace industry supply chain had been identified in 2008, an almost three-fold increase since 2005.

3. GIDEP data for counterfeit parts, including numerous cases of counterfeiting reported by NASA prime contractors, is trending steeply upward. 2011 is the worst year on record by a significant margin.

As reported in a 2010 DoC report, Defense Industrial Base Assessment: Counterfeit Electronics, counterfeit parts are most commonly identified during product testing due to part failure or significantly degraded performance. Parts that do not fail product testing and remain undetected pose severe reliability and safety risks. Catastrophic failure of

safety/mission critical electronic parts can potentially result in loss of life or loss of significant mission capabilities.

### C. Trusted Suppliers

The proposed legislative language mandates procurement of electronic parts from "trusted suppliers." For parts still in production, trusted suppliers are defined as "original manufacturers of the parts or their authorized dealers, or suppliers who obtain such parts exclusively from the original manufacturers of the parts or their authorized dealers." Such supply sources are not vulnerable to counterfeiting schemes.

An evaluation of 369 GIDEP Alerts reporting counterfeit parts over the past ten years reveals that 100% of the reported supply sources were independent distributors and brokers that do not meet the above definition of trusted supplier. Such resellers obtain parts from various unknown sources and are vulnerable to counterfeiting schemes.

Other factors reflecting the need and benefits of procuring electronic parts solely from trusted suppliers are: (1) product authenticity testing required to validate product provided by non-trusted suppliers is extremely costly and is not reliable (per the DoC assessment, 19% of test laboratories employed failed to detect counterfeits); (2) certificates of compliance, test reports, and supply chain traceability documentation provided by non-trusted suppliers have been found to be fraudulent; (3) material handling and storage of electronic parts by non-trusted suppliers is often compromised, leading to damaged material and/or significantly shortened life (*e.g.*, electrostatic discharge damage, cleanliness); and (4) warranty and product support is often unavailable for material provided by non-trusted suppliers.

## III. Cost Avoidance Factors Associated with Legislative Proposal

Costly tests and inspections required by NPD 8730.2, NASA Parts Policy, for procurement of parts from non-trusted suppliers would not be incurred for parts procured from trusted sources. Although parts supplied by non-trusted suppliers can be less costly than parts provided by trusted suppliers, this cost savings is negated and exceeded by costs to perform required additional tests and inspections.

Additional cost avoidance would be realized in the event that counterfeit parts are supplied to NASA. Contractors would bear the full responsibility for, and costs associated with, rework and/or corrective actions (these would not be allowable contract costs).

## Differences between National Defense Authorization Act (NDAA) for FY 2012 and NASA Proposed Legislative Language

NDAA provisions were omitted from the contents of this NASA legislative proposal in cases where the provisions duplicate legislative requirements imposed upon NASA by its 2010 Authorization Act, duplicate existing Agency policy and practices, provide

direction to non-NASA organizations, or would result in significant costs without commensurate benefit. Below is a listing of deletions.

1. Deleted language in NDAA Section 818(b) on establishment of Agency-wide counterfeit electronic part definitions, as well as requirements for training personnel, remedial measures, and reporting of suspected counterfeit parts as duplicative of requirements contained in the NASA 2010 Authorization Act, NPD 8730.2, NASA Parts Policy, and/or NFS 1809.4.

2. Deleted language in Section 818(c)(4) and (5) regarding GIDEP reporting as duplicative of requirements contained in NPR 8735.1, Procedures for Exchanging Parts, Materials, and Safety Problem Data Utilizing the Government-Industry Data Exchange Program and NASA Advisories.

3. Deleted language in Section 818(d) providing direction to the Secretary of Homeland Security to establish and implement an inspection program.

4. Deleted language in Section 818(e) regarding the implementation of a program for contractor detection and avoidance of counterfeit electronic parts as duplicative of requirements contained in NPD 8730.2, NASA Parts Policy.

5. Deleted language in Section 818(g) regarding information sharing by the Secretary of the Treasury regarding suspected products being imported in violation of section 42 of the Lanham Act.

6. Deleted language in Section 818(h), which revised 18 U.S.C. § 2320, "Trafficking in Counterfeit Goods or Services." This statute already applies to all federal agencies, including NASA, and the language simply adds more stringent penalties when the counterfeit goods compromise military operations.

7. Deleted requirement for NASA to implement a process for review and approval of contractor counterfeit parts avoidance systems. This would result in significant costs to NASA that are unnecessary due to an impending 3rd party certification program currently under development by the SAE G-19 Technical Committee.

An additional change to the DoD legislative language is modification of the definition of "electronic part" to reflect NASA's definition of electronic, electrical, and electromechanical parts and to narrow the definition so that it only includes discrete parts used in safety/mission critical applications.

## Confidentiality of Voluntarily-Provided Safety Information

**STATUTORY LANGUAGE:**

(a) The NASA Administrator shall not disclose witness statements taken during mishap investigation boards if the Administrator finds that:

1. disclosure of the information would inhibit the voluntary provision of that type of information;
2. receipt of that information aids in improving the safety of NASA's programs and NASA's research related to aeronautics and space; and
3. withholding such information from disclosure would be consistent with improving the safety of NASA's programs and NASA's research related to aeronautics and space.

(b) Regulations. The Administrator shall issue regulations to carry out this section.

(c) For purposes of section 552 of title 5, United States Code, this subsection shall be considered a statute described in subsection (b)(3)(B) of such section 552.

**SECTIONAL ANALYSIS:**

NASA is seeking legislative authority to protect safety-related information from public disclosure. The authority that NASA seeks here has been well-established in law for many years. In fact, the legislative proposal is based on an FAA statute found at 49 USC § 40123. The FAA statute protects safety-related information collected in the Aviation Safety Action Program (ASAP) and Flight Operational Quality Assurance (FOQA) Program. This grant of authority to the FAA has permitted the sharing of critical safety information within the commercial aviation industry without the risk of publicly releasing that information. NASA is similarly asking for the ability to identify and manage safety risks related to its programs and operations.

NASA collects safety-related information in many situations, including internal surveys, external surveys, and when a mishap investigation board takes witness statements. Protecting this type of information from public disclosure will encourage open and honest communication about risks and potential mishaps. Further, it will assist in ensuring safety of the public and a safer workplace for employees, allowing managers to make more informed decision about the risks associated with NASA activities.

For many years, NASA has sought to protect witness statements taken during mishap investigation boards. The authority that NASA asserts is similar to that asserted by the Department of Defense per a Supreme Court case (U.S. v. Weber Aircraft Corp.) that supported the safety privilege for witness statements taken during an Air Force safety investigation board. Currently, each NASA witness is told that their statement will be protected to the "greatest extent permitted by law." In other words, NASA will assert that these statements are protected, but a court may order the disclosure of a statement. Each person who provides a statement bears the risk that the statement may be disclosed. NASA needs clear statutory language to protect these types of witness statements from public release. This will help NASA to protect the safety of the public, its team members, and those assets that the Nation entrusts to the agency.

## Confidentiality of Medical Quality Assurance Records

**STATUTORY LANGUAGE**

Confidentiality of Medical Quality-Assurance Records

SEC. XXX. The National Aeronautics and Space Act, as amended (51 U.S.C. 20101, et seq.), is amended by adding a new section 319 as follows:

"Sec. XXX. (a) AUTHORITY.—Subject to the requirements set forth in this section, the Administration establishes that records created by NASA as part of a medical quality-assurance program are confidential and privileged and may not be disclosed to any person or entity except in the exceptions noted below.

(b)-–DEFINITIONS.—For purposes of this section,

(1) the term "quality assurance program" means :

A comprehensive program within NASA to systematically review and improve the quality of medical and behavioral health services to assure the safety and security f persons receiving medical and behavioral health services, and to evaluate and improve the efficiency, effectiveness, and utilization of staff and resources in the delivery of medical and behavioral health services. It includes any activity carried out by or for the NASA to assess the quality of medical care.

(2) The term "medical quality assurance record" means:

The proceedings, discussion, records, findings, recommendations, evaluations, opinions, minutes, reports, and other documents or actions that emanate from quality assurance committees, quality assurance programs, or quality assurance program activities.

(c) ACCESS TO RECORDS – Medical quality assurance records, as defined, may be disclosed as follows:

(1) To a Federal agency or private organization, if such record is needed by such agency or organization to perform licensing or accreditation functions related to NASA health-care facilities or to perform monitoring, required by statute, of NASA health-care facilities.

(2) To a Federal executive agency or provider of health-care services, if such record is required by such agency or provider for participation by the NASA in a health-care program with such agency or provider.

(3) To a criminal or civil law enforcement governmental agency or instrumentality charged under applicable law with the protection of the public health or safety, if a qualified representative of such agency or instrumentality makes a written request that such record be provided for a purpose authorized by law.

(4) To an officer, employee, or contractor of NASA who has need for such record to perform official duties associated with health care.

(5) To health-care personnel, to the extent necessary to meet a medical emergency affecting the health or safety of any individual.

(6) To any committees, panels, or boards convened by NASA to review Agency health care related policy and practices.

(d) STIPULATIONS – Disclosure of medical quality assurance records will be governed by the following stipulations:

(1) No part of any medical quality assurance record described in section (b) may be subject to discovery or admitted into evidence in any judicial or administrative proceeding, except as provided in section (c).

(2) A person who reviews or creates medical quality assurance records for NASA or who participates in any proceeding that reviews or creates such records may not be permitted or required to testify in any judicial or administrative proceeding with respect to such records or with respect to any finding, recommendation, evaluation, opinion, or action taken by such person or body in connection with such records except as provided in section (c).

(3) The name of and other identifying information regarding any individual patient or employee of NASA, or any other individual associated with NASA for purposes of a medical quality assurance program, contained in a record or document shall be deleted from any record or document before any disclosure is made outside the Agency, if disclosure of such name and identifying information would constitute a clearly unwarranted invasion of personal privacy.

(4) No person or entity to whom a record has been disclosed shall make further disclosure of such record or document except for a purpose provided in this subsection.

(5) Medical quality assurance records as described in this section shall not be made available to any person under section 552 of title 5 of the Freedom of Information Act and this section shall be considered a statute described in subsection (b)(3)(B) of section 552.

(6) Nothing in this section shall be construed as authority to withhold any record from a committee of either House of Congress or any joint committee of Congress, if such record or document pertains to any matter within the jurisdiction of such committee or joint committee.

(7) Nothing in this section shall be construed as limiting the use of records within NASA (including contractors and consultants of NASA)."

(e) REGULATIONS - The Administrator shall prescribe regulations to implement this section.

## SECTIONAL ANALYSIS

SECTION XXX. Confidentiality of NASA Medical Quality-Assurance Records

This section would establish that records created by NASA as part of its medical quality-assurance program are confidential and privileged and may not be disclosed to any person. The section describes the conditions under which exceptions to this policy are permitted and delineates the stipulations that guide the disclosure of records for those exceptions.

NASA's medical quality assurance program is a comprehensive program within NASA to systematically review and improve the quality of medical and behavioral health services within NASA to assure the safety and security of persons receiving such services, and the efficiency and effectiveness of the utilization of staff and resources in the delivery of these services. It encompasses all licensed independent practitioners and personnel (e.g., medical, nursing, allied health professionals, pharmacists, dietitians, certified athletic trainers, and other allied health professionals), and non-licensed personnel (e.g., lab and x-ray techs, paramedics, dental assistants, strength and conditioning specialists, wellness counselors, and other personnel who provide services) at all NASA occupational health and flight clinics, and other medical settings. Activities of the medical quality assurance program include any activity carried out by or for NASA to assess its quality of medical care. This includes activities conducted by civil servants, contractors, or consultants related to medical, dental, or psychological care, and any committees or other review bodies responsible for medical quality assurance. The records associated with these activities include the proceedings, discussion, findings, recommendations, valuations, opinions, minutes, reports, and other documents or actions that emanate from quality assurance committees, quality assurance programs, or quality assurance program activities.

The purpose of establishing that medical quality assurance records and documents are confidential and privileged is to establish that records created by NASA as part of its medical quality-assurance program are confidential and privileged and may not be disclosed to any person. Maintaining such confidentiality promotes open and honest communication during investigations and other quality assurance review procedures. The privacy afforded by this stipulation contributes to the ability of the Agency to conduct

internal medical investigations and reviews in a thorough and comprehensive manner which ultimately enhances the ability of the Agency to assure the quality of its medical care programs. Having such records confidential and privileged is the standard of practice in other medical settings, and other Federal agencies (e.g., VA, 38 USC Section 5705; DOD, 10 USC Section 1102) have such provisions. The lack of these provisions for NASA constitutes a notable deficiency in the Agency's medical quality assurance capability.

This section provides the foundation for the policy that medical quality assurance records created by or for NASA, as part of the medical quality assurance program, are confidential and privileged. They may not be made available to any person under the "Freedom of Information Act" (Sections 552) of title 5, United States Code and no part of any medical quality assurance record may be subject to discovery or admitted into evidence in any judicial or administrative proceeding, except for the exceptions noted in the section. A person who reviews or creates medical quality assurance records for NASA, or who participates in any proceeding that reviews or creates such records, may not testify in any judicial or administrative proceeding on such records, or on any finding, recommendation, or action taken by such person or body, except in accordance with proposed Section XXX of the National Aeronautics and Space Act as amended. Any person or entity having possession of, or access to medical QA records, or testimony, may not disclose the contents of such record or testimony in any manner or for any purpose, except in accordance with proposed Section XXX of the National Aeronautics and Space Act as amended. As a system of records, they are within the purview of the "Privacy Act" and, therefore, any individual healthcare provider who is the subject of an individual quality assurance action may be entitled access to the records.

Within the Agency access to quality assurance records is restricted to NASA employees (including detailees, consultants and contractors) who have a need for such information to perform their government duties or contractual responsibilities. NASA medical personnel may have access to confidential and privileged quality assurance records and documents relating to evaluation of the care they provide. Any quality assurance record or document or the information contained within them, whether confidential and privileged or not, will be provided to the NASA Inspector General upon request. Finally, NASA will continue to maintain the privacy of individually-identifiable medical records in accordance with the privacy protections of the Privacy Act of 1974, 5 U.S.C. 552a and the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, where applicable.

Disclosure of NASA medical quality assurance records is limited to those exceptions noted in this section. For any disclosure outside the Agency made for the purposes described in the section, the name of, and other identifying information regarding any individual patient, employee, or other individual associated with NASA must be deleted from any confidential and privileged quality assurance record or document before any disclosure is made. For use within the Agency, the name of the subject of a quality assurance action may not be redacted.

**SEC. ___. COMMERCIAL SPACE LAUNCH COOPERATION.**

(a) In General.—Chapter 201 of title 51, United States Code, is amended by adding at the end the following new section:

**"§ 20148. Commercial space launch cooperation**

**'(a) Authority for Agreements Relating to Space Transportation Infrastructure**- The Administrator of the National Aeronautics and Space Administration--

'(1) may enter into an agreement with a covered entity to provide the covered entity with support and services related to the space transportation infrastructure of the National Aeronautics and Space Administration; and

'(2) upon the request of such covered entity, may include such support and services in the space launch and reentry range support requirements of the National Aeronautics and Space Administration if--

'(A) the Administrator determines that the inclusion of such support and services in such requirements--

'(i) is in the best interest of the Federal Government;

'(ii) does not interfere with the requirements of the National Aeronautics and Space Administration; and

'(iii) does not compete with the commercial space activities of other covered entities, unless that competition is in the national security interests of the United States; and

'(B) any commercial requirement included in the contract has full non-Federal funding before the execution of the contract.

**'(b) Contributions**-

'(1) IN GENERAL- The Administrator of the National Aeronautics and Space Administration may enter into an agreement with a covered entity on a cooperative and voluntary basis to accept contributions of funds, services, and equipment to carry out this section.

'(2) USE OF CONTRIBUTIONS- Any funds, services, or equipment accepted by the Administrator under this subsection--

‘(A) may be used only for the objectives specified in this section in accordance with terms of use set forth in the agreement entered into under this subsection; and

‘(B) shall be managed by the Administrator in accordance with regulations of the National Aeronautics and Space Administration.

‘(3) REQUIREMENTS WITH RESPECT TO AGREEMENTS- An agreement entered into with a covered entity under this subsection--

‘(A) shall address the terms of use, ownership, and disposition of the funds, services, or equipment contributed pursuant to the agreement; and

‘(B) shall include a provision that the covered entity will not recover the costs of its contribution through any other agreement with the United States.

**‘(c) Annual Report**- Not later than January 31 of each year, the Administrator of the National Aeronautics and Space Administration shall submit to its congressional oversight committees a report on the funds, services, and equipment accepted and used by the Administrator under this section during the preceding fiscal year.

**‘(d) Regulations**- The Administrator of the National Aeronautics and Space Administration shall prescribe regulations to carry out this section.

**‘(e) Definitions**- In this section:

‘(1) COVERED ENTITY- The term ‘covered entity’ means a non-Federal entity that--

‘(A) is organized under the laws of the United States or of any jurisdiction within the United States; and

‘(B) is engaged in commercial space activities.

‘(2) LAUNCH SUPPORT FACILITIES- The term ‘launch support facilities’ has the meaning given the term in section 50501(7) of title 51.

‘(3) SPACE RECOVERY SUPPORT FACILITIES- The term ‘space recovery support facilities’ has the meaning given the term in section 50501(11) of title 51.

‘(4) SPACE TRANSPORTATION INFRASTRUCTURE- The term ‘space transportation infrastructure’ has the meaning given that term in section 50501(12) of title 51.’.

**(f) Clerical Amendment**- The table of sections at the beginning of such chapter, as so amended, is further amended by adding at the end the following new item:

'20148. Commercial space launch cooperation.'.

**SECTIONAL ANALYSIS:**

This proposal would provide a mechanism for the National Aeronautics and Space Administration (NASA) to support commercial space activities by providing greater access to launch property and services to the private sector, and allow NASA to accept funding from the private sector in order to develop, enhance, or maintain the U.S. Government's launch, range instrumentation, and reentry sites. This proposal would authorize NASA to accept non-federal funding only under strict implementation guidelines, which would be narrowly applied to space launch and base support services only.

With one exception, this proposal is identical to and provides NASA with the same authority provided to the Department of Defense under Section 912 of Public Law 112-239, the FY 2013 National Defense Authorization Act..[1]

Failure to take action to provide NASA with the same authority to work with commercial partners as DoD risks creating uncertainty for commercial providers, contributes to the further erosion of NASA's space transportation infrastructure as compared to the DoD and places NASA at a disadvantage compared to DoD as it supports the development of a robust domestic space launch industry.

Under this proposal, NASA may include, with up-front commercial funding, commercial launch/base support requirements in NASA contracts. For example if a commercial launch provider could add its requirements and funding to existing NASA infrastructure support contracts, the government's purchasing power would be enhanced through the increase in the economies of scale, as well as the benefit from receiving the additional up-front funding from the commercial launch provider prior to contracting. Thus, this change would ensure our contracts are "right-sized" and no longer offered to commercial launch providers just on an "excess" capacity basis, which would result in synergistic operations and eliminate administrative impediments and bureaucracy. Commercial use of any/all NASA processing facilities to process both commercial and government payloads would result in efficiencies, better mission assurance, and cost savings for users.

Existing section 2273(c) of Title 10 instructs the Secretary of Defense to pursue the attainment of the capabilities necessary to launch and insert United States national security

[1] Because NASA receives reimbursable budget authority in its annual appropriation, NASA does not require, and therefore does not seek, the authority provided to the DoD under subsection (d), which establishes the "Defense Cooperation Space Launch Account" to hold funds received under the new authority.

payloads into space "in coordination with the Administrator of the National Aeronautics and Space Administration" to the maximum extent practicable. DoD and NASA maintain continuing collaboration on many space-related activities, including significant agreements under the Economy Act for shared services and infrastructure. And both DoD and NASA launch and space recovery support facilities and ranges are challenged by escalating costs, eroding capabilities, and bureaucratic processes. These conditions not only impair DoD and NASA launch programs, but also impair DoD's and NASA's ability to support commercial space to the level of Congressional/Presidential intent. Because of the significant coordination and interdependencies between DoD and NASA's space programs, it is imperative that NASA be provided the same opportunities to meet the needs of the commercial sector and reduce the cost to the government.

This legislative change would provide NASA with the same abilities to address these needs by allowing the NASA and the commercial space sector to combine their requirements and funding within NASA contracts and allowing and NASA to purchase facilities and equipment that can be shared and maintained on an equitable basis -- making the services and facilities available to each with the cost and availability efficiencies shared by all.

**Budget Implications:** The National Aeronautics and Space Administration (NASA) expects this proposal to be covered by existing civil servant labor, specifically within the plans and programs functions of the Human Explorations and Operations Mission Directorate (HEOMD). The work involved would be an extension of the administration, liaison, consultation, and planning functions already performed in conjunction with commercial and state entities doing business with the DoD space wings and HEOMD. Any cost is part of the FY 2014-2018 budget baseline and does not require additional funding from Congress. There would be no budgetary tradeoff to fund this proposal. Rather, the associated workload would be added to and compete with other assigned tasks for performance by appropriate personnel as priorities dictate.

The primary budget implication of this proposal is that it would permit NASA to accept contributions of funds, property, and services from non-federal entities to enable federal/non-federal partnerships that benefit access to space and the development and vitality of the commercial space industry. It would not increase any NASA launch, range, or facility budget, but it could pave the way for cost savings or cost avoidance opportunities. The proposal would allow NASA and the commercial industry to share requirements and costs on a case-by-case basis, thereby creating quantity efficiencies for all. It does not mandate additional costs or generate guaranteed, measurable savings. It is an "enabling" authority for NASA launch and space recovery support facilities to enter into agreements with the commercial space industry, to save resources and add capability for all parties, but only when in the best interests of the government.

This proposal would enhance NASA's authority to collaborate with non-federal entities to facilitate implementation of the NASA launch support and infrastructure modernization

program. It also furthers NASA's ability to collaborate with the Secretary of Defense in developing the additional capabilities necessary to support both government and commercial launch requirements. The specific mechanisms provided in the proposal are beneficial in that they permit non-federal entities to leverage government resources to support development of the United States domestic space industry.

**Background on Proposal**:

Since late 2010, NASA has collaborated with the Air Force on this proposed legislation to be included in the National Defense Authorization Act (NDAA), to ensure that it would provide NASA the same authorities being requested by the DoD to support commercial space activities. Due to the extensive coordination between the DoD and NASA in use of launch infrastructure and capabilities, it is imperative that both entities operate under the same authorities in this area. Commercial partners utilizing co-located DoD and NASA facilities need assurance that "the Government" will provide consistent and coordinated support.

During consideration of the NDAA in 2011, Armed Services Committee staff did not include this provision, either for DoD alone, or with the addition of NASA, due to Congressional staff unfamiliarity with the criticality, issues with Congressional Budget Office scoring, and an incorrect perception that only DoD authorities can reside in Title 10 of the US Code.

Given this history, the DoD submitted to the House and Senate Armed Services Committees (HASC/SASC) the Commercial Space Launch Cooperation authority without the inclusion of NASA. However, recognizing the close relationship between NASA and the Air Force for co-located space launch facilities, the Air Force supports NASA seeking the same authority which the DoD recently received in Section 912 of Public Law 112-239, the FY 2013 National Defense Authorization Act. . On April 20, 2012, Air Force staff discussed the proposed authority with House and Senate Armed Services Committee staff and relayed that NASA oversight Committee staff may be speaking to them about supporting the proposed authority and including NASA in the provision.

NASA briefed staff for its authorization Committees in both the House and the Senate on this Authority in May, 2012. Ultimately, the authority was included (without NASA) in Section 912 of Public Law 112-239, the FY 2013 National Defense Authorization Act.

## Improvements to Baselines and Cost Controls Breach Reporting Process

**STATUTORY LANGUAGE:**

Section 30104 of Title 51 of the United States Code is amended by inserting before the period at the end of subsection (d)(3), "and a timeline by which the Administrator intends to make the determinations and reports required by paragraph (e)"; striking from subsection (e)(1), "Not later than 30 days after receiving a written notification under subsection (d)(2)," and inserting in lieu thereof, "In accordance with the timeline submitted in the report required by subsection (d)(3)"; striking from subsection (e)(1)(A) "not later than 15 days after making the determination," in inserting in lieu thereof, "in accordance with the timeline submitted in the report required by subsection (d)(3)"; striking from subsection (e)(2) "not later than 6 months after the Administrator makes a determination under this subsection," and inserting in lieu thereof, "in accordance with the timeline submitted in the report required by subsection (d)(3)"; and inserting in paragraph (f), after "a report under subsection (e)(1)(A)," "or an annual budget request that reflects this growth,".

As amended, §30104 paragraphs (d) and (e) would read as follows:

(d) NOTIFICATION.—

(1) REQUIREMENT.—The individual identified under subsection (b)(2)(E) shall immediately notify the Administrator any time that individual has reasonable cause to believe that, for the major program for which he or she is responsible—

(A) the development cost of the program is likely to exceed the estimate provided in the Baseline Report of the program by 15 percent or more; or

(B) a milestone of the program is likely to be delayed by 6 months or more from the date provided for it in the Baseline Report of the program.

(2) REASONS.—Not later than 30 days after the notification required under paragraph (1), the individual identified under subsection (b)(2)(E) shall transmit to the Administrator a written notification explaining the reasons for the change in the cost or milestone of the program for which notification was provided under paragraph (1).

(3) NOTIFICATION OF CONGRESS.—Not later than 15 days after the Administrator receives a written notification under paragraph (2), the Administrator shall transmit the notification with a timeline for the activities in subsection (d), if recommended to be different than reflected below, to the Committee on Science of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate **and a timeline by which the Administrator intends to make the determinations and reports required by paragraph (e).**

**Improvements to Baselines and Cost Controls Breach Reporting Process**

(e) FIFTEEN PERCENT THRESHOLD.—

(1) DETERMINATION, REPORT, AND INITIATION OF ANALYSIS.-- **In accordance with the timeline submitted in the report required by subsection (d)(3),** the Administrator shall determine whether the development cost of the program is likely to exceed the estimate provided in the Baseline Report of the program by 15 percent or more, or whether a milestone is likely to be delayed by 6 months or more. If the determination is affirmative, the Administrator shall—

(A) transmit to the Committee on Science and Technology of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate, **in accordance with the timeline submitted in the report required by subsection (d)(3),** a report that includes—

(i) a description of the increase in cost or delay in schedule and a detailed explanation for the increase or delay;

(ii) a description of actions taken or proposed to be taken in response to the cost increase or delay; and

(iii) a description of any impacts the cost increase or schedule delay, or the actions described under clause (ii), will have on any other program within the Administration; and

(B) if the Administrator intends to continue with the program, promptly initiate an analysis of the program, which shall include, at a minimum—

(i) the projected cost and schedule for completing the program if current requirements of the program are not modified;

(ii) the projected cost and the schedule for completing the program after instituting the actions described under subparagraph (A)(ii); and

(iii) a description of, and the projected cost and schedule for, a broad range of alternatives to the program.

(2) Completion of analysis and transmittal to committees.— The Administration shall complete an analysis initiated under paragraph (1)(B) in accordance with the timeline submitted in the report required by subsection (d)(3). The Administrator shall transmit the analysis to the Committee on Science and Technology of the House of Representatives and Committee on Commerce, Science, and Transportation of the Senate not later than 30 days after its completion.

(f) **Thirty Percent Threshold.—** If the Administrator determines under subsection (e) that the development cost of a program will exceed the estimate provided in the Baseline Report of the

program by more than 30 percent, then, beginning 18 months after the date the Administrator transmits a report under subsection (e)(1)(A), **or an annual budget request that reflects this growth,** the Administrator shall not expend any additional funds on the program, other than termination costs, unless Congress has subsequently authorized continuation of the program by law. An appropriation for the specific program enacted subsequent to a report being transmitted shall be considered an authorization for purposes of this subsection. If the program is continued, the Administrator shall submit a new Baseline Report for the program no later than 90 days after the date of enactment of the Act under which Congress has authorized continuation of the program.

**SECTIONAL ANALYSIS:**

This legislative proposal retains both the requirements on NASA to provide the reports with the same content and the timeline for Congressional notification of a cost or schedule breach on a project. The proposal would change the timelines after the Congressional notification.

The amended language in subsection (c), would allow NASA to propose a timeline for the activities in subsection (d), if different from that required by the law, in the initial notification to the Congress of a more than 15 percent cost growth or six month schedule slip of a major project. The changes to timeline could better align the breach reporting process to the existing NASA processes on budget formulation and governance of programs and projects, and strengthen breach reporting.

Specifically, the criticism in the House Report was that the breach reports did not provide sufficient explanation of the causal factors for cost and/or schedule growth, an indication of the impact on other programs, and what alternatives exist as a result of the growth, including cancelling the project. In NASA's review of the process for breach reporting (requested in the House report) it was determined that this information is either already generated through the budget formulation, program and project governance processes, and in the latter case, the program management council (PMC) proceedings. It was further determined that the §30904 mandated reporting timelines may require the report before the completed management discussions and analysis occurs within these processes. Additionally, OMB, in its governance role, may need to weigh in with its policy on what programs are to be affected and what alternatives they want moving forward as a result of the growth, to align with Administration priorities. As a result of the misalignment of the §30904 mandated timeline and the activities outlined above, the breach reports are often provided late to the Congress to account for those activities, or are missing key information the Congress would like. The proposed amendment to §30904 subsection (c) affords the Agency the opportunity to provide an alternative timeline for the breach reports, to account for the on-going budget formulation, management discussion and analysis, and program governance activities, and thereby NASA could better assure that the Congress receives the required information in those reports.

### Improvements to Baselines and Cost Controls Breach Reporting Process

The amended language of subsection (e) removes any ambiguity for when the timeline would start for Congressional reauthorization of a project that has experienced more than thirty percent estimated cost growth, if not realized at the "Administrator's determination." Per the current legislation, in subsection (d), Congress links the start of the timeline for reauthorization to the Administrator's determination, which is thirty days from the initial notification of a breach by the project manager, if he/she determines at that point that the cost growth greater than thirty percent. This often does not reflect the actual timeline for which the Agency has determined this magnitude of growth. The ambiguity often results from the advent of "evolving' cost growth, i.e. less than thirty percent growth is often determined at the initial breach but more than thirty percent is realized at a later date, well after the Administrator's determination.

NASA adopted a process to account for the misalignment of the statutory timeline to the normal agency processes and timelines for which the greater than thirty percent growth is generally realized, and has been providing an additional notification when the growth exceeds thirty percent. There are no provisions in the legislation for a second notification or for any actions as a result. To rectify this, the amended language provides another mechanism to tie the start of the timeline for reauthorization, which could be used if the additional cost growth is realized downstream of the Administrator's determination. The budget request was chosen as this point, because it starts the appropriations cycle for which the reauthorization could occur.

**BACKGROUND:**

There are two requirements in Title 51 § 30104, Baselines and Cost Controls, which should be revised. This change would support our plan to change the internal NASA process for baseline and cost control (breach) reporting, in response to comments found on page 69 of the House Report (H. Rept. 112-169) accompanying the 2012 Appropriation Act (P.L. 112-55). Specifically, the House Report indicated:

> ***Breach Reporting:*** *The Committee notes, however, that NASA's reports pursuant to section 103 are often lacking in detail and, as such, often do not serve the intended purposes of the Congress. Specifically, the Committee finds that NASA's reports generally contain only a cursory explanation for why cost and/or schedule parameters have been breached and are not responsive to the requirements to address the impact of these overruns on other NASA programs or to consider a broad range of alternatives to the program. Therefore, the Committee directs NASA to undertake a review of process and procedures for its breach reports under Section 103 of P.L. 109-155 and make improvements to ensure that these reports fully address the intended purpose of Section 103; NASA should report to the Committee within 90 days of enactment of this Act on steps it has taken to improve its breach reports.*

Two provisions within the existing § 30104 create some barriers to strengthening the process and addressing the concerns in the House Report. The recommended changes to the law are:

1. The timeline for the Agency to provide the ensuing "breach" reports after the initial notification of the Congress of cost or schedule growth; and

### Improvements to Baselines and Cost Controls Breach Reporting Process

2. The starting point for the timeline that the agency can continue to expend funds without Congressional re-authorization of a project that has experienced cost growth exceeding the 30% threshold.

## Capturing Credit Card Rebates

**STATUTORY LANGUAGE:**

(Place in “other matters” section)

Section 30102(c) of title 51 of the United States Code, is amended by striking "and" at the end of paragraph (2) and inserting before the period at the end: "; and (4) refunds or rebates received on an ongoing basis from a credit card services provider under the National Aeronautics and Space Administration's credit card programs."

As amended, 51 USC § 30102, Working Capital Fund, would look like:

(c) Contents. - The capital of the fund consists of -

(1) amounts appropriated to the fund;
(2) the reasonable value of stocks of supplies, equipment, and other assets and inventories on order that the Administrator transfers to the fund, less the related liabilities and unpaid obligations; and
(3) payments received for loss or damage to property of the Fund; and
(4) refunds or rebates received on an ongoing basis from a credit card services provider under the National Aeronautics and Space Administration's credit card programs.

**SECTIONAL ANALYSIS:**

This language would permanently change the standing Working Capital Fund appropriation within Title 51 to allow use of rebates received to the same extent as any other working capital fund funds. Additionally, it would close out this remaining action from the OIG stemming from the Credit Card Program Audit. Note that identical language was submitted as a part of the NASA FY13 Budget Request, and if it appears in an appropriation act, it will be unnecessary in any other law.

**BACKGROUND:**

The NSSC manages the various Agency credit card programs (including the purchase card and travel card programs). Under contracts with the issuing banks, NASA receives rebates based on card balances and other criteria (e.g., if a traveler pays off the outstanding balance on the individual traveler’s card early). Until 2010, the NSSC collected these rebates and used them to defray service charges to NSSC customers. A NASA Inspector General audit of the credit card program concluded that NASA does not have authority to deposit these rebates in the working capital fund for use in this manner by the NSSC. As a result, NASA agreed to seek an amendment to the Title 51 section on the Working Capital Fund in order to expressly allow use of the rebates.

### Unnecessary Reports Deletion

## STATUTORY LANGUAGE:

(This section could be inserted in Other Matters, or in the alternative the different reports could be placed in the Auth Act sections with the corresponding to subject matter)

Section XXXX. Reports no longer required. Notwithstanding any other law, the Administration is not required to compile or submit the following reports:

(a) The annual audit required by §126 of P.L. 106-391 [the 2000 NASA Auth Act] on export controls compliance;
(b) The annual report required by §301 of P.L. 109-155 [the 2005 NASA Auth Act] on National Academy of Sciences reviews of Science Mission Directorate divisions;
(c) The annual report required by § 306 paragraph (b) of P.L. 109-155 [the 2005 NASA Auth Act] on planned coordination between NASA and the National Oceanic and Atmospheric Administration for the following year;
(d) The annual report required by § 501 paragraph (b) of P.L. 109-155 [the 2005 NASA Auth Act] on the "Crew Exploration Vehicle" and "Crew Launch Vehicle";
(e) The monthly report required by §525 paragraph (b) of P.L. 110-161 [the 2008 Appropriations Act] on budget execution.
(f) The annual report required by §1107 paragraph (c) of P.L. 110-422 [the 2008 NASA Auth Act] on the Innovative Partnerships Program;
(g) The annual report required by § 1203 Paragraph (b) of P.L.111-267 [the 2010 NASA Auth Act] on the implementation of the corrective action plan submitted by NASA in 2010;
(h) The annual report required by 51 U.S.C. 20116, Reports to Congress, [§ 206 of P.L.111-314, the National Aeronautics and Space Act.]

## SECTIONAL ANALYSIS:

The reports listed are active reporting requirements from various laws that are irrelevant, duplicative, over-burdensome, or the data are simply not used by the receiving party. These requirements have been listed in other efforts to eliminate extraneous administrative requirements (e.g., GPRAMA reduction efforts.)