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Congressional Hearing Summary  
Office of Commercial Space Transportation's Fiscal Year 2012 Budget  
Request  
House Science, Space and Technology Committee  
Subcommittee on Space and Aeronautics  
May 5, 2011

Chair: Rep. Steve Palazzo (R-MS) ([opening statement](#))

Acting Ranking Member: Rep. Jerry Costello (D-IL) ([opening statement](#))

Witnesses

- Dr. George C. Nield, Associate Administrator for Commercial Space Transportation, Federal Aviation Administration ([prepared statement](#))
- Dr. Gerald Dillingham, Director, Physical Infrastructure Issues, Government Accountability Office ([prepared statement](#))
- Dr. Henry R. Hertzfeld, Research Professor, George Washington University ([prepared statement](#))

Background

The Office of Commercial Space Transportation (AST) in the Federal Aviation Administration (part of the Department of Transportation) is charged with regulating as well as promoting the commercial space launch industry. Created in 1984, the office's responsibilities have expanded as the commercial space launch industry has evolved. Today, with substantial activity in orbital and suborbital launches and growing interest in commercial human spaceflight, the office is requesting a considering increase in its budget for FY2012. The \$26 million request is a 74 percent increase over FY2010 (the same level at which it is funded in FY2011 under the final Continuing Resolution), and its staff would grow by 45 percent. Such a large increase sparked considerable debate during this hearing. A [hearing charter](#) written by subcommittee staff and a [webcast](#) of the hearing are available on the subcommittee's website.

Nuggets

“You’re asking us to increase your budget for what-if. I have great concern about that. I just want you to know that.”

Rep. Sandy Adams (R-FL)

“We’re for incrementalism.”

Gerald Dillingham, GAO

Hearing Highlights (A version of this summary appeared as an article on [SpacePolicyOnline.com](http://SpacePolicyOnline.com) on May 5, 2011 entitled “FAA Defends Requested 74 Percent Budget Increase for FY2012.”)

George Nield, associate administrator for Commercial Space Transportation at the Federal Aviation Administration defended his office's request for a 74% budget increase. According to Nield, the office is requesting \$26.6 million for FY2012, of which \$15.8 million is to pay for 103 full time employees and \$10.8 million is for "non-pay" activities. That compares to \$15.2 million and 71 full time employees in FY2010 (the same level at which it is funded for FY2011) according to the FAA's FY2012 [budget submission](#). Nield defended the increase by saying that his office anticipates a ten-fold increase in the number of commercial launches in FY2012 and his office's responsibilities are expanding as the industry expands. He also pointed to new initiatives to stimulate the industry, including \$5 million and 50 employee positions for a Commercial Spaceflight Technical Center at NASA's Kennedy Space Center, and \$5 million for a "prize" program for the first non-governmental team to develop and demonstrate the ability to launch a 1 kilogram cubesat to orbit using a partially reusable system. His office also plans to continue funding the Center of Excellence for Commercial Space Transportation at New Mexico State University, Las Cruces.

The Government Accountability Office's (GAO's) Gerald Dillingham noted that the request is a 74 percent budget increase compared to FY2010, and the number of employees would increase by 45 percent. Dillingham said in his opening statement that he agreed the request is "reasonable," but that Congress should give it careful consideration given today's budget constraints.

Several members of the subcommittee questioned the increase, including Rep. Sandy Adams (R-FL), whose district includes Kennedy Space Center. She lambasted Nield for requesting such a large increase in these difficult budget times. She asked how creating a regulatory regime for commercial human spaceflight based on a lot of unknowns would be helpful. Nield replied that industry leaders are asking for it because they want a "consistent and compatible set of results" that will satisfy both NASA and FAA requirements. Later, ending a harsh interrogation of Nield over how long it took his office to issue the first reentry license and after getting GAO's Dillingham to reverse himself and say that he did not believe the increase was necessary, she lectured Nield that a "74 percent increase in a time of economic restraint ... you're asking us to increase your budget for what-if. I have great concern about that. I just want you to know that."

Other members focused on the perennial question of whether there is a conflict of interest between the office's dual role as both a regulator and promoter of commercial space launch and reentry services.

Rep. Donna Edwards (D-MD) and others noted that originally the FAA had a similar dual role for aviation, but as the years passed the two roles became contradictory and Congress removed the facilitator role so the FAA could focus on safety. Dillingham suggested that the Department of Commerce might one day take on promoting the commercial space launch industry while the FAA focuses on regulation. He said, however, that GAO did not see any conflicts of interest in its most recent review of the office a few years ago.

George Washington University Professor Henry Hertzfeld went further in discussing potential conflicts of interest, noting that originally the office regulated only expendable launch vehicles (ELVs). Today it regulates several competing modes of transportation -- ELVs, reusable launch vehicles (RLVs), suborbital launch vehicles, and perhaps unmanned aerial vehicles (UAVs), he said. He sees a potential conflict of

interest among those responsibilities as well. However, he said there were no complaints from industry yet about the dual role, and one measure for determining when it is time to review the issue would be when such complaints arise. He agreed with Dillingham that the time is not yet ripe for Congress to reconsider the office's mandate, but that someday other agencies might be charged with promoting the industry to "preserve the integrity of the regulatory process."

Regulating the safety of commercial human spaceflight was also a focus of attention. The 2004 Commercial Space Launch Act Amendments directed that the FAA take no action to regulate the safety of passengers on commercial human spaceflight missions for eight years after the law was enacted. That time period will expire in 2012. Instead, "informed consent" is all that is required - the commercial operator must tell passengers what the risks are, but it is up to the passenger to decide whether or not to board the craft. When the Act was passed, commercial human spaceflight was expected to occur within a few years and after eight years there would be sufficient experience to inform regulatory efforts. No such flights have yet occurred, however, so the question is whether the time period should be extended. The FAA Reauthorization Act that passed the House on April 1 (H.R. 658) contains a provision (sec. 1301) that would prohibit such regulations until eight years after the "first licensed launch of a spaceflight participant" instead of after enactment of the law.

GAO's Dillingham said that he did not know how eight years was selected in the first place, and did not think that a specific number of years is appropriate. Instead, such regulations should develop as the industry matures, he said, stressing that regulations should not be made in times of crisis, such as after an accident: "We're for incrementalism." Hertzfeld agreed, arguing that it is a matter of the maturity of the industry. He also alerted the committee that some states are developing their own passenger waivers of liability for commercial human spaceflight, including Florida, Virginia, New Mexico, and Texas, and each law is worded differently. "Federal preemption on this issue might be warranted," he said, "to prevent competition among states on an issue that involves interstate commerce and may adversely affect safety decisions" by the companies.

Nield pointed out that his office is holding a meeting at the end of this month in Florida to solicit input from the public about how to approach regulating commercial orbital human spaceflight. (The meeting is on May 26 -- see our calendar for a link to the announcement.)