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# United States Senate

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March 9, 2020

U.S. SENATE CLIMATE CHANGE TASK FORCE

Administrator Stephen Dickson  
Federal Aviation Administration  
800 Independence Avenue, SW  
Washington, DC 20591

Dear Administrator Dickson:

I write today regarding the current debate over who should be authorized to test technology intended to detect and mitigate unmanned aerial systems (UAS), also known as drones. I believe that state and local authorities should have the legal authority to test counter-UAS technology in coordination with the Federal Aviation Administration (FAA), and request more information to discern why it is the FAA's position that trusted state and local officials do not have the authority to test this technology.

On June 18, 2019, the Senate Committee on Commerce, Science, and Transportation's Subcommittee on Security held a hearing entitled "Drone Security: Enhancing Innovation and Mitigating Supply Chain Risks." Through witness testimony, the Committee heard that the FAA has expressed concern to airports about the legal implications of deploying counter-UAS mitigation and detection tools. The FAA's representative at this hearing further maintained that current federal law prevents local authorities from testing counter-UAS technologies, as well as some critical detection tools.<sup>1</sup> I am troubled by the FAA's position on this issue and believe it may have a chilling effect on local authorities that wish to proactively engage with your agency on how to best counter the growing risks of UAS.

The United States has only begun to tap into the applications and benefits of drone technology, but as drones become more prevalent in the air, so too do malicious applications of the technology. The FAA's position on counter-UAS testing is concerning because state and local authorities are now on the front-lines of drone security and have an integral role to play in defending against threats posed by this emerging technology. Consequently, state and local authorities must be able to test counter-UAS technology alongside the FAA or we will likely face delays in the technology's implementation, thus preventing public safety officials from being able to better protect their communities. In particular, I believe that the state and local

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<sup>1</sup> *Drone Security: Enhancing Innovation and Mitigating Supply Chain Risks: Hearing before the Subcomm. On Security*, <https://www.commerce.senate.gov/2019/6/drone-security-enhancing-innovation-and-mitigating-supply-chain-risks> (last visited Jan. 15, 2020) (Exchange between Chairman Sullivan and Angela Stubblefield)

perspective would prove instrumental in developing a list of pre-approved counter-UAS systems that could eventually be deployed to protect our critical infrastructure.

As a follow up to the Security Subcommittee's hearing, I request answers to the following questions in order to allow the FAA to clarify the basis of its position and to help us determine whether new legislation is needed to authorize state and local testing:

1. What is the FAA's position on permitting state and local authorities to test UAS detection and mitigation technologies in coordination with the FAA, including potential conflicts with the Aircraft Sabotage Act<sup>2</sup>, the Computer Fraud and Abuse Act of 1986<sup>3</sup>, the Wiretap Act<sup>4</sup>, and the Pen/Trap Statute?<sup>5</sup>
2. Is it the FAA's position that statutory changes are necessary to permit counter-UAS testing by state and local authorities, or does the FAA believe that it possesses the authority to make the necessary changes through the regulatory process?
3. If regulatory changes would be sufficient, will FAA make these necessary changes? If not, why not?
4. One objective of the UAS Integration Pilot Program (IPP) was to "test and evaluate various models of State, local, and Tribal government involvement in the development and enforcement of Federal regulations for UAS operations." During the hearing, the FAA indicated that they had not tested "reasonable time, place, and manner limitations" in the context of State and local law enforcement response.
  - a. Why has the FAA not prioritized this testing within the IPP?
  - b. Does the FAA have any future plans to test state and local law enforcement time, place, and manner limitations?

Thank you for your cooperation in addressing this important public safety issue, and I hope to continue this productive dialogue.

Sincerely,



Edward J. Markey  
United States Senator

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<sup>2</sup> 18 U.S.C. 32 (2012)

<sup>3</sup> 18 U.S.C. 1031 (2012)

<sup>4</sup> 18 U.S.C. 2510-2522 (2012)

<sup>5</sup> 18 U.S.C. 3121-3127 (2012)