



November 26, 2018

The Honorable Kirstjen M. Nielsen
Secretary
United States Department of Homeland Security
245 Murray Lane, SW
Washington, D.C. 20528

The Honorable Elaine Chao
Secretary
United States Department of Transportation
1200 New Jersey Avenue, SE
Washington, D.C. 20590

Dear Secretary Nielsen and Secretary Chao:

We are writing on behalf of the state and local government-elected officials, whom our collective organizations represent, to request that the U.S. Department of Homeland Security (DHS) and U.S. Department of Transportation (DOT) establish and maintain, prior to the proposal of any regulatory policies, a joint series of formal federalism consultations in accordance with Executive Order (EO) 13132 (Federalism, August 19, 1999) in response to the passage of H.R. 302, Division H, Preventing Emerging Threats.

Division H provides Secretary Nielsen the authority to destroy or overtake an unmanned aerial system (UAS), more commonly referred to as a drone, that has violated protected airspace or is otherwise posing a threat to the safety or security of the United States. Further, it requires the Federal Aviation Administration to develop a comprehensive strategy to provide outreach to state and local governments as well as provide guidance for local law enforcement agencies and first responders with respect to how to protect public safety, identify and respond to threats posed by UAS, and identify and take advantage of opportunities to use UAS to enhance the effectiveness of local law enforcement agencies and first responders.

In addition to the provisions of Division H, EO 13132 lays out specific parameters on how and when a federal agency must consult with state and local governments regarding the formulation and implementation of its policies. The implementation of H.R. 302 will have significant impacts on state and local governments, as one of the foremost responsibilities of both state and local governments is ensuring the protection of public safety, security and personal privacy. This impact is reinforced by Secretary Nielsen’s recent statements (U.S. Senate Homeland Security and Governmental Affairs Committee, October 10, 2018) regarding the department’s planned testing of counterdrone technology in certain populated areas.

Unmanned aerial systems simultaneously represent one of the 21st century's more impactful economic innovations, as well as a potential public safety and security threat. State and local law enforcement officials are on the front lines of responding to and reducing threats from unlawful drone operation and are often the first to respond to these threats to public safety. Further, state and local law officials are also responsible for the enforcement of state and local criminal laws that apply to unlawful drone operations.

Prior to any testing of counterdrone technology and the establishment of any regulations governing the use of counterdrone technology, the undersigned organizations request DHS and DOT establish a consultation process to ensure meaningful and timely input by state and local officials and representatives from the undersigned organizations in the development of regulatory policies on the use of counterdrone technology. These consultations should take into consideration:

- What will be the conditions for notifying state and local officials on the intent to use counterdrone technology by the federal government?
- What are the state and local responsibilities and costs associated with training and equipping law enforcement officials in the operation of counterdrone technology?
- What should be the "rules of engagement" governing the use of counterdrone technology, especially in urban and populated areas?
- What are the state and local liabilities on the use of counterdrone technology?
- Any additional concerns state and local officials may have on the use of counterdrone technology.

To ensure the safety and security of both the national airspace and states and communities across the country, it is imperative that federal, state and local governments work in close coordination to appropriately assess and counter this new potential threat. If you have further questions, please do not hesitate to contact any of the undersigned organizations.

Sincerely,



Scott D. Pattison
Executive Director and CEO
National Governors Association



William T. Pound
Executive Director
National Conference of State Legislatures



Matthew D. Chase
Executive Director
National Association of Counties



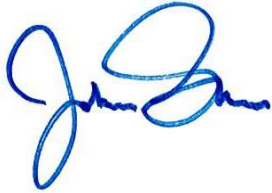
Tom Cochran
CEO and Executive Director
The United States Conference of Mayors



Clarence Anthony
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National League of Cities



Bud Wright
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John Shea
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