

Department of State Proposed Rule
Amendment to the International Traffic in Arms Regulations:
Revision of U.S. Munitions List Category XII (RIN 1400-AD32)

Comments of Small UAV Coalition

Filed via email to DDTCTCPublicComments@state.gov

The undersigned, on behalf of the Small UAV Coalition, hereby comments on the proposed rule published on May 5, 2015, 80 Fed. Reg. 25821.

Members of the Small UAV Coalition¹ share an interest in advancing regulatory and policy changes that will permit the operation of small UAVs in the near term, within and beyond the line of sight, with varying degrees of autonomy, for commercial, consumer, recreational and philanthropic purposes.

Our detailed comments are provided below. As a general proposition, the Coalition does not believe that LiDAR (light detection and ranging) systems manufactured and used solely for civil commercial operations of small unmanned aerial vehicles and systems (“UAV”, “UAS”) should be subject to the ITAR. LiDAR systems are now widely used by UAS operators for purposes of situational awareness and collision avoidance. Commercial markets in the U.S. and around the world now dominate and in the future will continue to dominate the sale of this technology for use with UAS. The Coalition expects that such technology will be included in many thousands of UAS and employed in conducting a wide variety of civil and commercial operations both in the United States and in foreign countries. Far from being designed or intended for military application, the UAS with a LiDAR system will save time, save money, and even save lives, as the Federal Aviation Administration (“FAA”) has found.² Tasks now being conducted by manned helicopter or fixed-wing aircraft, or by persons on the ground using a ladder or other device, will be replaced with the safer operations of a small UAS.

¹ Members of the Small UAV Coalition include 3D Robotics, Aerialtronics, AirMap, Airware, Amazon Prime Air, Botlink, DJI Innovations, DroneDeploy, EHang, Flirtey, Intel, HAZON Solutions, InterMedia Development Corporation, Google[x] Project Wing, GoPro, Kespry, Parrot, PrecisionHawk, SkyPan, Sky-Futures, SkyWard, Strat Aero, Verify, and Zero Tech.

² Operation and Certification of Small Unmanned Aircraft Systems (Feb. 23, 2015), 80 Fed. Reg. 9544, at 9547-8, 9578 (preamble to Notice of Proposed Rulemaking).

By FAA definition in its Small UAS Notice of Proposed Rulemaking, small UAVs weigh no more than 55 pounds, generally may fly in Class G airspace below 500 feet Above Ground Level (“AGL”), and generally must be flown at a certain distance from airports unless the operation is cleared by the airport manager or Air Traffic Control. They currently operate pursuant to an FAA exemption under section 333 of the FAA Modernization and Reform Act or a Certificate of Authorization (for public agencies). We expect the final rule adopted by the FAA within the next year or so will retain these basic conditions.

The Coalition is concerned that the proposed inclusion on the United States Munitions List (“USML”) of LiDAR systems that are used with small UAS will significantly reduce the safety and efficiency benefits of commercial and civil UAS operations and will simply drive manufacturers to other countries.

In the United States, the Departments of State and Commerce agreed, as part of the President’s Export Control Reform effort, on a common definition of “specifically designed” in order to clarify and simplify the distinction between military and dual-use items. The current USML Category XII utilizes this definition to ensure that only those items “specifically designed” for military application are captured on the USML. For example, USML Category XII(b) covers “lasers, *specifically designed*, modified or configured *for military application . . .*”, while Category XII(e) covers “components, parts, accessories, attachments and associate equipment *specifically designed* or modified for the articles in paragraphs (a) through (d) of this category, *except for such items as are in normal commercial use.*” Emphasis added. However, the proposed Category XII does not fully employ this “specifically designed” distinction, focusing more on the limits of commercial performance rather than on defining the characteristics of military utility and significance.

The internationally-agreed Wassenaar Munitions List generally covers commodities and components not “specifically designed” for military purposes and, under the U.S. regulations, these items are identified on the Commerce Control List (“CCL”), which is part of the less restrictive Export Administration Regulations. LiDAR systems that are not “specifically designed” for military applications should be similarly treated.

The Coalition believe that the proposed Category XII revisions appear to be much broader than the current Category XII(b) controls. If adopted as proposed, it will stunt the growth of the rapidly advancing LiDAR technology for use in

commercial small UAS operations, and will likely disincentivize investment by U.S. companies in the emerging technological markets for UAVs and UAS.

In addition to this general commentary, the UAV Coalition also provides the following comments on specific provisions:

Proposed ITAR control (b)(6)

The proposed Note to (b)(6) excludes LiDAR systems or equipment “for civil automotive applications having a range limited to 200 m or less.” We believe this reflects the view that such applications are intended only for commercial and consumer use. The Coalition requests the Note include a similar exclusion for LiDAR systems and equipment for “commercial and consumer operations of a small unmanned aircraft system in Class G airspace having a range limited to 1,500 m or less.” This range is needed to provide maximum protection against collision with structures or other aircraft.

Proposed ITAR control (b)(8)(ii)

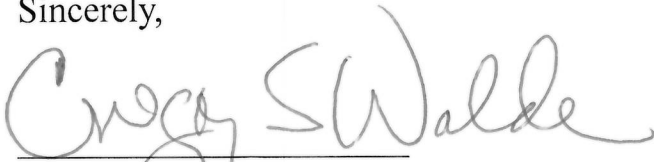
This proposed subparagraph appears to cover small UAS operations with a LiDAR system that can identify a power line or wire at a certain distance. A dramatically beneficial use of small UAVs now and in the future will be to inspect power lines and cell towers. The FAA has granted many section 333 exemptions to allow inspection and monitoring of such energy and communications infrastructure. Thus, the Coalition requests that the note requested above for (b)(6) be included also as a note to (b)(8)(ii).

Proposed ITAR control (b)(8)(iii) and (iv)

It is uncertain whether these proposed provisions would apply to LiDAR systems as part of a small UAS operation for commercial or consumer use. If either would apply, for the reasons stated above the Coalition requests that a note be added to exclude “LiDAR systems and equipment for commercial and consumer operations of small UAS.”

In summary, LiDAR systems and equipment for use with small unmanned aircraft systems are designed and intended for consumer and commercial use, in the United States and other countries, and thus should be excluded from the ITAR Munitions List.

Sincerely,

A handwritten signature in black ink that reads "Gregory S. Walden". The signature is written in a cursive style with a horizontal line underneath the name.

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