IV. Comments

Regardless of attendance at the public meeting, interested persons may submit to the Division of Dockets Management (see table 1 of this document) either electronic or written comments for consideration at or after the meeting in addition to, or in place of, a request for an opportunity to make an oral presentation. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

V. Transcripts

Please be advised that as soon as a transcript is available, it will be accessible at *http://www.regulations.gov* and *http://www.fda.gov/Food/FoodSafety/FSMA/default.htm.* It may be viewed at the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. A transcript will also be available in either hardcopy or on CD–ROM, after submission of a Freedom of Information request. Written requests are to be sent to Division of Freedom of Information (HFI–35), Office of Management Programs, Food and Drug Administration, 5600 Fishers Lane, rm. 6–30, Rockville, MD 20857.

Dated: April 7, 2011.

David Dorsey,

Acting Deputy Commissioner for Policy, Planning and Budget.

[FR Doc. 2011–8785 Filed 4–12–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF STATE

22 CFR Parts 120 and 124

[Public Notice: 7415]

RIN 1400–AC80

International Traffic in Arms Regulations: Defense Services

AGENCY: Department of State.

ACTION: Proposed rule.

SUMMARY: The Department of State proposes to amend the International Traffic in Arms Regulations (ITAR) to update the policy regarding defense services, to clarify the scope of activities that are considered a defense service, and to provide definitions of "Organizational-Level Maintenance," "Intermediate-Level Maintenance," and "Depot-Level Maintenance," and to make other conforming changes.

DATES: The Department of State will accept comments on this proposed rule until June 13, 2011.

ADDRESSES: Interested parties may submit comments within 60 days of the date of the publication by any of the following methods:

- *E-mail: DDTCResponseTeam@state.gov* with the subject line, "Regulatory Changes—Defense Services."
- *Mail:* PM/DDTC, SA–1, 12th Floor, Directorate of Defense Trade Controls, Office of Defense Trade Controls Policy, ATTN: Regulatory Changes—Defense Services, Bureau of Political Military Affairs, U.S. Department of State, Washington, DC 20522–0112.
- *Internet:* View this notice by searching for its RIN on the U.S. Government regulations Web site at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Director Charles B. Shotwell, Office of Defense Trade Controls Policy, Department of State, Telephone (202) 663–1282 or Fax (202) 261–8199; E-mail *DDTCResponseTeam@state.gov.* ATTN: Regulatory Changes—Defense Services.

SUPPLEMENTARY INFORMATION: As part of the President's Export Control Reform effort, the Department of State is proposing to amend parts 120 and 124 of the ITAR to reflect new policy regarding coverage of defense services.

The Department reviewed the ITAR's treatment of defense services with a view to enhancing support to allies and friends, improving efficiency in licensing, and reducing unintended consequences. As a result, it was determined that the current definition of defense services in § 120.9 is overly broad, capturing certain forms of assistance or services that do not warrant ITAR control. The proposed change in subpart (a) of the definition of "defense services" narrows the focus of services to furnishing of assistance (including training) using "other than public domain data", integrating items into defense articles, or training of foreign forces in the employment of defense articles. Consequently, services based solely upon the use of public domain data would not constitute defense services under this part of the definition and, therefore, would not require a license, technical assistance agreement, or manufacturing license agreement to provide to a foreign person. The proposed new definition of defense service also includes a new provision that would control the "integration" of items, whether controlled by the U.S. Munitions List (USML) or the Commerce Control List (CCL), into USML controlled defense articles even if ITAR-controlled "technical data" is not provided to a foreign person during the provision of such services. Additionally, the new rule specifies that training for foreign "units or forces" will be considered a defense service only if the training involves the employment of a defense article, regardless of whether technical data is involved. This operational definition improves upon the current open-ended wording of § 120.9(a)(3), which covers "military training of foreign units and forces." Also, significantly, the proposed new rule specifies in subpart (b) examples of activities that do not constitute defense services. For example, the proposed new rule would prevent the anomalous situation where foreign companies are reluctant to hire U.S. citizens for fear that such employment alone constitutes a defense service, even where no technical data would be transferred to the employer.

A new § 120.38 is proposed to provide definitions for "Organizational-Level Maintenance" (or basic level maintenance), "Intermediate-Level Maintenance," and "Depot-Level Maintenance," terms used in the proposed revision of § 120.9.

The Department proposes to make several other conforming changes to the ITAR. The proposed rule modifies § 124.1(a), which describes the approval requirements of manufacturing license agreements and technical assistance agreements. The proposed change removes the requirement in § 124.1(a) to seek the Directorate of Defense Trade Controls' approval if the defense service that is being rendered uses public domain data or data otherwise exempt from ITAR licensing requirements. This change would be made to conform with the revisions made to § 120.9. The Department proposes to delete § 124.2(a), as this requirement is no longer applicable as a result of proposed changes to § 120.9. Conforming changes are to be made to § 124.2(c) to reflect the proposed deletion of § 124.2(a).

This proposed rule was presented to the Defense Trade Advisory Group (DTAG), a Department of State advisory committee, for purposes of comment and evaluation. The DTAG commented favorably on most aspects of this proposed rule, but also recommended certain changes. Having thoroughly reviewed and evaluated the comments and the recommended changes, the Department has determined that it will proceed with the proposed rule per the Department's evaluation of the written comments and recommendations as follows:

The DTAG recommended the qualifier "U.S. origin" be added before "technical data" in the proposed § 120.9. We note the current definition of technical data in § 120.10 is not restricted to U.S. origin data. We do not believe that a departure from the existing definition of technical data for the purposes of defense services is prudent. However, the confusion caused by the term "technical data" lead to the rewrite of the definition to require the use of data "other than public domain data" as the regulatory standard. This rewrite provides clarity and an objective standard that can be easily applied. Using data that is "other than public domain data," including proprietary data or "technology" "subject to the Export Administration Regulations," to provide assistance would constitute a defense service under this change. The DTAG also recommended adding definitions of "intermediate or depot level repair or maintenance." We agreed with the recommendation and added such definitions in a new § 120.38. The DTAG agreed with the addition of "integration" but recommended that a definition of that term be added, especially to distinguish it from "installation." We declined to accept that recommendation, finding that integration has plain meaning in the context of the proposed rule. As used in the proposed definition of defense services, "installation" means the act of putting something in its pre-determined place and does not require changes or modifications to the item in which it is being installed (*e.g.,* installing a dashboard radio into a military vehicle where no changes or modifications to the vehicle are required; connecting wires and fastening the radio inside of the preexisting opening is the only assistance that is necessary). "Integration" means the systems engineering design process of uniting two or more things in order to form, coordinate, or blend into a functioning or unified whole, including introduction of software to enable proper operation of the device. This includes determining where to install something (*e.g.,* integration of a civil engine into a destroyer which requires changes or modifications to the destroyer in order for the civil engine to operate properly; not simply plug and play). The DTAG suggested that language in § 120.9(a)(3) be changed from "whether or not use of technical data is involved" to "whether or not the transfer of technical data is involved." We adopted that recommendation.

The DTAG suggested we add definitions of "irregular forces" and "tactical employment." We did not agree with the need to define the first term, believing that the meaning should be clear in the context of the proposed rule. Subsequent to the DTAG's evaluation of this proposed rule, the word "tactical" was removed from before the word "employment" in § 120.9(a)(3). In § 120.9(a)(3), the DTAG recommended we change "conducting direct combat operations or providing intelligence services for a foreign person" to "conducting direct combat operations of a military function for or providing military intelligence services to a foreign person." We do not believe that adding the words "military function" or "military" are necessary or add clarity. The clarification in subsection § 120.9 (b)(5) suffices.

The DTAG advised that "U.S. citizen" in § 120.9 (b)(2) be changed to "U.S. person." We did not concur with that recommendation because the proposed rule was intended to cover individuals, not business entities such as corporations. The use of "U.S. persons" would have included the latter. The DTAG recommended we add the words "or installed" after the word "integrated" in § 120.9 (b)(3). We accepted the inclusion of those words, but subsequently changed the word "integrated" to "incorporated." The DTAG also suggested adding "physical security or personal protective training" to § 120.9 (b)(4). We accepted that change.

Regulatory Analysis and Notices

Administrative Procedure Act

The Department of State is of the opinion that controlling the import and export of defense services is a foreign affairs function of the United States Government and that rules implementing this function are exempt from § 553 (Rulemaking) and § 554 (Adjudications) of the Administrative Procedure Act. Although the Department is of the opinion that this proposed rule is exempt from the rulemaking provisions of the APA, the Department is publishing this proposed rule with a 60-day provision for public comment and without prejudice to its determination that controlling the import and export of defense services is a foreign affairs function.

Regulatory Flexibility Act

Since this proposed amendment is not subject to 5 U.S.C. 553, it does not require analysis under the Regulatory Flexibility Act.

Unfunded Mandates Reform Act of 1995

This proposed amendment does not involve a mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This proposed amendment has been found not to be a major rule within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996.

Executive Orders 12372 and 13132

This proposed amendment will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this proposed amendment does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this proposed amendment.

Executive Order 12866

The Department of State does not consider this proposed rule to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. The Department is of the opinion that controlling the import and export of defense articles and services is a foreign affairs function of the United States Government and that rules governing the conduct of this function are exempt from the requirements of Executive Order 12866.

Executive Order 13563

The Department of State has considered this rule in light of Section 1(b) of Executive Order 13563, dated January 18, 2011, and affirms that this regulation is consistent with the guidance therein.

Executive Order 12988

The Department of State has reviewed this proposed amendment in light of sections 3(a) and 3(b)(2) of Executive

Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Order 13175

The Department of State has determined that this proposed amendment will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not pre-empt tribal law. Accordingly, the requirement of Section 5 of Executive Order 13175 does not apply to this proposed amendment.

Paperwork Reduction Act

This proposed amendment does not impose any new reporting or recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

List of Subjects in 22 CFR Parts 120 and 124

Arms and munitions, Exports.

Accordingly, for the reasons set forth above, title 22, chapter I, subchapter M, parts 120 and 124 are amended as follows:

PART 120—PURPOSE AND DEFINITIONS

1. The authority citation for part 120 continues to read as follows:

Authority: Secs. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); 22 U.S.C. 2794; E.O. 11958, 42 FR 4311; E.O. 13284, 68 FR 4075; 3 CFR, 1977 Comp. p. 79; 22 U.S.C. 2651a; Pub. L. 105–261, 112 Stat. 1920.

2. Section 120.9 is amended by revising paragraphs (a)(1), (a)(2), and (a)(3), and adding new paragraphs (a)(4) and (b) to read as follows:

§ 120.9 Defense service.

(a) * * *

(1) The furnishing of assistance (including training) using other than public domain data to foreign persons (see § 120.16 of this subchapter), whether in the United States or abroad, in the design, development, engineering, manufacture, production, assembly, testing, intermediate or depot level repair or maintenance (see § 120.38 of this subchapter), modification, demilitarization, destruction, or processing of defense articles (see § 120.6 of this subchapter); or

(2) The furnishing of assistance to foreign persons, whether in the United States or abroad, for the integration of any item controlled on the U.S. Munitions List (USML) (see § 121.1 of this subchapter) or the Commerce Control List (see 15 CFR part 774) into an end item (see § 121.8(a) of this subchapter) or component (see § 121.8(b) of this subchapter) that is controlled as a defense article on the USML, regardless of the origin; or

(3) Training or providing advice to foreign units and forces, regular and irregular, regardless of whether technical data is transferred to a foreign person, including formal or informal instruction of foreign persons in the United States or abroad by any means including classroom or correspondence instruction, conduct or evaluation of training and training exercises, in the employment of defense articles; or

(4) Conducting direct combat operations for or providing intelligence services to a foreign person directly related to a defense article.

(b) The following is not a *defense service:*

(1) Training in the basic operation (functional level) or basic maintenance (see § 120.38) of a defense article; or

(2) Mere employment of a U.S. citizen by a foreign person; or

(3) Testing, repair, or maintenance of an item "subject to the Export Administration Regulations" (see 15 CFR 734.2) administered by the Department of Commerce, Bureau of Industry and Security, that has been incorporated or installed into a defense article; or

(4) Providing law enforcement, physical security or personal protective training, advice, or services to or for a foreign person (see § 120.16 of this subchapter), using only public domain data; or

(5) Providing assistance (including training) in medical, logistical (other than maintenance), or other administrative support services to or for a foreign person.

3. Sections 120.33 through 120.37 are added and reserved, and a new § 120.38 is to be added to read as follows:

§ 120.33–120.37 [Reserved]

§ 120.38 Maintenance levels.

(a) *Organizational-level maintenance* (or basic level maintenance) is the first level of maintenance performed by an end-user unit or organization "on-equipment" (directly on the defense article or support equipment) assigned to the inventory of the end-user unit or organization. Its phases consist of repair, inspecting, servicing, or calibration, testing, lubricating and adjusting equipment, as well as replacing minor parts, components, assemblies and line-replaceable spares or units.

(b) *Intermediate-level maintenance* is second-level maintenance performed "off-equipment" (on removed components, parts, or equipment) by designated maintenance shops or centers, tenders, and mobile teams in direct support of end-users units or organizations. Its phases consist of: Calibration, repair, or testing and replacement of damaged or unserviceable parts, components, or assemblies.

(c) *Depot-level maintenance* is third-level maintenance performed on-or off-equipment at or by a major repair facility, shipyard, or field team with extensive equipment, and personnel of higher technical skill in direct support of end-user units or organizations. It consists of providing evaluation or repair beyond unit or organizations capability. Its phases include: Inspection, testing, calibration or repair, including overhaul, reconditioning and one-to-one replacement of any defective items, parts or components; and excluding any modification, enhancement upgrade or other form of alteration or improvement that enhances the performance or capability of the defense article.

PART 124—AGREEMENTS, OFF-SHORE PROCUREMENT AND OTHER DEFENSE SERVICES

4. The authority citation for part 124 continues to read as follows:

Authority: Sec. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); E.O. 11958, 42 FR 4311; 3 CFR 1977 Comp. p. 79; 22 U.S.C. 2651a; 22 U.S.C. 2776; Pub. L. 105–261.

5. Section 124.1(a) is revised to read as follows:

§ 124.1 Manufacturing license agreements and technical assistance agreements.

(a) *Approval.* The approval of the Directorate of Defense Trade Controls must be obtained before the defense services described in § 120.9(a) of this subchapter may be furnished. In order to obtain such approval, the U.S. person must submit a proposed agreement to the Directorate of Defense Trade Controls. Such agreements are generally characterized as manufacturing license agreements, technical assistance agreements, distribution agreements, or off-shore procurement agreements, and may not enter into force without the prior written approval of the Directorate of Defense Trade Controls. Once approved, the defense services described in the agreements may generally be provided without further licensing in accordance with §§ 124.3 and 125.4(b)(2) of this subchapter. This requirement also applies to the training of any foreign military forces, regular

and irregular, in the employment of defense articles. Technical assistance agreements must be submitted in such cases. In exceptional cases, the Directorate of Defense Trade Controls, upon written request, will consider approving the provision of defense services described in § 120.9(a) of this subchapter by granting a license under part 125 of this subchapter.

* * * * *

6. In § 124.2, paragraph (a) is removed and reserved and paragraph (c) introductory text is revised to read as follows:

§ 124.2 Exemptions for training and military service.

(a) [Reserved]

* * * * *

(c) For NATO countries, Australia, Japan and Sweden, in addition to the basic maintenance information exemption in § 125.4(b)(5) of this subchapter, no technical assistance agreement is required for maintenance training or the performance of maintenance, including the export of supporting technical data, when the following criteria can be met:

* * * * *

Dated: April 5, 2011.

Ellen O. Tauscher,

Under Secretary, Arms Control and International Security, Department of State.

[FR Doc. 2011–8998 Filed 4–12–11; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–154159–09]

RIN 1545–BJ14

Guidance Under Section 108(a) Concerning the Exclusion of Section 61(a)(12) Discharge of Indebtedness Income of a Grantor Trust or a Disregarded Entity

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the exclusion from gross income under section 108(a) of discharge of indebtedness income of a grantor trust or an entity that is disregarded as an entity separate from its owner. The proposed regulations provide rules regarding the term "taxpayer" for purposes of applying section 108 to discharge of indebtedness income of a grantor trust or a disregarded entity. The proposed regulations affect grantor trusts, disregarded entities, and their owners.

DATES: Written or electronic comments and requests for a public hearing must be received by July 12, 2011.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–154159–09), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–154159–09), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC; or sent electronically, via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–154159–09).

FOR FURTHER INFORMATION CONTACT: Bryan A. Rimmke or Benjamin H. Weaver, (202) 622–3050 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 61(a)(12) of the Internal Revenue Code (the Code) provides that income from the discharge of indebtedness is includable in gross income. However, such income may be excludable from gross income under section 108 in certain circumstances. Section 108(a)(1)(A) and (B) excludes from gross income any amount that would be includible in gross income by reason of the discharge of indebtedness of the taxpayer if the discharge occurs in a Title 11 case or to the extent the taxpayer is insolvent when the discharge occurs. Section 108(d)(1) through (3) provides the meaning of the terms "indebtedness of the taxpayer," "Title 11 case," and "insolvent," for purposes of applying section 108, and each definition uses the term "taxpayer." Section 7701(a)(14) defines a *taxpayer* as any person subject to any internal revenue tax.

Several types of disregarded entities exist under the Code and regulations. For instance, § 301.7701–2(a) of the Procedure and Administration Regulations provides that the term *business entity* includes an entity with a single owner that may be disregarded as an entity separate from its owner under § 301.7701–3; an example of a disregarded entity under this provision is a domestic single member limited liability company that does not elect to be classified as a corporation for Federal income tax purposes. Additionally, some disregarded entities are created by statute; examples of statutory disregarded entities include a corporation that is a qualified REIT subsidiary (within the meaning of section 856(i)(2)), and a corporation that is a qualified subchapter S subsidiary (within the meaning of section 1361(b)(3)(B)).

The activities of an entity that is a disregarded entity are treated in the same manner as a sole proprietorship, branch, or division of the owner (except for certain employment and excise tax rules). Accordingly, for Federal income tax purposes, all assets, liabilities, and items of income, deduction, and credit of a disregarded entity are treated as assets, liabilities, and such items (as the case may be) of the owner of the disregarded entity.

A *grantor trust* is any portion of a trust that is treated (under subpart E of part I of subchapter J of chapter 1) as being owned by the grantor or another person. In the case of any grantor trust, items of income, deductions, and credits attributable to the trust are includable in computing the taxable income and credits of the owner.

Explanation of Provisions

The proposed regulations provide that, for purposes of applying section 108(a)(1)(A) and (B) to discharge of indebtedness income of a grantor trust or a disregarded entity, the term *taxpayer,* as used in section 108(a)(1) and (d)(1) through (3), refers to the owner(s) of the grantor trust or disregarded entity. The proposed regulations further provide that grantor trusts and disregarded entities themselves will not be considered owners for this purpose. Finally, the proposed regulations provide that, in the case of a partnership, the owner rules apply at the partner level to the partners of the partnership to whom the discharge of indebtedness income is allocable. Thus, for example, if a partnership holds an interest in a grantor trust or disregarded entity, the applicability of section 108(a)(1)(A) and (B) to discharge of indebtedness income of the grantor trust or disregarded entity is tested by looking to the partners to whom the income is allocable. If any partner is itself a grantor trust or disregarded entity, the applicability of section 108(a)(1)(A) and (B) is determined by looking through such grantor trust or disregarded entity to the ultimate owner(s) of such partner.

Some taxpayers have taken the position that the insolvency exception is available to the extent a grantor trust or disregarded entity is insolvent, even if its owner is not. The IRS and the Treasury Department do not believe this