

**Traffic in Arms Regulations (ITAR)
MANUAL**

Number: M-002

Revision: A

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REVISION HISTORY

DATE	CHANGE DESCRIPTION
10/21/09	Original release

Approval: _____ *Robert Faia*
 Robert Faia, President



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Compliance Program Guidelines

MKS projects identified via the job folder information as “ITAR” will involve the receipt and/or use of technical data that is controlled under United States export control laws: the Export Administration Act and Export Administration Regulations (“EAR”), enforced by the Bureau of Industry and Security in the Department of Commerce or the Arms Export Control Act and its Implementing regulations, the International Traffic in Arms Regulations (“ITAR”), enforced by the Office of Defense Trade Controls in the State Department.

ITAR: The ITAR regulations control the export of equipment, technology and technical data that are primarily military in nature. It is unlawful under the ITAR regulations to send ITAR controlled technical data to any foreign persons outside the United States or to disclose – in written, oral or visual form -- ITAR-controlled technical data to any foreign persons in or outside the United States unless one of several exclusions applies or the State Department has issued a license authorizing the disclosure or export of the technical data to specific foreign persons.

EAR: The EAR regulations control the export of equipment, technologies (including software), and technical data that serve primarily civil uses. The prohibition on the export or disclosure of technical data controlled under the EAR regulations is determined on a country-by-country basis for each disclosure of controlled technical data. As a result, it is unlawful to export technical data out of the US or to disclose technical data in or outside the US to foreign persons of certain countries for which a license is required as a condition of making such exports and disclosures.

Definitions:

A “**foreign person**” is anyone who is “not a lawful permanent resident” of the United States (i.e., not a green card holder) or does not have refugee or asylum status.

In general, **export controlled technical data** is specific information that is needed to develop, produce, maintain, manufacture, assemble, test, repair, operate, modify, process or otherwise use equipment or technologies that are on the control lists of the EAR or the ITAR. Controlled technical data may take the form of “blueprints, plans, diagrams, models, formulae, tables, engineering designs and specifications, manuals and instructions written or recorded on other media or devices such as disk, tape, read-only memories.” Basic marketing information on function or purpose of equipment; general system descriptions; general scientific, mathematical, or engineering principles commonly taught in schools, colleges and universities and related information, and information that is in the public domain -- commonly available to interested persons – does not qualify as controlled technical data under the export control laws. The export laws and regulations determine if technical data is controlled, not your intended or actual use of the information.

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This comprehensive operational compliance program includes instructions and makes reference to documents that articulate the processes in the company. Important elements of documents and programs are:

Organization Structure

- [Organizational charts](#) are available.
- Description (and flow charts, as appropriate) of MKS's functions per our QMS.
- Description of management and control structures for implementing and tracking compliance with U.S. export controls (including names, titles, and principal responsibilities of key officers). This is achieved via [job descriptions](#) and information in the applicable [procedures](#) of our QMS.

Corporate Commitment and Policy

- Management has issued a directive to comply with the International Traffic in Arms Regulations (ITAR).
- Training has provided employees with the knowledge and understanding of when and how the ITAR affect the company with ITAR controlled items/technical data.
- Training provides for necessary knowledge of corporate internal controls that have been established and implemented to ensure compliance with the ITAR.

Examples of detail:

- Citation of basic authorities (ITAR).
- Identification of authorized U.S. Government control body (Directorate of Defense Trade Controls ("DDTC")), when applicable.
- [Corporate policy](#) to comply fully with all applicable U.S. export control laws and regulations.
- Compliance as a matter for top management attention that needs adequate resources.
- Identification, duties, and authority of key persons (senior executives, empowered officials) for day-to-day export/import operations and compliance oversight.
- Periodic Review of ITAR system and compliance during Management Reviews and,
- Assessment of the activities for compliance to ITAR requirements set forth within MKS.

Identification, Receipt and Tracking of ITAR Controlled Items/Technical Data

- Methodology used, specifically tailored to corporate structure, organization, and functions, to identify and account for ITAR controlled items/technical data the company handles (trace processing steps of ITAR controlled transactions from the time the company manufactures/receives the item to the time an item is shipped from the company – or in the case of a defense service, when provided).

Examples of issues addressed as applicable:

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- Assuring appropriate employees are familiar with ITAR and related requirements with certain provisos and limitations?
- Assuring company employees are notified of changes in U.S. export control restrictions, and are they provided accurate, reliable interpretation of U.S. export control restrictions?
- Handling of U.S. origin defense articles manufactured/received by MKS and from whom? How identified and “tagged”?
- What U.S. origin technical data related to defense articles are produced/received by MKS and from whom? How identified and tagged”?
- What items are manufactured by MKS using U.S. origin technical data? How identified and “tagged”?
- What items or articles are manufactured by MKS that incorporates U.S. origin defense articles (components)? How identified and “tagged”?
- What kind of recordkeeping system does the company maintain that would allow for control of, and for retrieval of information on, U.S. origin technical data and/or defense articles exported to the company?

Re-Exports/Retransfers

(If applicable-MKS is a subcontractor performing work to customer requirements and all released product and data is to the customer and not to any other agency.)

Procedures will be utilized, if activity is applicable, to

- (a) obtain written State Department approval prior to the retransfer to a party not included in a State Department authorization of an item/technical data transferred or exported originally to the company, and
- (b) track the re-export or re-transfer (including placing parties on notice that the proposed transfers involve US origin products and labeling such products appropriately). Examples of the types of procedures that may be created when applicable are;
 - Procedure when an ITAR controlled item/technical data is transferred by MKS to a foreign national employed at the company.
 - Procedure when an ITAR controlled item/technical data is transferred by MKS to a foreign person within the U.S.
 - Procedure when ITAR controlled technical data or defense articles are transferred from MKS to a foreign person outside of the U.S.
 - Procedure when an ITAR controlled item/technical data is to be used or transferred for an end-use not included in the State Department authorization.

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Controls exist and will be documented as the need arises to Restricted/Prohibited Exports and Transfers when necessary.

- Procedure for screening customers, carriers, and countries.
- Screening procedure for high-risk transactions to combat illegal exports/retransfers.
- Procedures to investigate any evidence of diversion or unauthorized use of U.S. origin products.

Recordkeeping (Procedure P-002)

- Description of record systems concerning U.S. origin products.
- Procedures for maintaining records relating to U.S. origin products for five years from the expiration of the State Department license or other approval.
- Regular internal review of files to ensure proper practices and procedures by persons reporting to top management.

Internal Monitoring

- Perform audits periodically to ensure integrity of compliance program per Procedure [P-003](#).
- Emphasis on validation of full export compliance, including adherence to license and other approval conditions.
- Measurement of effectiveness of day-to-day operations.

Adopted a procedure for highlighting any compliance areas that needs more attention.

- Report known or suspected violations to administration office.

Examples of detail:

- Specific description of procedures (examination of organizational structure, reporting relationships, and individuals assigned to export/import controls process.
- Random document review and tracing of processes.
- Review of internal recordkeeping, communications, document transfer, maintenance and retention.
- Conclusion and report of violations to Corporate Administrator.

Training (Procedure P-008)

- Explanation of company training program on U. S. export control laws and regulations.
- Process to ensure education, training, and provision of guidance to all employees involved on exports (including those in departments such as Traffic, Marketing, Contracts, Security, Legal, Public Relations, Engineering, Executive Office).

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Violations and Penalties

- MKS employees will notify management of potential violations, including use of voluntary disclosure to report any violation of the company's internal control program or U.S. export controls.
- MKS emphasizes on importance of compliance (to avoid jeopardizing MKS business and severe sanctions against MKS and responsible individuals).
- Description of AECA/ITAR penalties can be found below.

Written statements and [procedures](#) to foster employee discipline exist (e.g., keying certain types of advancement to compliance understanding and implementation, and establishment of internal disciplinary measures).

Obligations: Recipients of export controlled technical data may be held personally liable for disclosures of export-controlled technical data to unauthorized foreign persons. As a result, researchers must take reasonable measures to prevent the disclosure to and use and access of export-controlled technical data by unauthorized, unlicensed foreign persons. What qualifies as reasonable depends on the circumstances.

Examples of measures researchers should consider adopting include clearly marking "controlled" technical data that is controlled, identifying personnel who may lawfully access the technical data, storing hard copies of controlled technical data in locked cabinets or desks, securing access to electronic copies of and communications containing controlled technical data by passwords, user ids, or other controls; storing technical data in a single location; making only that number of copies of technical data as is necessary, and requiring all persons with lawful access to controlled technical data to sign this certification.

Penalties: Individual liability for the disclosure of controlled technical data to unauthorized foreign persons under the ITAR includes fines up to \$500,000 per violation for civil violations and up to ten years imprisonment and penalties up to \$1,000,000 per violation for criminal violations. Liabilities under the EAR may involve fines ranging from \$10,000 to \$120,000 for each civil violation and fines ranging from \$50,000 to \$1,000,000 for each criminal violation and 10 years imprisonment. Individual researchers and MKS also face loss of export privileges and debarment from federal contracts and grants.

Certification: Employees will certify (via [F-010](#)) that they are familiar with the export control issues summarized above and have read and understand this certification. Employees must understand that they could be held personally liable if unlawfully disclose export controlled technical data to foreign persons and agree to take reasonable measures to prevent unauthorized foreign persons from having access to or using any export controlled technical data they may receive under the work identified as "ITAR" within MKS. Employees must agree to take appropriate security measures and to contact management before making any type of disclosure of controlled technical data to any foreign person.



United States Department of State
Bureau of Political-Military Affairs
Directorate of Defense Trade Controls
Washington, D.C. 20522-0112

ROBERT FAIA
President
MK SERVICES CORP.
194 S. MAIN ST.
Middleton, Massachusetts 01949

2023-01-12

REGISTRANT CODE: M29573
EXPIRATION DATE: 2024-02-28

Reference: DDTC Manufacturer Registration Statement and Fee Submission

Dear ROBERT FAIA:

The Office of Defense Trade Controls Compliance (DTCC) received your registration statement and fee to register as a manufacturer. Your registration code is M29573, which expires on 2024-02-28.

Any person who engages in the United States in the business of manufacturing or exporting or temporarily importing defense articles or furnishing defense services is required to register and keep that registration current with this office pursuant to the Arms Export Control Act (AECA) and the International Traffic in Arms Regulations (ITAR). A registration is current if the registration is unexpired and has accurate and up-to-date information.

Registration is a precondition to submitting an application for an export license or other approval from the Directorate of Defense Trade Controls (DDTC) or to use ITAR exemptions but does not confer any export rights or privileges. In addition, if you also plan to engage in brokering activities pursuant to ITAR Part 129, you must register as a broker with DDTC.

As the senior officer empowered to sign the registration statement, you should ensure that your organization maintains records regarding: 1) The senior officer listed on the registration who will oversee the compliance program and be responsible for designating the direct employees who will serve as “empowered officials” for their organization; and 2) The qualified, direct employees who will serve as “empowered officials,” listed by name, position, business unit, phone and fax numbers and email addresses. Please note that third parties (i.e., individuals who are not direct employees, such as consultants, subcontractors, or outside counsel, for example) cannot serve as “empowered officials.”

Also, ITAR Section 122.5 requires you to maintain records concerning your registration and the manufacture, acquisition, and disposition of defense articles; the provision of defense services; and information on political contributions, fees, or commissions furnished or obtained, as required by ITAR Part 130. Records maintained shall be available at all times for inspection and copying by DTCC or Customs officials. To ensure such records are maintained in accordance with ITAR Section 122.5, the organization should provide appropriate training on AECA and ITAR requirements to all employees who will be performing recordkeeping functions and ensure they comply with the ITAR. Ramifications for the failure to comply may include shipment delay and/or shipment seizure by Customs and Border Protection, loss of export privileges, and/or criminal or civil penalties.

Further, if your organization has foreign-person employees, including officers and senior managers,

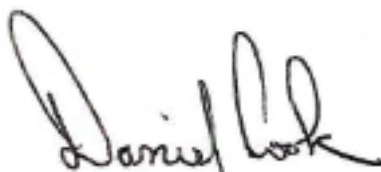
your organization must first obtain a license or other approval before providing such foreign-person employees with access to any ITAR-controlled technical data. It is also prohibited to provide defense services or export defense articles to subsidiaries/affiliates located in proscribed countries under ITAR Section 126.1 (for example, the People's Republic of China, North Korea, Syria, etc.). You should caution your organization's employees not to discuss the substance of ITAR-controlled information with foreign-person employees without first obtaining a license or other approval from DDTC.

You may refer to the DDTC website for a Compliance Guide at <http://www.pmdtdc.state.gov/> and then click on ITAR Compliance tab, next click on How to Comply tab. The DDTC website also includes a copy of the ITAR, explanations of export licensing procedures, how to submit a license application, country sanctions, individuals / companies debarred by the Department of State, and other export matters. The website also includes procedures for requesting a commodity jurisdiction determination (ITAR Section 120.4) should you have doubt as to whether an article, services, or data is covered by the ITAR Part 121 (the U.S. Munitions List).

You may submit your organization's registration renewal up to 60 days before the registration expiration date. At latest, your registration must be received at least 30 days prior to the expiration date to avoid a lapse in registration. You should also ensure your organization's Registration is current before applying for export licenses or other approvals. Also, if appropriate, DTCC requests you to keep your registration information current by submitting amendment requests via DECCS Registration system.

For general registration related questions, please contact the DDTC Response Team at 202-663-1282 or by email at DDTCCustomerService@state.gov. For questions related to this matter, please contact Telethia Thomas at 202-632-2153.

Sincerely,

A handwritten signature in black ink that reads "Daniel Cook". The signature is written in a cursive style with a large initial "D" and "C".

Daniel Cook
Chief, Registration, Compliance, & Analysis
Office of Defense Trade Controls Compliance