



ITAR Legal Services for Aerospace and Defense

ITAR COMPLIANCE

For domestic and foreign companies engaged in international trade across U.S. borders, federal compliance needs to be a top priority. U.S. Customs and Border Protection (CBP) and other federal agencies strictly enforce the nation's import and export control laws, and importers and exporters face a host of compliance obligations – and law enforcement risks – under other federal statutes as well.

The federal government imposes especially strict laws when it comes to the export of defense-related products or technical data in hopes of keeping technology and information out of the wrong hands. The International Traffic in Arms Regulations (ITAR) control the export, import, sharing, and use of items and information found on the United States Munitions List (USML).

Many companies and citizens do not realize that they fall under ITAR, even if they do not export products and even if they manufacture products that have only an indirect application in the firearms, munitions, and defense industries. While it might seem the USML would be specific to military items, its scope encompasses a great deal of technology. Consequently, it is essential for every high-tech company to understand ITAR and

whether its business operations fall within its scope.

ITAR enforcement falls within the jurisdiction of the U.S. Department of State. The penalties for violating ITAR can be quite severe with a single violation providing for a fine of \$1 million, 20 years' imprisonment, or both.

The export, import, or attempted export of any defense article, defense service, or technical data from the U.S. without the proper license, documentation, or written approval can result in an ITAR violation. ITAR applies to manufacturers, exporters, and distributors. ITAR compliance is extremely nuanced and strictly enforced. Consequently, anyone with any exposure to ITAR should consult with an ITAR attorney.

Kirton McConkie ITAR lawyers are the only ITAR experts in Utah that provide a comprehensive suite of aerospace and defense compliance legal services at Utah rates. Other law firms attempting to offer ITAR advice to Utah's aerospace and defense companies are not based in Utah and subsequently charge Utah companies much more for services – similar to what they charge clients in Washington, D.C., or New York. Instead, Kirton McConkie is Utah's own elite law firm, locally connected and invested alongside

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the booming Utah ecosystem of aerospace, defense, and technology companies that increasingly need ITAR assistance as they engage in international trade, so we only charge fair Utah rates.

Our ITAR lawyers assist domestic and foreign companies with all federal import/export matters and are experts in guiding companies to comply with ITAR, the Directorate of Defense Trade Controls (DDTC), Export Administration Regulations (EAR), and general CBP international trade controls.

Kirton McConkie ITAR lawyers help a company using technology determine whether their technology falls within the scope of ITAR and the USML. This happens to be more than simply the actual hardware or software. It involves the technical information associated with it. Moreover, it could involve even a component of a large product. Kirton McConkie can help you make this determination. Our ITAR lawyers will then help you complete all proper registration, licensing, and documentation needed to comply with ITAR and other federal trade controls.

Our ITAR lawyers can also help a company determine whether their business operations fall within the scope of ITAR. Should a company employ only U.S. citizens within the U.S., do business only within the U.S., purchase parts from only within the U.S., ship

product to locations only within the U.S., and refrain from sharing any piece of information related to the technology outside the U.S., a company may be compliant. However, you should retain ITAR counsel to help make this determination.

We work with clients to draft and negotiate agreements, including specialized ITAR technical assistance agreements (TAAs) and manufacturing license agreements (MLAs), that both protect your interests and ensure complete federal compliance. We take a proactive approach, working to identify exactly what our clients' compliance obligations are, avoiding confusion and unnecessary administrative burden and expense. Given the nuances and detail involved in some of these determinations, our firm invests the time to learn about its clients and tailors its ITAR counsel to each client's specific product and export needs. We want to know our clients, we believe in your products and services, and we want to make your business growth and trade as smooth and risk-free as possible.

We also specialize in assisting aerospace and defense companies comply with the Export Administration Regulations (EAR), which is a set of U.S. government regulations on the export and import of most commercial items. Many of these items are "dual-use" items, meaning that they have both commercial and military functions.





Such products are often on the Commerce Control List (CCL) and fall under the jurisdiction of EAR. License requirements can depend on a product's technical characteristics, the destination, the end user, and the end use.

The legal landscape surrounding the export and import of aerospace and defense products, services, and technology is always changing. The U.S. federal government launched the Export Control Reform Initiative (ECR Initiative), which will fundamentally reform the U.S. export control system. The reform is happening in three phases. Phases I and II reconcile various definitions, regulations, and policies for export controls, all the while building toward phase III, which will create a single control list, single licensing agency, unified information technology system and enforcement coordination center.

Retaining legal counsel to ensure that current and future trade agreements and business operations do not run afoul of shifting federal compliance requirements is extremely important to avoid the harsh penalties associated with this industry's regulations.

WHAT IS AN ITAR VIOLATION?

The Six Most Common Ways Companies Violate ITAR

1. Failing to Register

All manufacturers of items, data, or services that have military application are required to register with the U.S. Department of State's Directorate of Defense Trade Controls (DDTC), even if they do not intend to export their product. Any manufacturing of the items on the USML is illegal without proper registration. Industries often requiring ITAR or EAR compliance include aerospace and propulsion, chemicals, cybersecurity products, defense or military services or equipment, drones, information security and software,

materials processing, munitions, navigation or sensor technology, nuclear products, unmanned and manned vehicles, and weapons manufacturing or licensing, including technical data and parts manufacturing.

Additionally, the DDTC requires advanced approval for any exports. Failure to obtain a license to export is considered a violation of ITAR.

2. Lack of Technical Data Licenses

In addition to the goods themselves, any export of technical data or defense services related to firearms and ammunition require prior approval and licensure. Exporting these without prior approval is considered a violation of ITAR. An example may include sending technical drawings to a foreign vendor to obtain a quote without getting a license to do so beforehand. Any discussion of technical data with foreign companies also requires this licensure. Most people who violate ITAR in this way are simply not aware of the rules, but they will still be enforced.

3. Incorrect Documentation

Any error in a document can lead to an ITAR or customs violation, even if it is a simple mistake or an omission. Documents subject to this rule may include DDTC license applications, electronic export information filings, destination declarations, delivery verifications, applications for registration, purchase orders, foreign import certificates, bills of lading, non-transfer and use certificates, and shipping documents that contain information related to the export of defense articles. In short, any export of defense articles requires meticulous attention to details, as simple mistakes can have legal implications.

4. Not Vetting Other Parties

As an exporter of record for any ITAR-related items and services, the Department of State holds you accountable for knowing every



party involved in a transaction. It is your responsibility to confirm that each party is not prohibited from engaging in ITAR-controlled transactions, as well as confirming that the information they provide about end users is reliable. Doing due diligence is critical to avoiding violations, as failure to investigate exposes your entire organization to enforcement from the government. Even if you are licensed or operating under ITAR rules, exporters have continued responsibility for the items they export.

5. Uncontrolled Technical Data

If you manufacture, design, or perform manufacturing services related to ITAR-controlled items, it's very likely you are also in possession of technical data controlled by ITAR. The definition of technical data is very broad under ITAR, including all information used in the design, manufacture, testing, repair, or quality assurance of the defense articles. You are prohibited from transferring or disclosing this technical data to foreign persons, even in the U.S., without the proper licenses.

This can be a particular challenge as there are many foreign persons in the U.S., both lawfully and unlawfully, and it is not always easy to identify them. Additionally, it's not

always clear what counts as technical data. It's important to know that if you work with this data, the burden is always on you to avoid unauthorized exports.

6. Willful Failure to Comply

While most ITAR violations can happen as a result of oversights or a lack of diligence, there are also cases where exporters purposefully do not comply with the regulations. This may be done to avoid red tape and complex processes, or it may be a more malicious decision intended to work with foreign actors who are not aligned with U.S. goals. These cases may be treated more harshly than others or lead to additional charges, depending on what regulations were violated and why.

For more information, visit kmclaw.com or contact Theo Smith (tsmith@kmclaw.com) or Joseph Brubaker (jbrubaker@kmclaw.com).