

Deemed Export Risks – Guidance for the University of Rochester Community

There are two primary export compliance regulations in the U.S.:

- [International Traffic in Arms Regulations \(ITAR\)](#)
- [Export Administration Regulations \(EAR\)](#)

The purpose of this guidance is to highlight potential deemed export risks at the University of Rochester. Generally speaking, a deemed export occurs when non-published and/or non-fundamental research technical information or source code is released to a foreign person in the U.S. In other words, just because a tangible item (e.g. equipment; material) is not being sent or taken out of the U.S., an export may still occur.

Note that while they are related, “published” and results from “fundamental research” are separate and distinct ways in which technical information and source code may be excluded from export controls under the EAR and the ITAR. Any contract associated with a project, even fundamental research, should be reviewed by ORPA and/or the Office of Counsel to ensure that the terms are reasonable and potential export compliance requirements are evaluated (e.g. publication restrictions; foreign person access restrictions; deemed exports).

While both the EAR and ITAR control deemed exports, the scope of deemed export restrictions and risks between the EAR and ITAR are significantly different.

ITAR: Everything subject to the ITAR should be reviewed for deemed export compliance. Immediately contact the University’s [Export Control Officer](#) and [Chris Deeney](#), the University’s ITAR Empowered Official and Director at the Laboratory for Laser Energetics if there is any chance that the University may engage in any activity involving the ITAR. ITAR controlled items are very high risk.

EAR: A deemed export generally involves releasing non-published and/or non-fundamental research technical information or source code to a foreign person in the U.S. Under the EAR, such export controlled technical information is referred to as “technology”.

Overall, it’s rare at the University of Rochester for a deemed export to occur, because:

- of the University’s [Openness in Research Policy](#) and that almost all research at the University of Rochester is [fundamental research](#), and consequently the technical information and/or source code that results from such research is not subject to the EAR (or the ITAR);
- most EAR controlled pieces of equipment, material, software and the providers of such EAR controlled items to the University do not release non-published/non-fundamental research technical information or source code
 - If a party does intend to share export-controlled technology or source code with the University, such release would typically be done under an agreement and/or such party should provide notice that export controlled technology or source code may be shared
 - Such situations should be reviewed by the University’s [Export Control Officer](#) and the University’s [Committee on Science and Security](#) and likely require implementation of a technology control plan to ensure export compliance

Summary: With respect to potential deemed exports, the University is primarily concerned about:

- Anything subject to the ITAR
- Rare instances in which University projects are not fundamental research
- Incoming technical information or source code from a party outside the University, and such technical information or source code is not already published and/or is not the result of fundamental research

Please contact the University’s [Export Control Officer](#), with export compliance questions