

ECCO

**DOE HQ Annual Export Control
Training for LMEMs**

by Evelyn Prestosh

April 2011

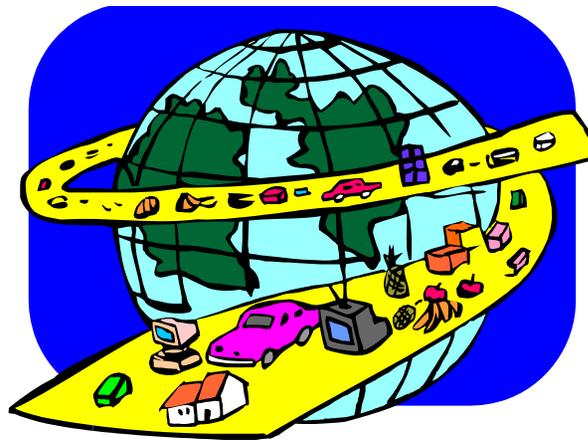
AGENDA

- What's New in Export Control?
- Statistics
- Review of Proposed Changes to the:
 - Disposition Guidelines
 - Assurance System
 - Internal Control Program (ICP)
 - Plus next steps
- Current Compliance Issues
- PMIS Update
- Goals
- Questions



WHAT'S NEW IN EXPORT CONTROL?

- Ron Rudolph's replacement --- me
- Status of massive 2 year undertaking to revise current processes
- How do the revisions impact the MPC&A Program?
 - *What's in it for you?*
- ICL S000030 amendments



STATISTICS

- ICL S000030 – April 2006 to present
 - 2,957 ICL Requests processed
 - 351,505 items
 - \$1.2B
- ICL S000005 – 11/1997 through 3/2006
 - 2,204 ICL Requests
 - 1,745,237 items
 - \$352M
- *Reviewed over 177 IVL applications*
- *Processed 56 General NRC Licenses for nuclear sources*

REVISED DISPOSITION GUIDELINES

REVIEW OF PROPOSED CHANGES: DISPOSITION GUIDELINES

Old Guidelines

Proposed Guidelines

- ICL/IVLs allow MPC&A Program to transfer to other sites/projects within MPC&A Program. → ○ ICL/IVLs allow MPC&A Program to transfer to other sites/projects within MPC&A Program.
 - ICL/IVLs restrict use of commodities to MPC&A Program activities only
 - ICL/IVLs forbid transfers, sale, re-export outside of Program without prior U.S.G. authorization
 - Russian law controls tax implications → ○ Russian law controls tax implications
- Allows for transfer of commodities outside the Program, but still within country, with Program (project and export) authorization.
Note: With the approval of the revised Guidelines comes the U.S.G. authorization.

REVIEW OF PROPOSED CHANGES: DISPOSITION GUIDELINES

THE BIG CHANGES

Old Guidelines

- Guidelines address :
 - In-Program Transfers
 - Salvage (subset of Commodity Transfers)
 - Scrap/Abandon



Proposed Guidelines

Guidelines address:

- In-Program Transfers
- Out-of-Program Transfers Within Country (includes salvaging equip & parts no longer needed by the Program)
- Scrap/Abandon (obsolete/end-of-life)
- Completed Activity

★ Includes step-by-step processes, designates responsible parties, required data points & assurance requirements

○ Active Version of Disposition Guidelines



Microsoft Office
Word Document

○ Latest Version of Revised Disposition Guidelines



Microsoft Office
Word Document

DISPOSITION: ACCOUNTING OF COMMODITIES (CONT)

Required Data Points

- Breakdown of Required Data Points by Responsible Party



Microsoft Office
Word Document

- Sample Excel template to help gather and track Required Data Points



Microsoft Office
Excel 97-2003 Worksheet

REVISED ASSURANCE SYSTEM

REVIEW OF PROPOSED CHANGES: ASSURANCES

- Main changes include:

- Updated roles
- Once goods are:
 - Scrapped/Abandoned,
 - Transferred Out-of-Program or
 - a Completed Activity determination has been made,
 - a Disposition Report plus one last Assurance Report to document the above activities are required and then Assurances for that equipment STOPS.



- Current Assurance Procedure



Microsoft Office
rd 97 - 2003 Docum

- Latest Version of Revised Assurance Procedure



Microsoft Office
rd 97 - 2003 Docum

INTERNAL CONTROL PLAN

REVIEW OF PROPOSED CHANGES: INTERNAL CONTROL PLAN

○ Major Updates

- Element 2: Identification & Roles of Export Control Personnel
 - Expanded and more clearly defines the roles and responsibilities of the HMEM, LMEMs, HQ Program Managers and Lab Program Managers/Lab Project Team Leads
 - Expanded explanation of responsibilities as they pertain to disposition and assurance processes
- Element 9: Record Keeping
 - More clearly addresses the record keeping requirements for the disposition and assurances processes

COMMERCE PROCESS APPROVAL: NEXT STEPS

- PMs and LMEMs provided feedback
- Export Control reviewed feedback and updated the documents as appropriate
- Presented final versions to Commerce
- Commerce responded with need for further clarification
- *MPC&A needs to respond to Commerce's request for clarification:*
 - *Expand on MPC&A's process for determining SHELF LIFE FOR DISPOSITION ACTIVITIES – Body Armor, Nuclear Detectors, Oscilloscopes*
- Present revised processes to Commerce
- Receive approval from Commerce
- Communicate approval and begin implementation of newly revised processes

CURRENT COMPLIANCE ISSUES

CURRENT COMPLIANCE ISSUES

○ Funds Transfers

- Are we exempt from compliance because it's “just a funds transfer”?
- Can we use this strategy to circumvent compliance?

○ Our ICL versus Commodity Jurisdiction

- Our ICL is for Commerce controlled goods, software and technology only;
- Commodities controlled by other agencies and administrations (ITAR, DEA, NRC, FDA, etc.) may not be added as line items to our ICL
- Commerce has stated that there is a strong presumption of denial should we request the addition of Crime Controlled or CWC controlled commodities to our ICL
- We use the ICL to document, track & audit ‘funds transfers’ & ‘in-country purchases’ of other agency controlled commodities. DOE MPC&A Project & Export Compliance approval is required first.

CURRENT COMPLIANCE ISSUES (CONT)

○ Weapons

- NO weapons
- NO mock weapons
- NO ammunition
- NO, NO, NO, NO, NO...
- Commerce cannot authorize weapons, mock weapons or ammunition under our ICL
- Per John Boyd, the Program will NOT fund weapons, mock weapons or ammunition
- The authority is not and cannot be built into our ICL ~ because it is not built into the Commerce regulations. There is only one ECCN 0A985 for guns in the EAR and the mock weapons we want to fund do not fall under this ECCN
- Dept. of State controls the bulk of these items and ITAR items cannot be added to the Commerce ICL.



CURRENT COMPLIANCE ISSUES (CONT)

○ Non-ICL Items

- Do not attempt to export/funds transfer /buy in-country any non-ICL items using our ICL

○ IVLs

- Please be reminded that DOE HQ must review and approve your IVL applications and NRC General Licenses for all NA-25 activities
 - MPC&A
 - Second Line of Defense
 - China PUNT – Peaceful Use of Nuclear Technology

CURRENT COMPLIANCE ISSUES (CONT)

○ The “DOE Exemption”

- How many people have been informed by another agency or administration that since you are a Lab, you are considered DOE and are exempt from said agency’s or admin’s regulations?
- Has Commerce ever RWA’d your IVL application stating that you are requesting DOE controlled technology from Commerce?
- SURPRISE !!! You really aren’t exempt from the regulations
- There is an internal DOE process/procedure that must be followed.
- You still need to contact NA-24 and request formal permission

PMIS UPDATE

- Good progress is being made in the PMIS database
- Major enhancements for request entry; increased search functionality;
- Future PMIS release may allow for creation of ‘disposition requests’ using existing ICL requests
 - provides many of the required data points (pedigree), e.g., equipment description, original ICL Number and Line Item, and Ship Date, etc.

GOALS

- Build consistency in classifications across Labs
 - Enhanced Commodity List with specific examples
- Meet with Commerce to update Funds Transfer Guidance
- ICL S000030 Amendments
 - Consignees
 - Addition of any new commodities, software and technology
- ECCN Review
 - Determine if current classifications for commodities on the license have changed

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ANY QUESTIONS?



BACK-UP SLIDES

DISPOSITION: ACCOUNTING OF COMMODITIES

○ Required Data Points

- Site/Consignee
- Project Number and Title
- WBS Number
- DOE Laboratory Name
- DOE Laboratory Request No.
- Lab Project Mgr/Lab Project Team Lead
- Notification Date

DISPOSITION: ACCOUNTING OF COMMODITIES (CONT)

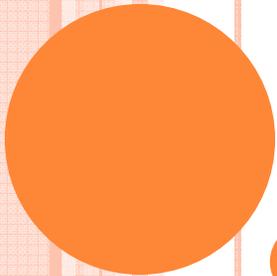
○ Required Data Points (cont)

- Disposition Activity
- In-Program Transfer
 - Provide recipient name, address & location
- Scrap/Abandon
 - Describe how items will be disposed of
- Completed Activity
- Out-of-Program Transfer
 - Provide recipient name, address & location

DISPOSITION: ACCOUNTING OF COMMODITIES (CONT)

○ Required Data Points (cont)

- Inventory Number
- Commodity Description
- Quantity
- Unit of Measure
- Serial Number(s), if applicable
- Reference Contract Number
- Date of Original Delivery
- ICL No., IVL No., Other
- ICL/IVL Line Item No.
- Condition (operational, inoperative, broken, etc)



DISPOSITION PROCEDURE

Detailed Review

if requested or required

DISPOSITION: IN-PROGRAM TRANSFER

MPC&A Program provided commodities may be transferred to another MPC&A Program project/site. Transferring commodities to another MPC&A Program project/site requires submission of a new ICL request or IVL application for the recipient project/site and must cross reference the current or original approved ICL or IVL request.

Process

1. Site Project Manager identifies commodities previously provided by the Program, but no longer needed or in use at the site.
2. Site Project Manager provides details to U.S. Lab Program Manager.
3. U.S. Lab Program Manager reviews information provided from site, identifies appropriate commodities to transfer, gathers background information on commodities including ICL & IVL information, & provides accounting of commodities to donor HQ Project Manager & Lab MPC&A Export Manager (LMEM) for concurrence.
4. U.S. Lab Program Manager and/or HQ Project Manager identifies & contacts possible recipient U.S. Lab Program Manager and/or HQ Project Manager who might be interested in receiving, utilizing, & taking responsibility for accountability of commodities.
5. Both HQ Project Managers review commodities & background information.
6. Recipient HQ Project Manager requests preapproval from Headquarters MPC&A Export Manager (HMEM).
7. HMEM reviews & approves/disapproves preapproval request from recipient HQ Project Manager & communicates preapproval determination to donor & recipient LMEMs & both HQ Project Managers.

DISPOSITION: IN-PROGRAM TRANSFER

Process (continued)

8. Recipient LMEM reviews commodities & background information & makes an export determination.
9. Both LMEMs communicate preapproval determination to both U.S. Lab Program Managers.
10. Recipient LMEM prepares & submits to recipient HQ Project Manager an ICL Request or IVL application referencing initial acquisition information in the Lab Notes.
11. Recipient HQ Project Manager reviews ICL request & concurs/non-concurs.
12. HMEM reviews & approves/disapproves ICL request or reviews IVL application.
13. Recipient U.S. Lab Program Manager generates the U.S. confirmation tax (property transfer) letter for the Commission for International Technical Assistance (CITA) or the Commission on International Humanitarian and Technical Assistance (CIHTA) certificates. The same letter can be used both by the donor & the recipient MPC&A Program project/site.
14. Proceed with physical transfer of commodities upon obtaining new CITA/CIHTA certificate.
15. Both LMEMs & both HQ Project Managers maintain accounting of commodities.
16. Both Lab Program Managers document transfer of commodities for assurance reports.

DISPOSITION: OUT-OF-PROGRAM TRANSFER WITHIN COUNTRY

Equipment/system is deemed functioning, no longer needed in the MPC&A Program, and may or may not be needed at the site for MPC&A Program use. This includes salvaging equipment and parts.

Process:

1. Site Project Manager identifies commodities no longer needed or in use at the site and identifies proposed recipient(s) within the country.
2. Site Project Manager provides details to U.S. Lab Program Manager.
3. U.S. Lab Program Manager gathers and reviews background information on commodities, which includes ICL or IVL information.
4. U.S. Lab Program Manager provides accounting of commodities and recommends approval/disapproval to HQ Project Manager.
5. HQ Project Manager reviews commodities with background information and proposed in-country recipient(s) & recommends approval/disapproval to Lab MPC&A Export Manager (LMEM).

DISPOSITION: OUT-OF-PROGRAM TRANSFER WITHIN COUNTRY

Process (continued):

6. LMEM reviews commodities with background information and proposed in-country recipient(s), makes the determination of whether an export license would be required and provides Headquarters MPC&A Export Manager (HMEM) with the accounting referencing the initial acquisition information and export determination.
7. HMEM reviews commodities with background information, approves/disapproves transfer and communicates transfer determination to LMEM and HQ Project Manager.
8. HQ Project Manager communicates transfer determination to donor facility and U.S. Lab Program Manager.
9. LMEM and HQ Project Manager maintain accounting of commodities.
10. U.S. Lab Program Manager documents out-of-program transfer/salvage for assurance report.

SCRAP/ABANDON

- MPC&A Program commodities may be scrapped/abandoned under the various circumstances listed below, if no other MPC&A Program project/site can utilize such commodities.
 - No longer in use;
 - No plans to utilize in the future;
 - Surpassed its recognized service life;
 - Can no longer adequately perform; exceeds cost to replace and/or
 - Not cost-effective to return to U.S.
 - No longer needed;
 - Technology obsolete;
 - End of useful life;
 - Cost to repair or upgrade
- The MPC&A Program rigorously establishes the life cycle of durable commodities using manufacturers' specifications and/or subject matter expert evaluation. For example, radio communications for protective forces may carry a warranty or life cycle from the manufacturer of five years. Subject matter experts may assign radios a longer life cycle of up to seven years based on usage & experience with a given site. This is the system that the program uses for establishing the status of a commodity as outdated or obsolete. Within that established life cycle, equipment systems are maintained & sustained as a part of the program.

SCRAP/ABANDON

Process

1. Site Project Manager identifies commodities to be scrapped/ abandoned.
2. Site Project Manager provides details to U.S. Lab Program Manager.
3. U.S. Lab Program Manager reviews list of commodities provided by Site Program Manager, identifies appropriate commodities, gathers background information on commodities including ICL and IVL information, and provides accounting of commodities to HQ Project Manager and Lab MPC&A Export Manager (LMEM) for their concurrence.
4. HQ Project Manager reviews the commodities and provides LMEM concurrence to scrap/abandon commodities.

SCRAP/ABANDON

Process (continued)

5. LMEM reviews commodities and background information and provides Headquarters MPC&A Export Manager (HMEM) accounting with the initial acquisition information.
6. HMEM reviews commodities, approves/disapproves disposition request and communicates disposition determination to LMEM and HQ Project Manager.
7. LMEM communicates HMEM disposition determination to U.S. Lab Program Manager.
8. LMEM and U.S. Lab Program Manager maintain accounting of commodities scrapped/abandoned.
9. U.S. Lab Program Manager documents scrap/abandonment for assurance report.

COMPLETED ACTIVITY

For facilities where MPC&A Program activity has been completed and the Program has no expectation of having future access to the facility for programmatic, security or safety reasons, the following process must be adhered to.

Process

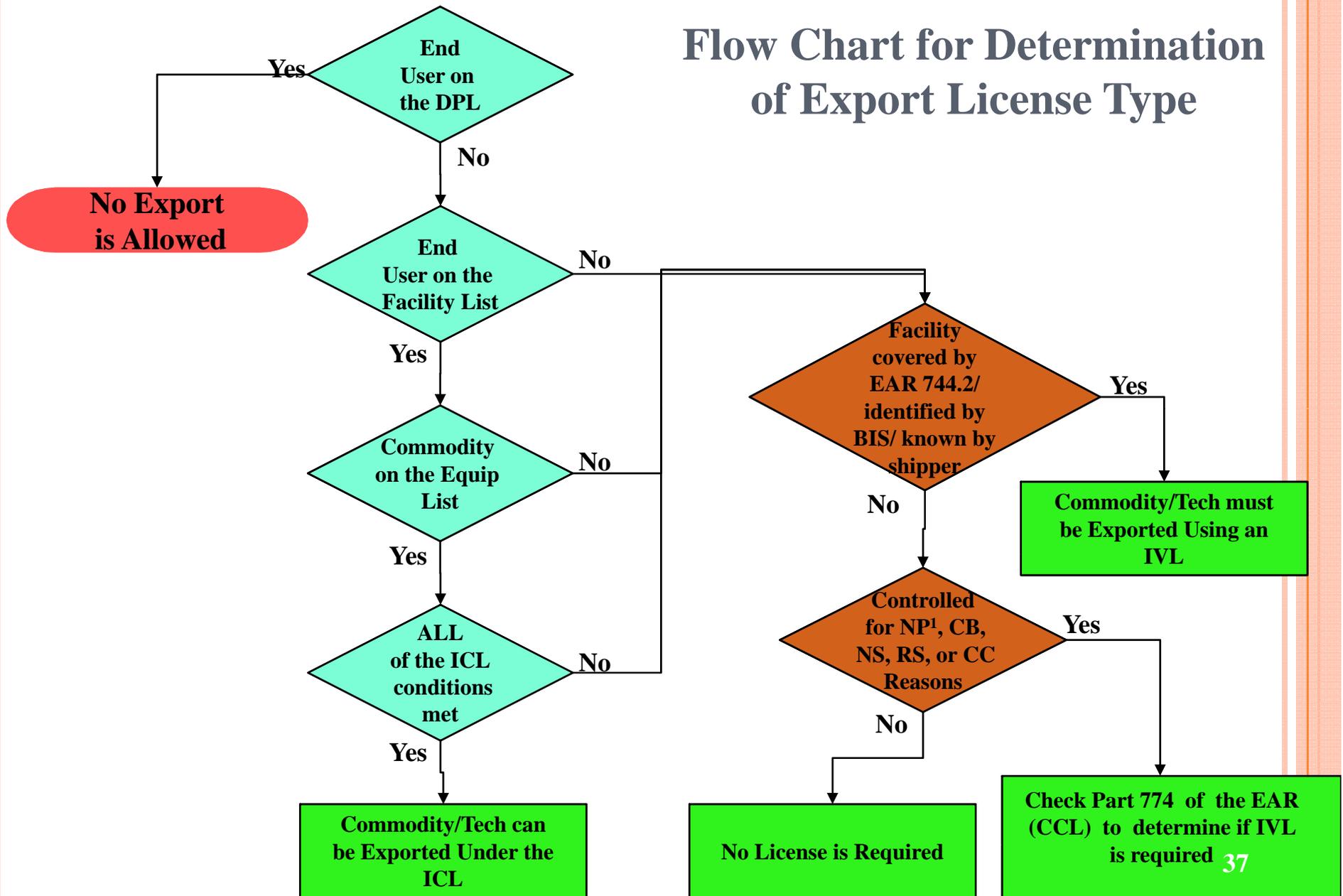
1. Site Project Manager & HQ Project Manager agree that the U.S. Project Team will no longer have access to a facility.
2. Site Project Manager identifies commodities remaining at the facility.
3. Site Project Manager provides accounting of commodities to U.S. Lab Program Manager.
4. Site Project Manager provides the U.S. Lab Program Manager Confirmation of Non-Transfer Statement, which is a statement confirming that the commodities will not be transferred or exported without U.S. Government Authorization.

COMPLETED ACTIVITY

Process (continued)

5. U.S. Lab Program Manager reviews list of commodities provided by Site Project Manager, gathers background information on commodities including ICL and IVL information, and provides accounting of commodities and Confirmation of Non-Transfer Statement to HQ Project Manager for concurrence.
6. HQ Project Manager reviews and approves the accounting of the commodities.
7. HQ Project Manager notifies HMEM of completed activity.
8. U.S. Lab Program Manager and HQ Project Manager maintain accounting of commodities and the Confirmation of Non-Transfer Statement.
9. U.S. Lab Program Manager documents completed activity for assurance report.

Flow Chart for Determination of Export License Type



¹ If a commodity or technology is controlled only for nonproliferation reasons (NP) and it is going to an NSG member state, it may be exported using NLR. If the commodity or technology is controlled for other reasons, it may require an IVL.

PRESENTATION GLOSSARY

- DPL – Denied Party List
- ECCN – Export Control Classification Number
- [Element] – refers to a condition on the ICL
- ICL – International Cooperative License
- ICP – Internal Control Plan
- IVL – Individual Validated License
- PMIS – Program Management Information System
- Reasons for Control
 - NP – Non-Proliferation (nuclear)
 - CB – Chemical/Biological (warfare)
 - NS – National Security
 - RS – Regional Stability
 - CC – Crime Control