

# **ECCO**

**DOE HQ Annual Export Control**

**Training for LMEMs**

**at Idaho National Laboratory**

**by Evelyn Prestosh**

**April 2012**

# AGENDA

- What's New in Export Control?
  - Too many to list in this agenda...
- Statistics
- Review of the Disposition Guidelines, Assurances and ICP
  - ~10 days shy of our 1 year approval anniversary
- Current Compliance Issues
  
- PMIS Update
  
- Questions



# WHAT'S NEW IN EXPORT CONTROL?

- NA-251 Special Disposition Procedure
  - Different requirements for Walk-Away Disposition
  - To be submitted to Commerce for review & approval
- ICL S000030 Amendments
  - Consignees
  - Commodities
  - SNAP-R
- Advisory Opinion Request Submitted to State
  - Category IX(a) Saab TESS/MILES Equipment – Military Training Equipment and Training
  - Russia
  - Non-NATO country and no President has designated Russia as a Major Non-NATO Ally

## WHAT'S NEW IN EXPORT CONTROL? (CONT.)

- Export Control Reform – Benefits & Issues to MPC&A Program?
  - Benefits? – None at this time
  - Issues?
    - Splitting of controlled commodities between agencies may require additional regulatory training for agents, may slow Customs clearance, may be more difficult to enforce, e.g. DOJ and guns
- New ECCN for Commerce OY521
  - Holding place for ITAR commodities transferred to Commerce for which Commerce needs to determine proper ECCN
  - Commerce may need to create new ECCNs for transferred commodities.
  - Commerce should NOT use OY521 as a standard or normal ECCN classification.

## WHAT'S NEW IN EXPORT CONTROL? (CONT.)

- 5/5/2011 Commerce approval received for our amended ICP, the Assurance System and Disposition Guidelines.
  - Any questions on the procedure, the process or the required datapoints, please call me.
- Disposition Requests on the rise
  - Thank you for your patience!
- What would MPC&A be like without the ICL?
- John Boyd and Ron Rudolph
  - The dreaded 'R' word...(retiring ☹ )

## STATISTICS

- ICL S000030 – April 2006 to present
  - 3,660 ICL Requests processed (up from 2,957 last year)
  - 739,601 items (up from 349,601 last year)
  - \$1.45B (up from 1.2B last year)
  
- ICL S000005 – 11/1997 through 3/2006
  - 2,204 ICL Requests
  - 1,745,237 items
  - \$352M
  
- NRC Licenses on the rise again

# REVIEW OF DISPOSITION GUIDELINES

## DISPOSITION: HIGH LEVEL CHANGE 1 & 2

- Four Different Options within Guidelines
  - In-Program Transfer
  - Out-of-Program Transfer (includes salvaging equipment & parts no longer needed by the Program)
  - Scrap / Abandon
  - Completed Activity (Walk-Away)
- Sites had Requested Permission to Disposition Commodities before Receiving Approval from DOE HQ
  - DENIED by Commerce
  - See why on the next slide...

## DISPOSITION: HIGH LEVEL CHANGE 3

- Commerce's **Original List** of Required Data Points Included.
  - Spreadsheet of every commodity provided to the site over the last 16 years
  - Maintain active & updated list of commodities at site + location
  - Data to include:
    - DOE's ICL Data
    - Vendor's Part Number
    - Vendor Description
    - Vendor Serial Number
    - Vendor Shelf Life per line item detail
    - DOE/Lab Shelf Life Determination
    - Justification of Difference between Shelf Lives
    - Disposition Activity, Method, Date Approved

## DISPOSITION: HIGH LEVEL CHANGE 3 (CONT)

- Other Commerce Original Requirements
  - Use spreadsheet for Assurance Reports as well as accounting of goods
  - Provide spreadsheet to auditors to be able to confirm equipment is accounted for and matches DOE's count.
    - Audit Nightmare
  - *If we could provide all these data points in a spreadsheet & we were willing to include the spreadsheet in our Assurance Reports & provide copies to the auditors, Commerce would allow the sites to disposition without receiving DOE HQ approval first. Can we provide all this data?*
- Successfully negotiated down to our Current List of Required Data Points
  - Much reduced list

# REQUIRED DISPOSITION DATA POINTS - BY PARTY

## DOE & Project Team

1. Site/Consignee
2. Project Number and Title
3. WBS Number
4. DOE Laboratory Name
5. DOE Laboratory Request No.
6. Lab Project Mgr/Lab Project Team Lead
7. Notification Date
8. Reference Contract Number
9. Date of Original Delivery
10. ICL No., IVL No., Other
11. ICL/IVL Line Item No.

## ○ Site/Consignee

1. Disposition Activity (choose one):
  - In-Program Transfer (include recipient information)
  - Scrap/Abandon (include description of how disposed of)
  - Completed Activity
  - Out-of-Program Transfer Within Country of Commodities or Parts Thereof, (includes Salvaging) (Include recipient information)
2. Inventory Number(s), if applicable
3. Commodity Description
4. Quantity
5. Unit of Measure
6. Serial Number(s), if applicable
7. Condition (operational, inoperative, broken, etc)



# REVIEW OF CHANGES: DISPOSITION GUIDELINES

## Old Guidelines

- 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

## Approved Guidelines

- ICL/IVLs allow MPC&A Program to transfer to other sites/projects within MPC&A Program.
- ★ 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.*
- Russian law controls tax implications

# REVIEW OF CHANGES: DISPOSITION GUIDELINES

## Old Guidelines

○ Guidelines address : —————→

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

## Approved 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

## DISPOSITIONS: LESSONS LEARNED

- ATSS system has 300+ parts – account for the high dollar, primary and sensitive parts. Do not account for nuts and bolts.
- First Disposition Request is always the toughest. Next request is much smoother
- When in doubt, call Evelyn
- Required Data Points are critical – Every effort must be made to provide them.
  - And if you can't find them, a detailed description of where you looked, how much effort you & the project team put into finding the data (e.g. searched office files & folders, got x number of boxes out of storage & went through them, searched PMIS database, requested ORNL IT's assistance to search database, etc.) needs to be provided to me because I'll need to notify Commerce on behalf of John Gerrard.

# LOG OF DISPOSITION REQUESTS –

TRACKING BEGAN IN 9/2011

DOE HQ Tracking Numer	Date Original Disposition Request Received	Date Complete Disposition Request Received	Submitter's Name	Lab Proj Mgr or Lab Proj Team Lead	LMEM	Lab Name	Original Site Consignee	Project	Disposition Activity	Date Approved
HQ2011-001	9/19/2011	9/19/2011	Jaigne Christman	Paul Singh	Greg Sergent	ORNL	Arzamas-16		Scrap	9/21/2011
HQ2011-002	6/20/2011	10/19/2011	Jaigne Christman	Paul Singh	Greg Sergent	ORNL	Arzamas-16		Scrap	10/24/2011
HQ2011-003	10/20/2011	10/20/2011	Kim Galloway	Jack Pope	Kim Galloway	PNNL	Rosatomflot		In-Program Transfer to MVD-IT	10/25/2011
HQ2011-004	10/25/2011		Patricia O'Brien	Bruce Mepen	Greg Sergent	ORNL	Atomspetstran		Scrap	
HQ2011-005DISP	10/28/2011	12/12/2011	Kim Galloway	Mike Carroll	Kim Galloway	PNNL	Sverdlovsk-44		Out-of-Program Transfer	12/12/2011
HQ2011-006DISP	12/14/2011	12/15/2011	Eric Hirschi	Eric Hirschi	K. Galloway	PNNL	IPPE	3.1.01	In-Program Transfer to Kazakhstan Project	

# REVIEW OF ASSURANCE SYSTEM

# REVIEW OF CHANGES TO ASSURANCE PROGRAM

- Main changes to Assurance Program include:
  - Updated Roles
  - Once approval is received to disposition goods and the site/consignee confirms the disposition activity is completed for the following activities:
    - Scrapped/Abandoned,
    - Transferred Out-of-Program or
    - Completed Activity determination
- One last Assurance Report is required to document the above disposition activity and then Assurances STOP for that equipment.
  - Assurance Report must include a copy of the approved Disposition Packet provided by HQ Export Control.
- In-Program Disposition Requests
  - Donor site conducts one last Assurance Report including a copy of approved Disposition Packet.
  - Recipient site takes responsibility for assuring transferred equipment

# INTERNAL CONTROL PLAN

# REVIEW OF CHANGES TO 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

- 2012 Revised ICP will reflect Record Keeping requirements to '5 years after MPC&A Program Ends' per Commerce.

# CURRENT COMPLIANCE ISSUES

## CURRENT COMPLIANCE ISSUES

- U.S. persons and/or U.S. companies being hired by the Labs as consultants to a site/consignee listed on our ICL are required to conduct their own licensing determination and may need to pursue their own export license/authorization since they may be dealing with listed entities, controlled technology, 744.2 activities, etc.
- This U.S. person/company would **not** be covered under our ICL.
- A approved Vendor Notification Form is required in order for the U.S. person/company to conduct business under the MPC&A ICL.
- How are the Labs covered?
  - DOE owns the labs and hires companies to run them.

## CURRENT COMPLIANCE ISSUES (CONT)

- All license applications or export authorization approval requests for the MPC&A Program are required to be submitted to DOE HQ Export Control for review and approval **prior** to submission of said application, technical assistance agreement, DSP-5, DEA Control Number, NRC application, etc.
- This applies to submissions to any agency.
- I'll also assist in reviewing other export authorization requests for other, non-MPC&A Programs, help expedite CCATS, CJs, Advisory Opinion Requests, license applications, etc.

# PMIS UPDATE

## PMIS UPDATE

- Successful implementation of IMPACT!
- ORNL IT is keeping a list of requested improvements; please share any ideas you have with Evelyn
- Assurance Database will be the next module to transition
- Disposition Request module may be the next improvement.
  - Similar to an ICL Request but the LMEM creates a Disposition Request by finding the old ICLs, choosing the appropriate items from each ICL and clicking transfer to create the disposition request. The DR carries over all the data points, e.g. site, ICL & line item numbers, ECCNs, descriptions, WBS numbers, etc.
- Good progress is being made in the PMIS database

# EXPORT CONTROL CONTACTS

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## ○ John Boyd

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ANY QUESTIONS?



# BACK-UP SLIDES

# 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

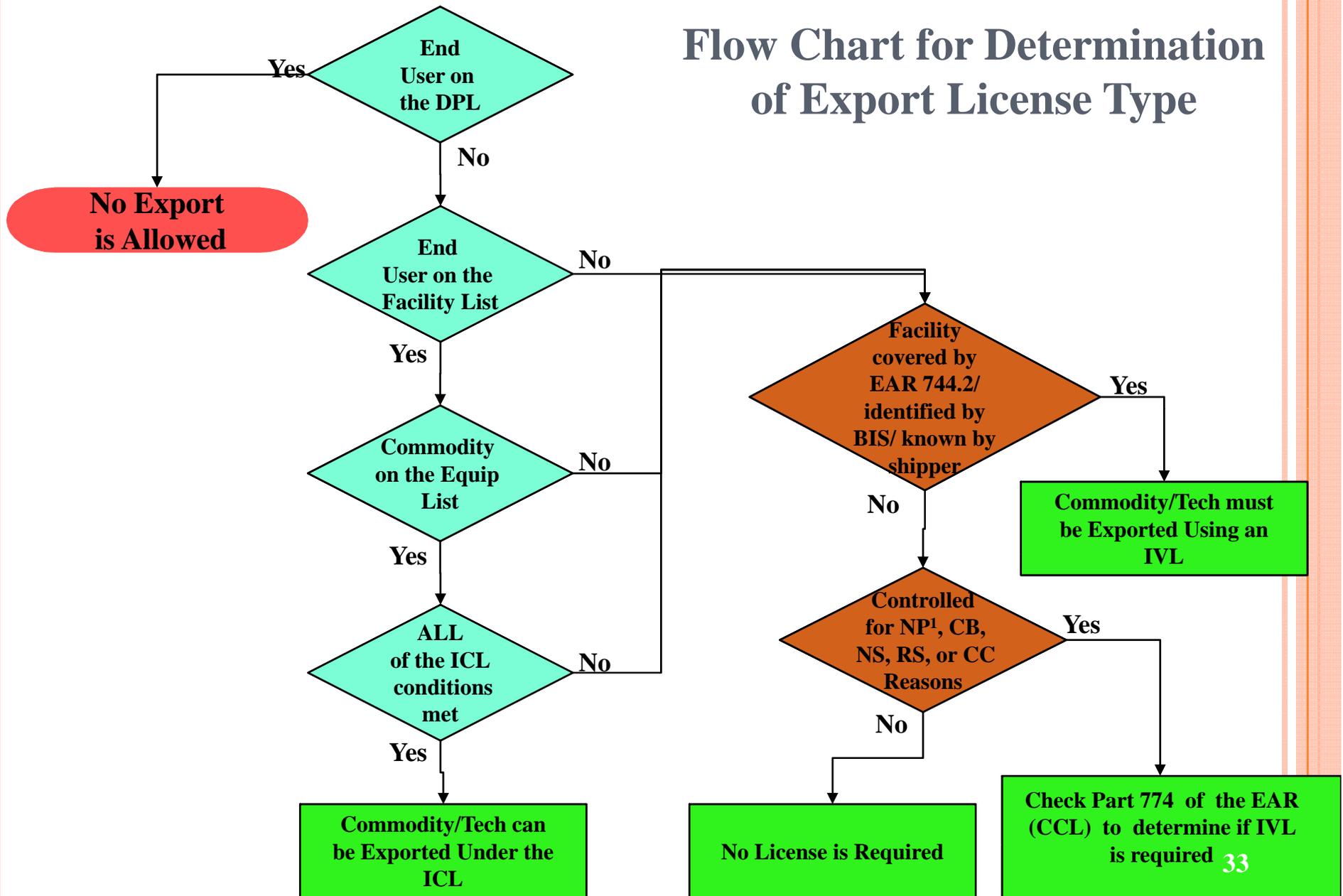
- Please be reminded that DOE HQ must review and approve your IVL applications and NRC General Licenses for all NA-25 activities
  - MPC&A
  - Second Line of Defense
  - China PUNT – Peaceful Use of Nuclear Technology

## 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

## Flow Chart for Determination of Export License Type



<sup>1</sup> 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

