



Directorate of Defense Trade Controls: Licensing Update

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Agenda



- DDTC Overview
- The Licensing Process
- Agreements
- Reexports and Retransfers
- Spacecraft



DDTC OVERVIEW



DDTC Mission Statement



Advance U.S. **foreign policy** and **national security** through licensing direct commercial sales of defense articles and through developing and enforcing defense trade export control laws, regulations, and policies.



Legal Authorities

Reference	Subject
AECA (Arms Export Control Act), Sections 3(g), 38(g)(7), and 40A	Establishes DDTC and legal authority for defense trade controls; requires end-use monitoring of defense articles and services
ITAR (International Traffic in Arms Regulations)	Implementing regulations for AECA, specifies the United States Munitions List (USML)
FAA (Foreign Assistance Act), Sec 505 FAA, Sec 515(a) FAA, Sec 623	Permits observation of use of articles, services, and training Overseas management of assistance and sales programs Requires supervision of end-use of FAA grant items
EAR (Export Administration Regulations)	Regulate the export and re-export of most commercial items, specifies the Commerce Control List (CCL) of dual-use items



Governing Laws and Regulations



- Arms Export Control Act (AECA)
 - Governs arms sales – Foreign Military Sales and Direct Commercial Sales
 - Mandates registration, licensing, reporting of fees and commissions, congressional reporting, end use and retransfer assurances
- International Traffic in Arms Regulations (ITAR)
 - Implementing regulations of AECA
 - U.S. Munitions List (USML) designates defense articles/services subject to Dept of State export jurisdiction
 - Licensing policy and procedures
 - Compliance, enforcement, and fines/penalties



Purpose of Controls



- Foreign Policy
- National Security
- Human Rights
- Regional Stability
- Non-Proliferation



Department of State



**Under Secretary for Arms
Controls & International
Security (T)**

Rose Gottemoeller

**Assistant Secretary for
International Security and
Non Proliferation (ISN)**

Tom Countryman

**Assistant Secretary
for
Political-Military Affairs (PM)**

Amb Tina Kaidanow (A)

**Assistant Secretary for
Arms Control Verification and
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Frank Rose

**Deputy Assistant Secretary
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**Deputy Assistant Secretary
for
Defense Trade Controls**

Brian Nilsson

**Deputy Assistant Secretary
for
Plans, Programs, and
Operations**

Maj Gen Mike Rothstein

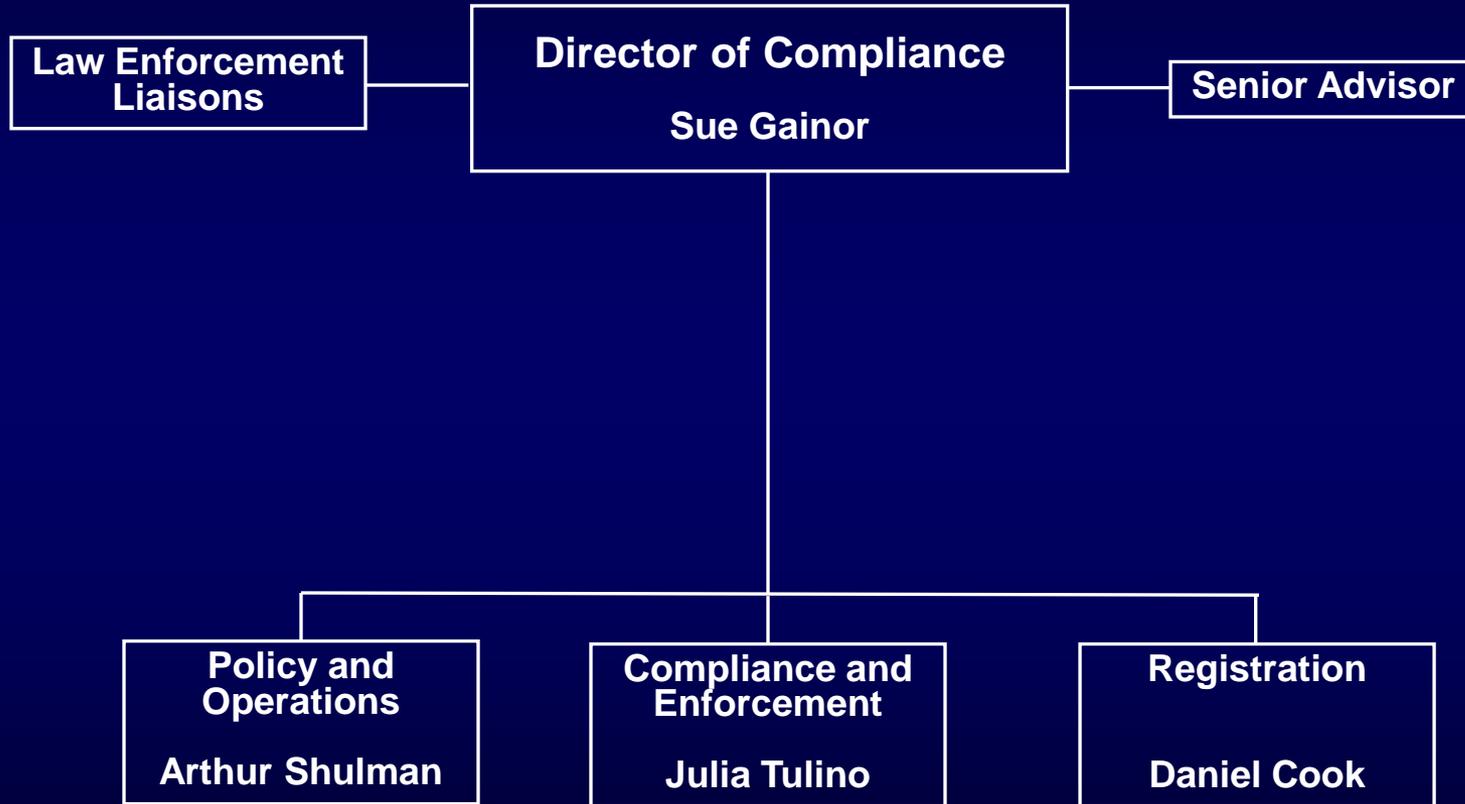


DDTC Organization



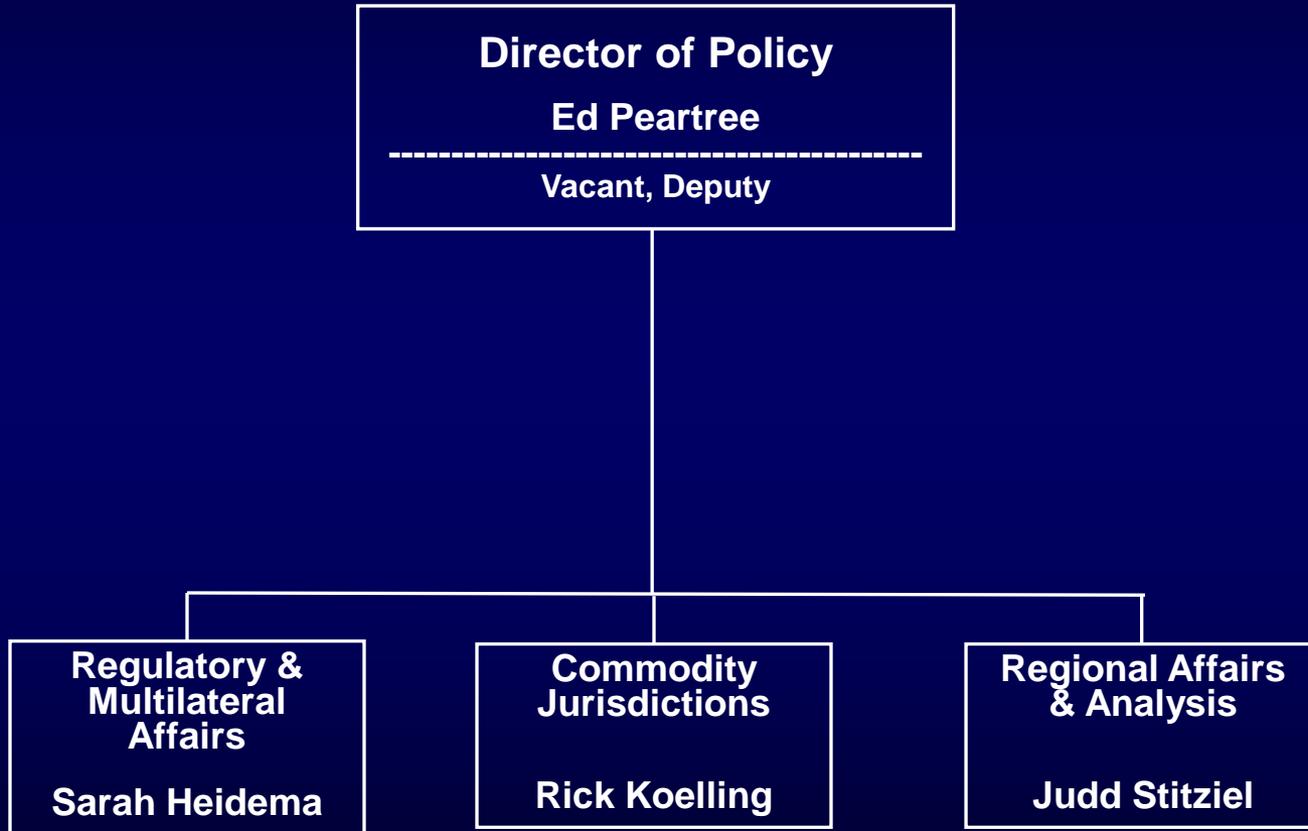


DTCC Organization



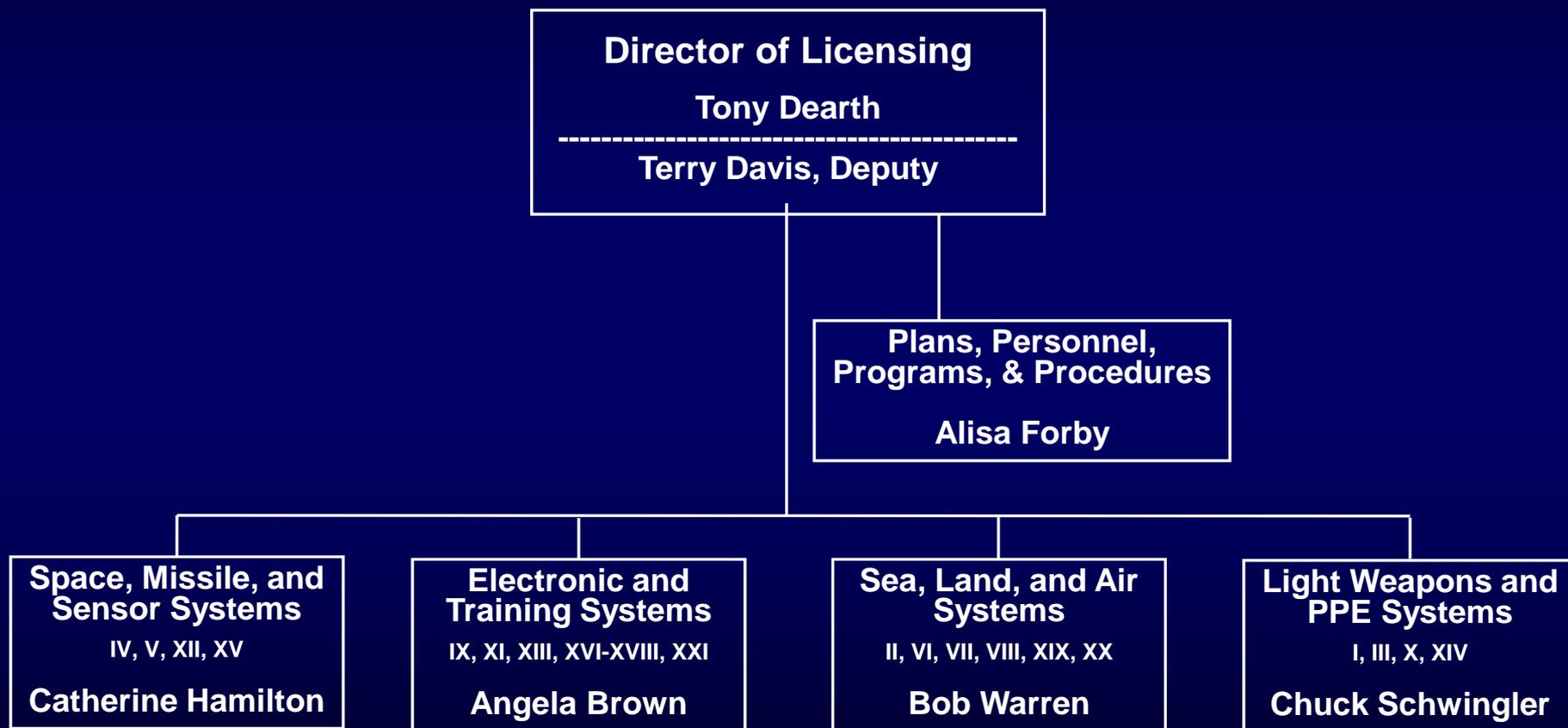


DTCP Organization





DTCL Organization





Office of Licensing



Core Responsibilities

- Respond to licensing requests from industry
- Confirm answers to the following questions on every export request – Who, What, When, Where, Why, and How
- Determine if the export is consistent with U.S. foreign policy and national security objectives (seek referrals)
- Make a final determination (approve, limit, deny, or RWA)



ECR: The Start of a Good Thing



- In August 2009, President Obama directed U.S. export control system agencies to conduct a broad-based review of export controls to identify additional ways to enhance U.S. national security
- The National Security Council (NSC) and the National Economic Council (NEC) were directed to jointly review the existing controls, structure, and policy and recommend a way forward

“The United States is thought to have one of the most stringent export regimes in the world. But stringent is not the same as effective.” – SecDef Gates

“He who defends everything defends nothing.” – Frederick the Great



Guiding Principles

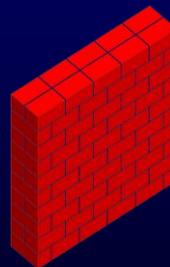
The administration determined that the U.S. export control system needed to be reformed to:

- Increase interoperability with NATO and other allies;
- Reduce current incentives for companies in non-embargoed countries to design out or avoid US-origin content; and
- Allow the U.S. Government (USG) to focus its resources on the transactions of greater concern



International Traffic in Arms Regulations (ITAR)

United States Munitions List (USML)



Commerce Control List (CCL)



Export Administration Regulations (EAR)



The Approved ECR Plan



- In 2010, the President approved a plan that envisions:
 - A Single Licensing Agency to receive and adjudicate licenses currently processed by State, Treasury, and Commerce
 - A Single Control List, tiered based on sensitivity of the commodity
 - A Single IT system for submission, review, and adjudication of licenses
 - A Single Export Enforcement Coordination Agency
- To be implemented in 3 phases:
 - I: Immediate improvements, create the framework
 - II: Implement the new framework within existing structures/authorities
 - III: Complete transition: merge and consolidate



ECR: How Are We Doing?



- Single Export Enforcement Coordination Agency
 - Export Enforcement Coordination Center (E2C2) created by Executive Order 13558 (Nov 9, 2010) under DHS
- Single IT System (USXPorts)
 - DDTC implemented USXPorts in 2013, DOC/BIS implemented in 2015
 - Single portal delayed – still use D-Trade and SNAP-R (landing page)
- Single Control List
 - Prior to Phase III will be “harmonized lists”
 - 71% implemented (15 of 21 USML Categories)
- Single Licensing Agency
 - Phase III activity



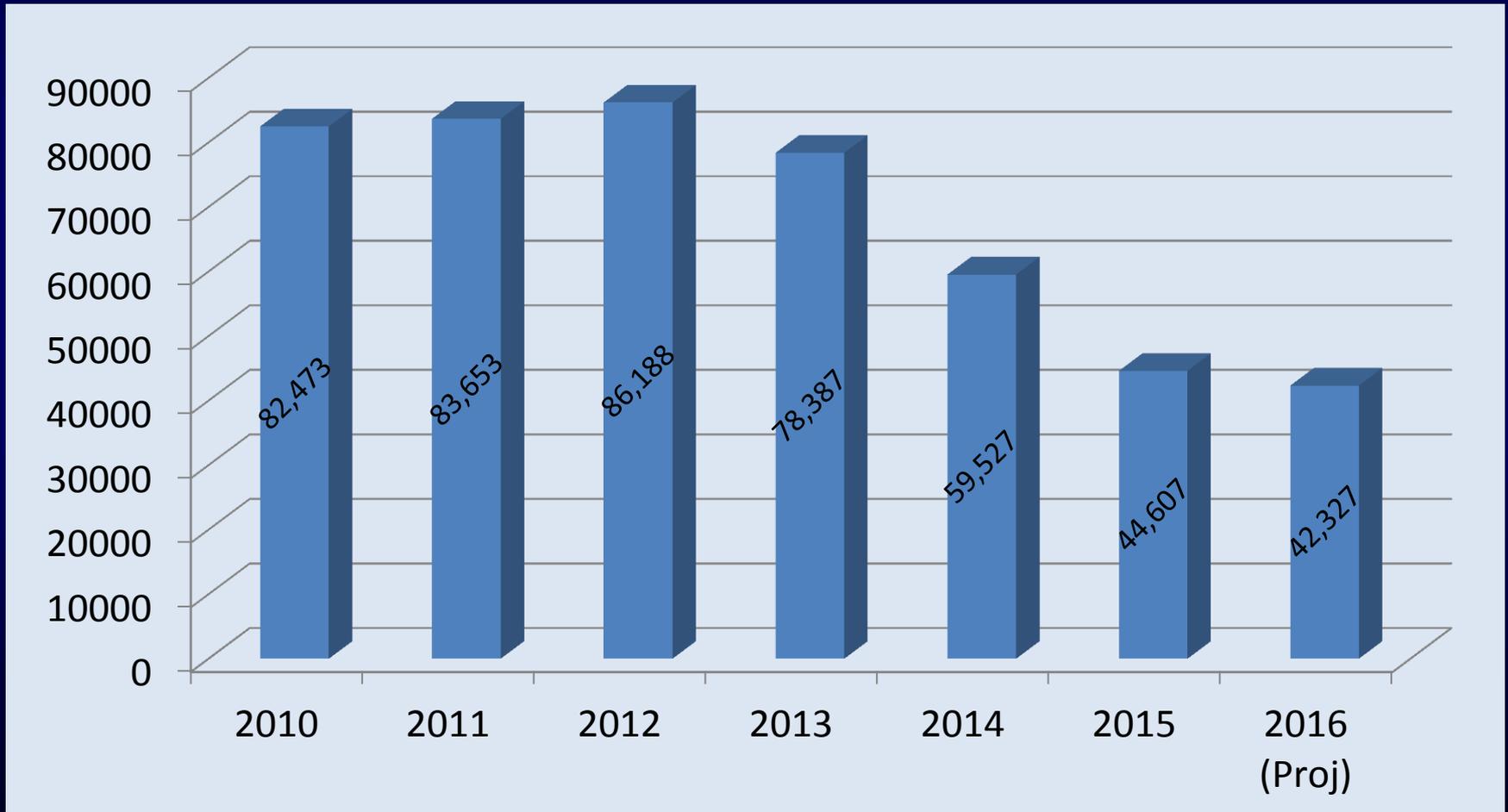
ECR: Recent FRNs



- Definition of export and Related Definitions – June 2016
- Category XII (proposed) – Feb 2016, working on final
- Re-revised Categories VIII & XIX (proposed) – Feb 2016, cmt review
- Categories VI, VII, XIII, and XX (Notice of Inquiry) – Oct 2015
- Categories XIV & XVIII (proposed) – June 2015, 38(f) process ongoing
- Revisions to Definitions of Defense Services, Technical Data, and Public Domain (proposed) – June 2015, process ongoing
- Registration and Licensing of U.S. Persons Employed by Foreign Persons, and Other Changes (proposed) – May 2015
- Exports/Temporary Imports Made to or on Behalf of the Department or Agency of the U.S. Government (proposed) – May 2015



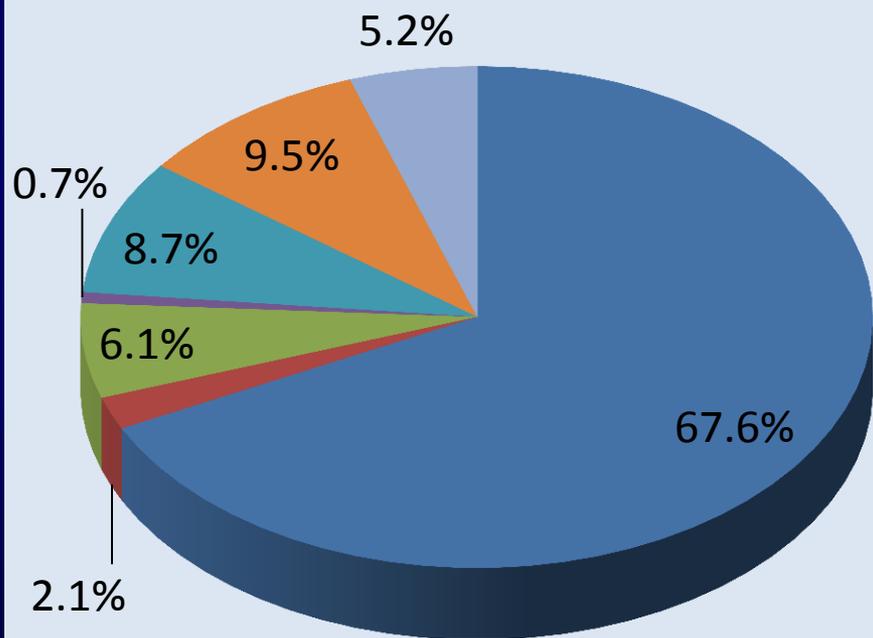
Licenses Submitted to DDTC by Calendar Year



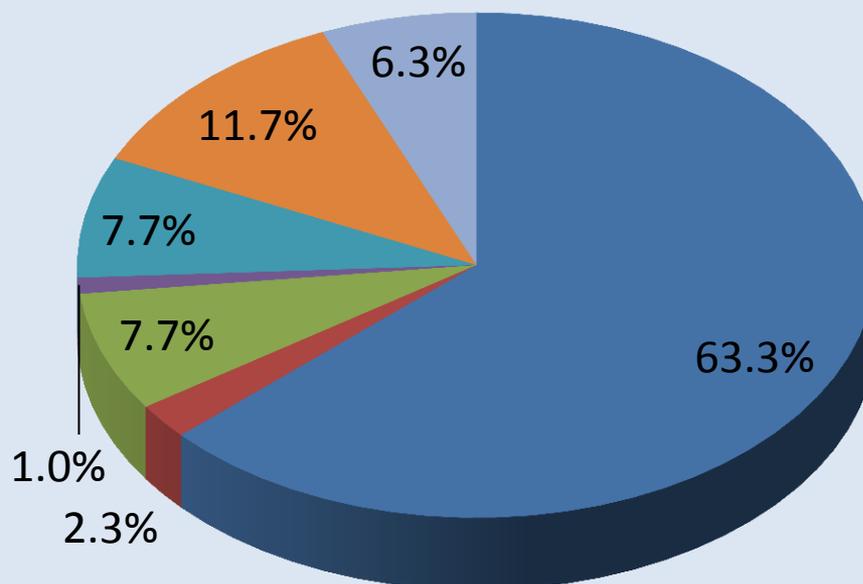


Cases Received

2013 Total Cases: 78,810



2015 Total Cases: 44,607



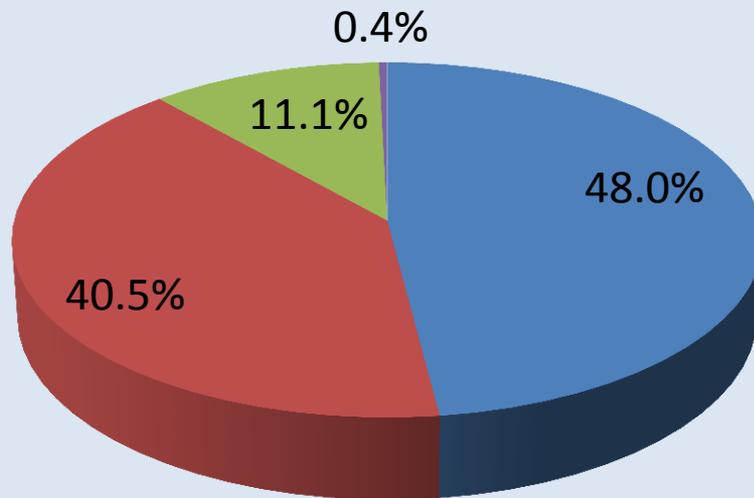
- DSP-5
- DSP-61
- DSP-73
- DSP-85
- Amend.
- AGs
- GC/BL



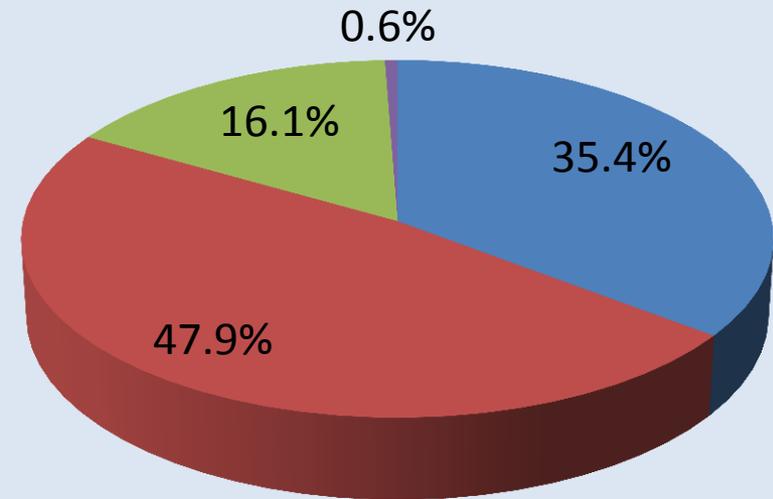
Licensing Decisions



2013



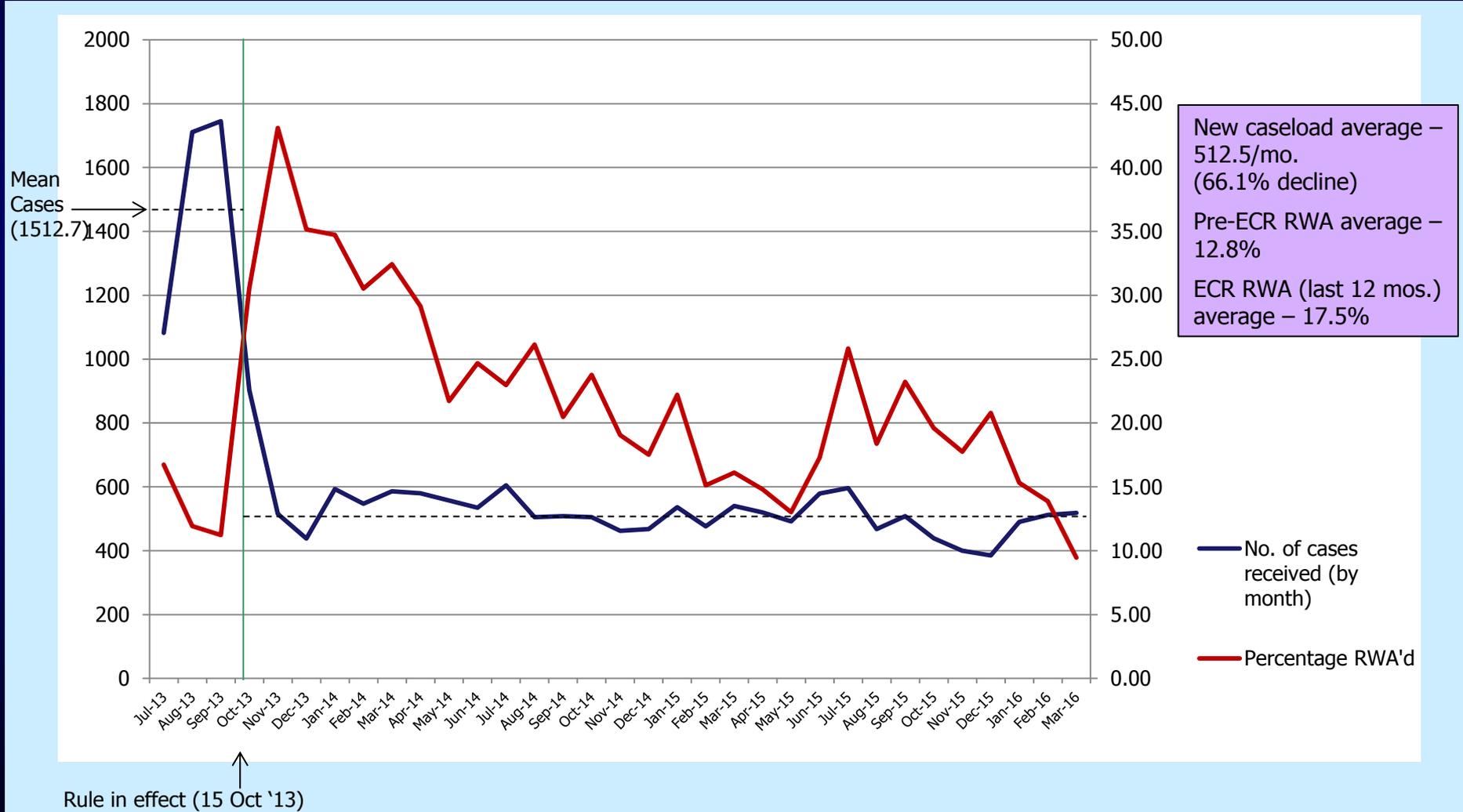
2015



■ Approve ■ Approve w/Provisos ■ RWA ■ Deny

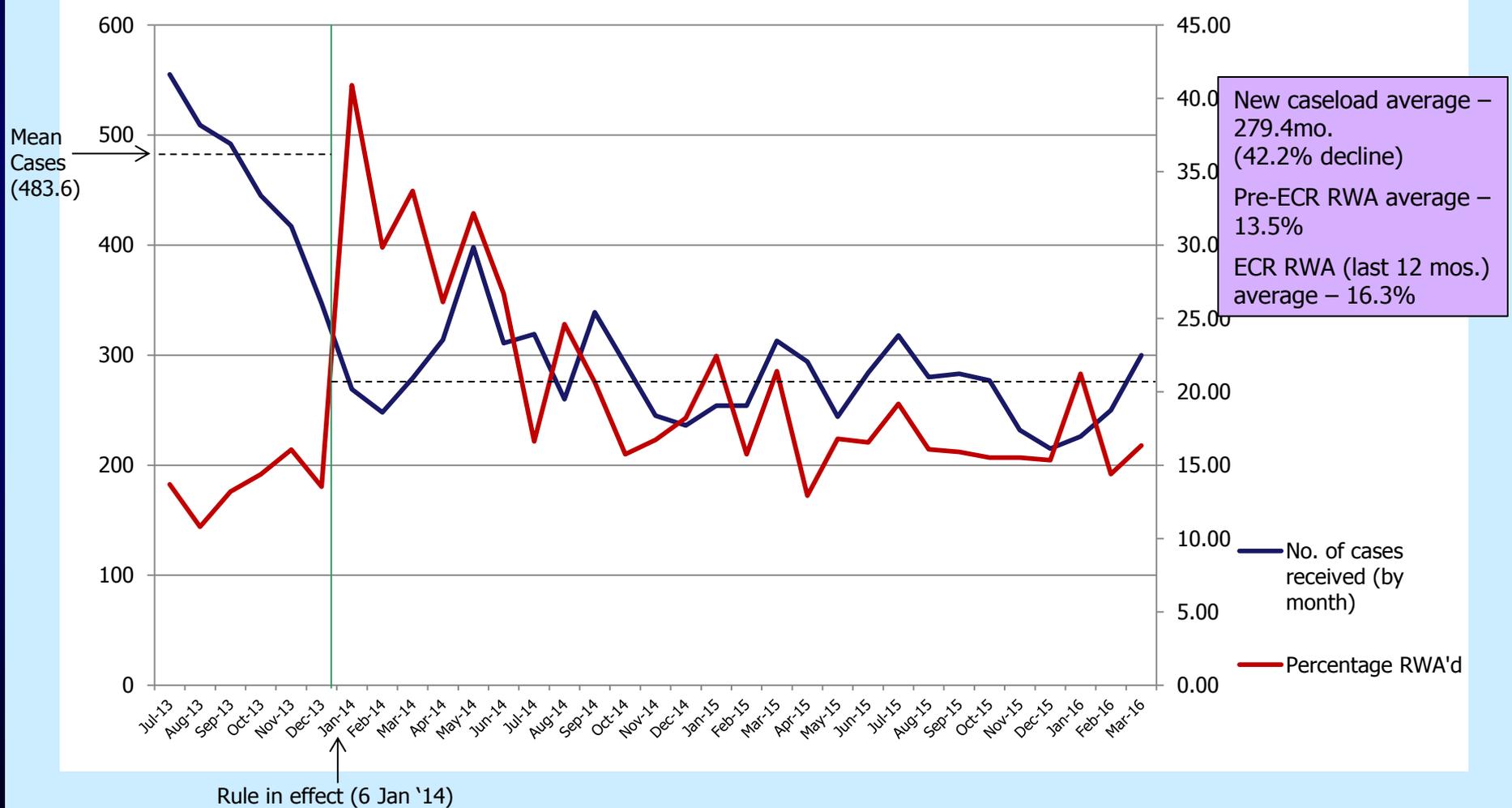


Cat VIII & XIX Trends



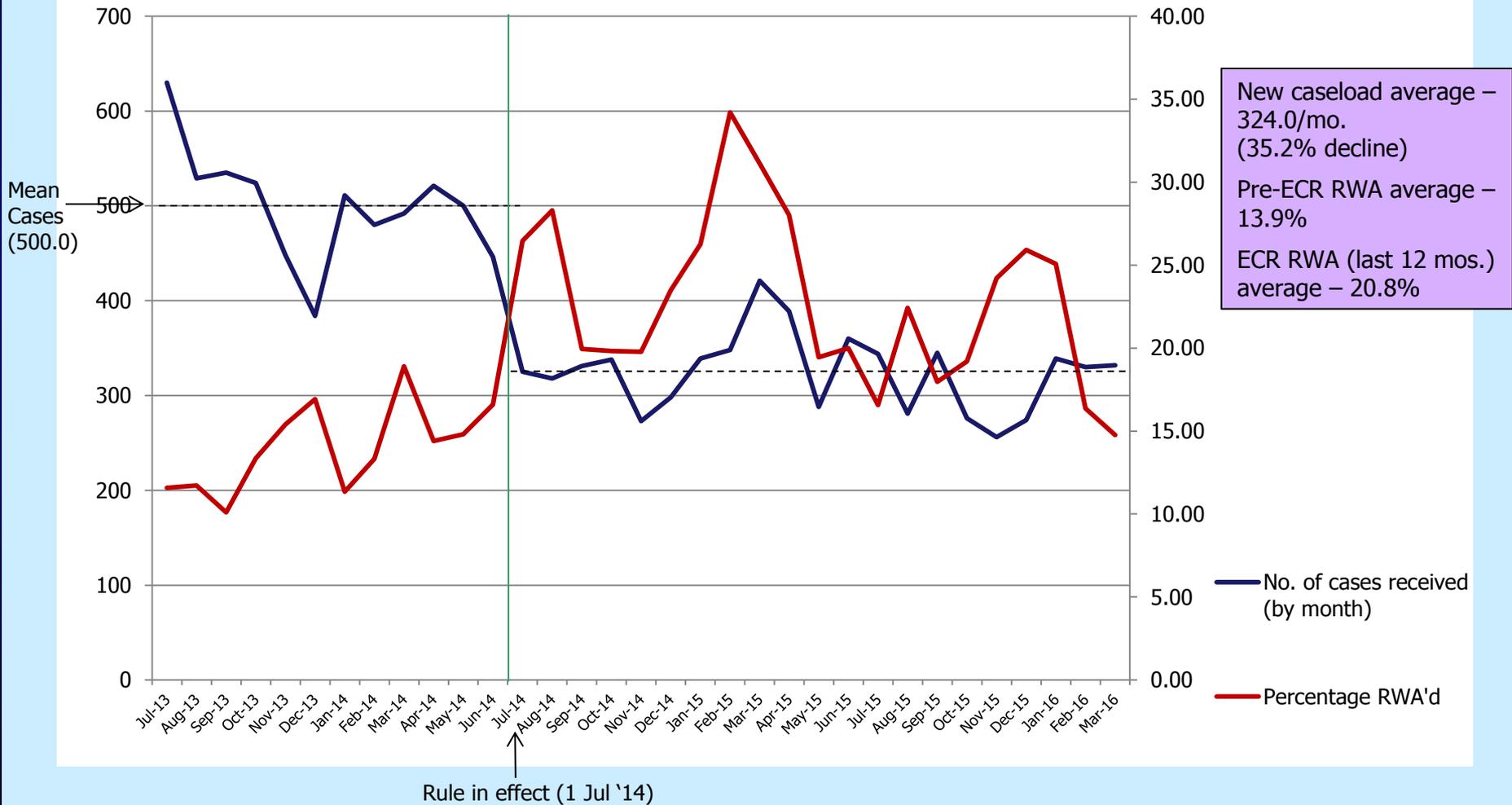


Cat VI, VII, XIII, XX Trends



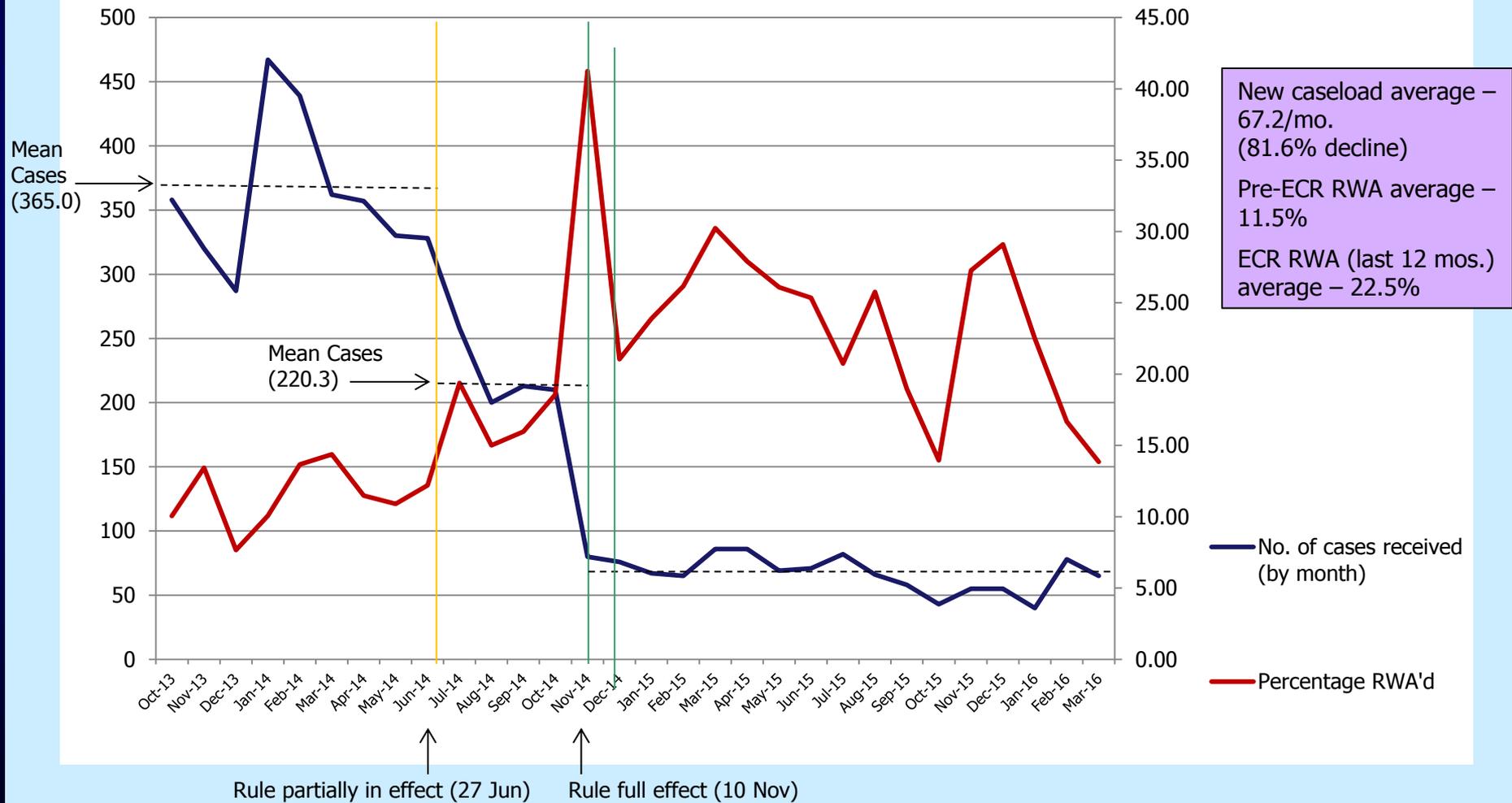


Cat IV, V, IX, X, XVI Trends



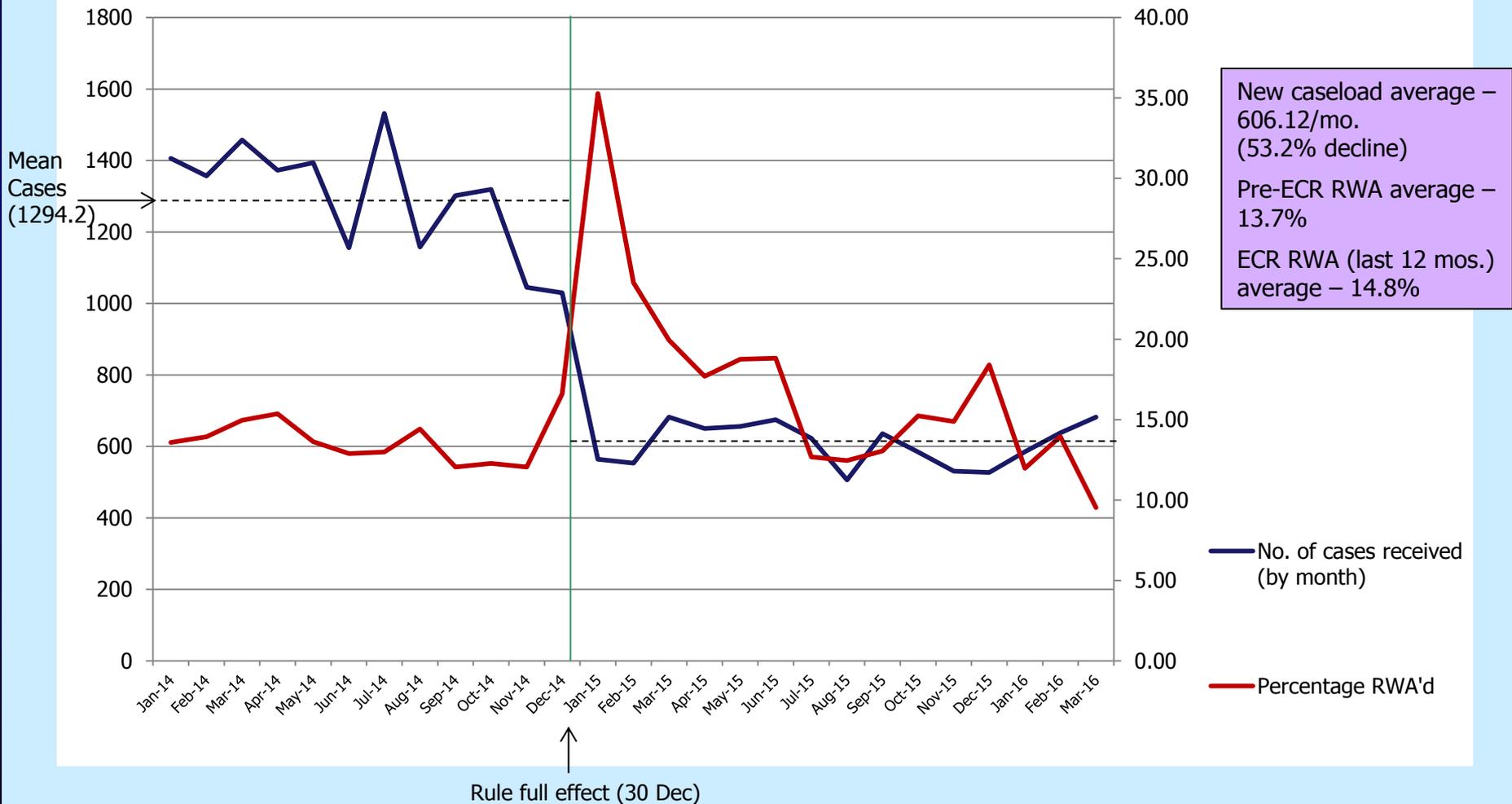


Cat XV Trends





Cat XI Trends





THE LICENSING PROCESS



USML Categories



- | | | | |
|------|---------------------------------|-------|-------------------------|
| I | Firearms | XII | Fire Control Systems |
| II | Armament | XIII | Auxiliary Equipment |
| III | Ammunition/Ordnance | XIV | Toxicological Agents |
| IV | Missiles, Rockets,
Torpedoes | XV | Spacecraft Systems |
| V | Explosives, Propellants | XVI | Nuclear Weapons |
| VI | Naval Vessels | XVII | Classified Articles |
| VII | Tanks & Vehicles | XVIII | Directed Energy Weapons |
| VIII | Aircraft | XIX | Gas Turbine Engines |
| IX | Military Training & Equip. | XX | Submersible Vessels |
| X | Protective Personnel Equip. | XXI | Miscellaneous Articles |
| XI | Electronics | | |



Submission Types



- DSP-05/06 Permanent Export/Amendment
- DSP-61/62 Temporary Import/Amendment
- DSP-73/74 Temporary Export/Amendment
- DSP-85 Classified Transactions
- Technical Assistance Agreement (TAA)
- Manufacturing License Agreement (MLA)
- Warehouse Distribution Agreement (WDA)
- Retransfer Requests (paper)
- Misc Requests (paper) – Brokering, Opinion, etc.



Typical License Parties



- Manufacturer of Commodity
- Source of Commodity
- U.S. Seller
- U.S. Consignor/Freight Forwarder
- Foreign Intermediate Consignee
- Foreign Consignee
- Foreign End-User



Typical Documentation Req'd



- Purchase order, letter of intent or other appropriate documentation (except temp)
 - Commodity
 - Quantity
 - Price
 - End-use
 - End-user
- DSP-83 (Non Transfer and Use Certificate)
- Must be consistent with information on license application



To Avoid Delays Provide



- **Detailed end-use statement:**
 - Ultimate end-user
 - End-use (e.g., include platform, such as aircraft type)
 - Intermediate consignees
 - Any entity which will take possession of the item or is involved in the transaction (e.g. freight forwarders, maintenance and repair providers, etc.)
- **Supporting documentation from ultimate end-user:**
 - Non-Transfer and Use Certificate (DSP-83), as required/appropriate
 - Contract (including contract number)
 - Purchase Order
 - End-Use Statement on official letterhead
- **Contact Information:**
 - Name(s), phone number(s), and email address of person(s) familiar with the specific procurement for end-user, consignees, and intermediate consignees



Paragraph x



- Executive Order 13222 authorizes State to approve licenses containing items controlled by the EAR
 - Created due to public comments about “dual licensing”
 - Provides “one stop shopping” for applicants
- Has specific limitations
 - The PO/LOI/EUS cites all items on the license;
 - Articles subject to the EAR are for end-use **in or with** the USML defense article proposed for export;
 - EAR-controlled items identified on USML application as “(x)”
 - Paragraph (x) items licensed by DDTC remain subject to the jurisdiction of the EAR
 - Generally used with USML items in the same category
 - May be used for retransfer requests



AGREEMENTS



Understanding Agreements



- When is an agreement necessary?
- Answer:
 1. When defense services are involved (TAA)
or
 2. For foreign manufacturing of defense articles that involves the export of tech data, defense articles, or defense services (MLA)



Agreements Overview

Licenses vs. Agreements



- **License:** "...permits the export or temporary import of a specific defense article or defense service..." (§120.20)
 - Involves an exchange of hardware or tech data between parties
 - Defense service via license only "in exceptional cases" (§124.1(a))
- **Agreement:** Generally involves multiple transactions of hardware and/or tech data between two or more parties involving performance of defense services
 - **TAA** – "An agreement for the performance of a defense service(s) or the disclosure of technical data...assembly of defense articles is included under this section, provided production rights or manufacturing know-how are not conveyed" (§120.22)
 - **MLA** – "An agreement whereby a U.S. person grants a foreign person an authorization to manufacture defense articles abroad and which involves...[tech data, defense articles, or defense services]" (§120.21)



Agreements Overview

Licenses vs. Agreements



Defense Service (§120.9)

- The furnishing of assistance (including training) to foreign persons in the...
 - Design
 - Development
 - Engineering
 - Modification
 - Destruction
 - Manufacture
 - Production
 - Assembly
 - Operation
 - Processing
 - Testing
 - Repair
 - Maintenance
 - Demilitarization
 - Use
- ...of defense articles
- The furnishing to foreign persons of any technical data, as defined by §120.10
- Military training of foreign units and forces, regular and irregular



Agreements: Licensees, Sublicensees, and End Users



- Licensee: Foreign signatory party to the agreement
- Sublicensee: Non-signatory foreign third party who will participate in the work of the agreement and will have access to defense articles and/or tech data; often a subcontracted company to the licensee
- End User: The foreign party that ultimately will use the defense article and/or tech data being exported; may or may not be a licensee



TAA/MLA: What Does My U.S. Partner Need From Me?



- **Licensee Info**
- **Sublicensee Info**
 - Complete physical address(es)
 - Tech data/hardware to be transferred
- **Dual and Third-Country National Info**
- **Amplifying Data**
 - Tech data
 - Hardware descriptions
 - Statements of Work
 - Product brochures
 - Request for Proposals
 - Contract/awards
 - Schematics
 - Performance data
 - Anything else related to the export

Attachments,
Annexes,
Supporting
Material



REEXPORTS AND RETRANSFERS



Re-export/Retransfer



- Reexport or retransfer: Transfer to an end use, end user, or destination not previously authorized (§120.19)
- Must obtain approval before retransfer (§123.9(a))
- Procedure for requesting approval (§123.9(c))
- Exemption for retransfer to NATO, Australia, Israel, Japan, New Zealand, or South Korea. (§123.9(e))



Before the Retransfer...



- You will receive US defense exports that were licensed for export from the US
- When you receive these exports, make sure you receive and keep track of the USML category or the Export Control Category Number (ECCN) for each export
- Even after export, US defense exports are still controlled by the US government
- Submit formal request to DDTC if you want to sell/transfer a USML item to someone not on the license or to a location outside your country



SPACECRAFT



Spacecraft - Overview



- May 13, 2014: Interim Final Rule
- June 27, 2014: Effective date for certain microelectronics
- November 10, 2014: Effective date for State and Commerce Final Rules
- July 13, 2015: Final Rule making certain clarifications and corrections to the EAR



Spacecraft - Summary of Controls



Cat XV Before ECR

CCL Before ECR

Revised USML

Revised CCL

Cat XV

Other

New ECCN 9x515

Existing ECCNs

Military Satellites

Military Ground equip

Parts critical for military functions

Services for USML and CCL satellites (IV and XV)

Military GPS Rcvrs (XV now; future XII)

Worldwide license, except Canada.

25% *de minimis*, except 0% for China and other D:5 countries.

STA eligible for A:5, except for certain software and technology

Review microelectronic circuit ECCNs, 7A004, 7A104, ECCNs using "space qualified" prior to using the catch-all control in 9A515.x.

Sats and Ground equip not in USML

Rad Hard ICs

Parts not on USML or other CCL

New sat related item or tech

Helix tubes, solar cells, atomic freq standards, optical detectors and sensors, cryocoolers, radar, microwave amps and assemblies, and TWTs



Spacecraft - Items that Remain on the USML



- **Spacecraft**
 - Military Satellites
 - Remote Sensing Satellites that Exceed Certain Thresholds
 - Sub-orbital Vehicles
- **Related systems including**
 - Ground control systems or training simulators specially designed for telemetry, tracking, and control (TT&C) of spacecraft in paragraph (a)
 - Global Positioning System (GPS) receiving equipment specially designed for military application, or GPS receiving equipment meeting certain thresholds
- **Parts and components**
 - Specific list of parts
- **Technical data and defense services**
 - Furnishing of assistance (including training) in the integration of a satellite or spacecraft to a launch vehicle
 - Furnishing of assistance (including training) in the launch failure analysis of a satellite or spacecraft



Spacecraft - Notes on Jurisdiction



- Hosted payloads do not flip jurisdiction
- Spacecraft passenger experience is neither ITAR nor EAR
- Telemetry data is neither ITAR nor EAR



Spacecraft - Ongoing Discussions



- Aperture Size
- Integrated Propulsion
- Autonomous Tracking...in real time
- Plasma Thrusters

*NOTE: When Proposed Rules are published, please provide your comments within the time specified in each rule.



Contact Information



Questions?

- DDTC's website: www.pmdtcc.state.gov (lots of resources)
- Generic Questions: DDTC Response Team, 202-663-1282
DDTCResponseTeam@state.gov.
- IT Issues: DDTC Help Desk, 202-663-2838
dtradehelpdesk@state.gov.
- Case status: <http://elisa.dtsa.mil/>