



Directorate of Defense Trade Controls (DDTC) Overview

Catherine Hamilton
Director of Licensing
U.S. Department of State



Agenda



- DDTC Overview
- Export Control Reform Efforts
- Licensing Overview and Trends
- Agreements Overview and Trends
- Administrative and Regulatory Review/Workflow
- Congressional Notification Process Overview and Trends



Department of State



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

Andrea Thompson

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

Christopher Ford

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

Tina Kaidanow (A)

**Assistant Secretary for
Arms Control Verification and
Compliance (AVC)**

Dr. Yleem D.S. Poblete

**Deputy Assistant Secretary
for
Security Assistance**

Kevin O'Keefe (A)

**Deputy Assistant Secretary
for
Defense Trade Controls**

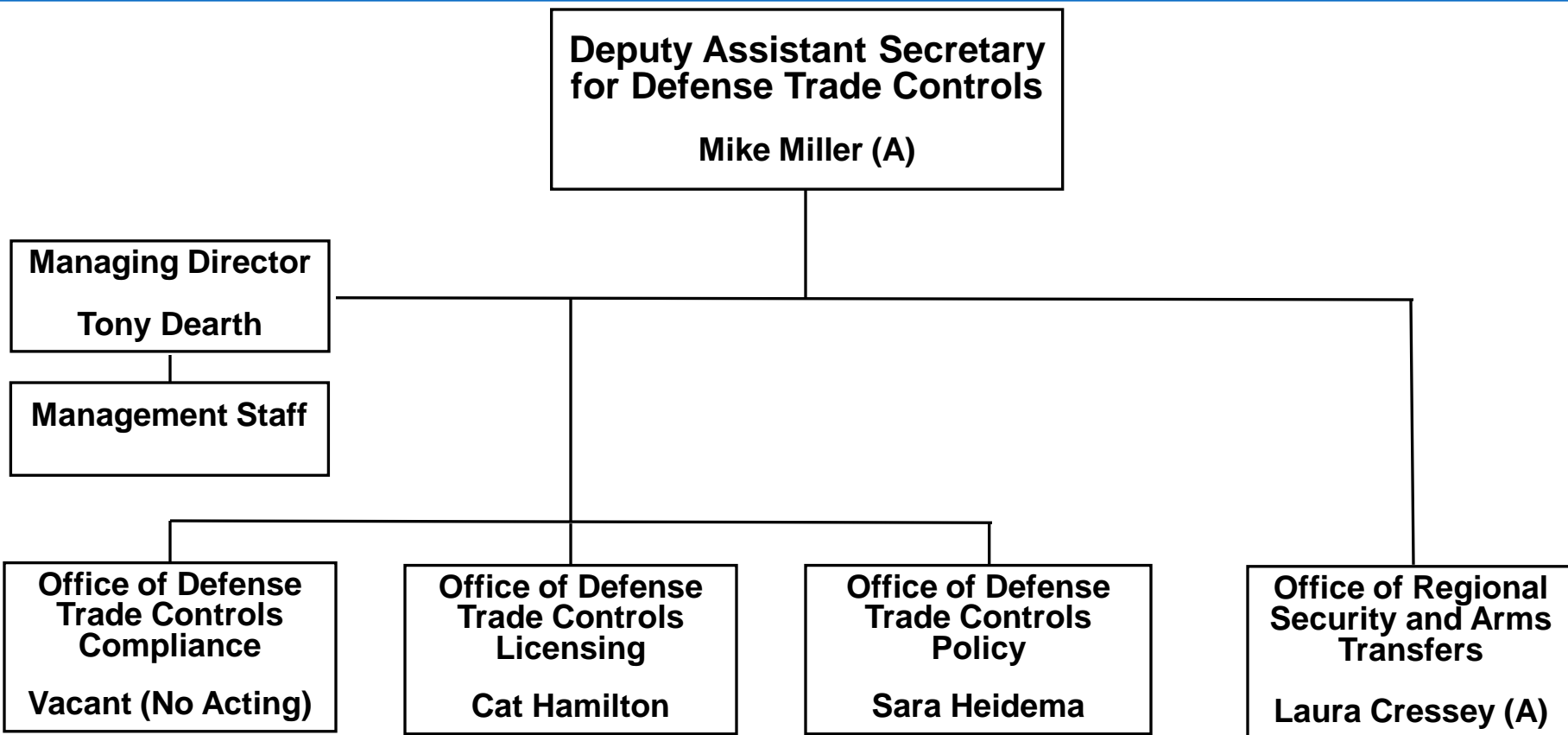
Mike Miller (A)

**Deputy Assistant Secretary
for
Security Negotiations**

Tim Betts (A)



DDTC





Delegation of Authority



- Arms Export Control Act (AECA)
 - President of the United States (AECA Section 38)
 - Secretary of State (Executive Order 13637)
- International Traffic in Arms Regulations (ITAR)
 - Under Secretary for Arms Control and International Security
 - Assistant Secretary for Political Military Affairs
 - Deputy Assistant Secretary for Defense Trade Controls



DDTC Mission



Ensure commercial exports of defense articles and defense services are consistent with U.S. national security and foreign policy objectives.



Office of Policy



Core Responsibilities

- Maintain and update the ITAR
- Respond to requests from industry and USG for Commodity Jurisdiction determinations and classification
- End-use monitoring of exports, research and risk analysis support to licensing
- Develop and implement policy and guidance for exporters, USG, and foreign allies



Office of Licensing



Core Responsibilities

- Respond to licensing requests from industry and foreign parties
- 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)



Office of Compliance



Core Responsibilities

- Process registrations for arms manufacturers, exporters, brokers
- Ensure ITAR compliance through various means, including:
 - Company Visits/Outreach
 - Voluntary and Directed Disclosures
 - Criminal Referrals
 - Administrative/Civil Actions



Export Control Reform



ECR Implementation (USML Revision Status)



USML	Description	Status
I	Firearms	Proposed rule TBD
II	Artillery	Proposed rule TBD
III	Ammunition	Proposed rule TBD
IV	Launch Vehicles/Missiles	Effective 7/1/14 Rule III
V	Explosives/Propellants	Effective 7/1/14 Rule III
VI	Vessels of War	Effective 1/6/14 Rule II
VII	Ground Vehicles	Effective 1/6 /14 Rule II
VIII ¹	Aircraft and Related Articles	Effective 10/15/13 Rule I
IX	Training Equipment	Effective 7/1/14 Rule III
X	Personal Protective Equipment	Effective 7/1/14 Rule III
XI	Electronics	Effective 12/30/14 Rule V



ECR Implementation (USML Revision Status)



USML	Description	Status
XII	Fire Control/Sensors/Night Vision	Effective 12/31/16 Rule VII
XIII	Miscellaneous	Effective 1/6/14 Rule II
XIV	Toxicological Agents	Effective 12/31/16 Rule VII
XV	Spacecraft/Satellites	Effective 11/9/14 Rule IV
XVI	Nuclear	Effective 7/1/14 Rule III
XVII	Classified Articles	Effective 10/15/13 Rule I
XVIII	Directed Energy Weapons	Effective 12/31/16 Rule VII
XIX	Gas Turbine Engines	Effective 10/15/13 Rule I
XX	Submersible Vessels	Effective 1/6/14 Rule II
XXI	Articles Not Enumerated	Effective 10/15/13 Rule I



ECR What's Next?



- USML Category I-III
 - Proposed rule published May 15th
 - Comment period ended July 9th
- 126.4 “By or For the USG” Exemption
- ITAR Restructure Update
- U.S. Persons Working Abroad



ITAR Restructure



- The average life cycle of a federal regulation has a complete rewrite every 15 years. ITAR >30 years old
- Format/content require revalidation and adjustments due to years of narrowly scoped and topic-centric revisions
- The ITAR currently contain numerous inconsistencies, contradictions, gaps, and overlaps resulting in unclear, ambiguous guidance
- Failure to reverse this trend now will only exacerbate the problem, making the publication of future rules more difficult to achieve in a timely manner



ITAR Restructure



- Consolidation of like content and ordering into an orderly, linear, readable format
- Examples of consolidation and organization:
 - Separation of Part 120 into General Information and Definitions sections
 - Reevaluation/migration of definitions into Part 120
 - Migration of exemptions, exceptions, and exclusions into a dedicated Part of the ITAR
 - Incorporation of Agreements Guidelines and similar related policy



Licensing Overview and Trends



Submission Types



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



DSP-61 Temporary Imports



- Option 1 - Temporary imports of unclassified defense articles that are to be returned directly to the country from which they were shipped to the United States.
 - Overhaul/repair
 - Modification/upgrade
 - Demonstration/Trade Shows (foreign-manufactured goods)
 - Military exercises at U.S. bases/ranges
- Option 2 - Temporary import of unclassified defense articles in transit to a third country.
 - Transshipment



Retransfer/Re-export (General Correspondence)



- 22 CFR 123.9(a) prior written approval of DDTC for any changes and applies to shipment under license or exemption
- Request submitted by U.S. or foreign person
- Must meet the requirements of 22 CFR 123.9(c)
- If hardware is Significant Military Equipment (SME), a DSP-83 is required
- Ensure updated USML category(ies) and sub categories are listed on request



Re-export/Retransfer Exemption (123.9(e))



- Exception for NATO, NATO agencies, a government of a NATO country, or the governments of Australia, Israel, New Zealand, Japan, or South Korea)
- One of few instances when a foreign party can submit the request
- Components incorporated into foreign defense articles: must be directly to governments!
- Limitations: No SME , MDE, and must be below congressional thresholds



Agreements Overview and Trends



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)



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



Agreement Types

- Technical Assistance Agreement (TAA) – “An agreement for the performance of **defense service(s)** or the disclosure of technical data...” (22 CFR 120.22)
- Manufacturing License Agreement (MLA) – “An agreement whereby a U.S. person grants a foreign person an authorization to **manufacture** defense articles abroad and which involves...” (technical data, defense articles, and/or **defense services**) (22 CFR 120.21)
- Warehouse and Distribution Agreement (WDA) – “An agreement (e.g. a contract) to establish a warehouse or distribution point abroad for defense articles exported from the United States for subsequent distribution to entities in an approved sales territory.” (22 CFR 120.23)



Defense Services

Defense Service (§120.9)

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



Parties in an Agreement

- **Applicant** – Company or Individual applying for the Agreement (Note - Must be Registered with State Department)
- **U.S. Signatories** – Other U.S. companies participating in the program and providing technical data and defense services to the Foreign Parties (i.e. - U.S. Technical Consultants, U.S. Suppliers, U.S. Subsidiaries, etc.)
- **Foreign Licensees** – Foreign Companies involved in the transaction listed as signatories to the Agreement (i.e. - Foreign Customer, Foreign Suppliers, Foreign Technical Consultants, Foreign Subsidiaries, etc.)
- **Sublicensees** – A company that requires access to technical data, but will have no contact with the U.S. Signatories (i.e. – U.S. or Foreign suppliers to the Foreign Licensees)
- **End User** – the entity that will take final possession of the commodity, regardless of the foreign purchaser. (May or may not be a signatory to the Agreement)



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
 - Schematics
 - Contract/awards
 - Statements of Work
 - Performance data
 - Anything else related to the export
 - Request for Proposals
 - Product brochures
 - Hardware descriptions

Attachments,
Annexes,
Supporting
Material



Dual National/ Third Country Nationals



- **Dual National (DN):** An individual who holds nationality from the country of their employer, who is a foreign licensee (or sub-licensee) to the agreement, and also holds nationality from one or more additional countries
 - Example: A citizen of Country A who is also a naturalized citizen of Country B and works in Country B for a company of Country B
 - Note: This individual is still considered a dual national (Countries A & B) even if he has renounced his citizenship with Country A
- **Third-Country National (TCN):** An individual who holds nationality from a country other than the country of their employer who is a foreign licensee (or sub-licensee) to the agreement
 - Example: A citizen of Country A who works in Country B for a company of Country B



Dual National/ Third Country Nationals



- Transfer of technical data, defense articles or services to a foreign person, inside or outside the U.S., is adjudicated similarly as an export or reexport to that foreign country.
 - However: Approval of a Dual/Third Country National employee only authorizes transfer to that employee. It does not authorize transfers to the country from which the employee derives.
- Two types of authorizations within the agreement:
 - 22 CFR 126.18 (foreign vetting)
 - 126.18(c) to authorize DN/TCN employees as vetted by the foreign licensees
 - 126.18(d) - NATO, EU, Australia, Japan, New Zealand and Switzerland
 - 22 CFR 124.8(a)(5) – DDTC vetting: identify specific countries requested (may include countries above), required for classified transfers
- Includes employees (and contract employees) of foreign licensees and foreign sublicensees



Non-Disclosure Agreements



- Required of all sublicensee(s)
- Required of all dual-national or third-country national employees vetted by DDTC or vetted under §126.18(c)(2)
- Applicant to maintain the NDA for 5 years from expiration of the agreement
- Sublicensing NDA must include 124.8/124.9 clauses



Major Amendment



- Changes to DDTC approved agreements must be made via an amendment
- Major amendments always require DDTC approval
- Typical major amendments
 - Addition of new hardware or value
 - Expansion of Scope
 - Transfer of additional technical data or defense services
 - New End Users
 - Add foreign licensees or sub-licensees
 - Add Dual/Third Country Nationals
- Major amendments often require additional staffing

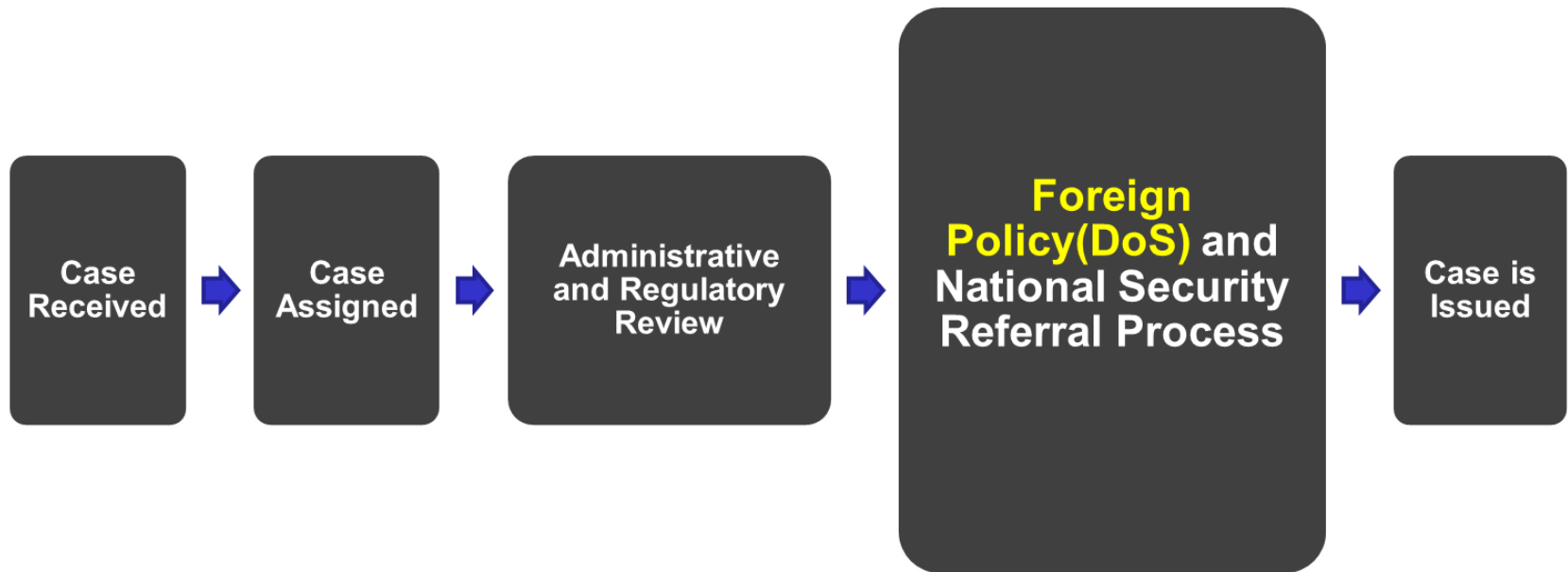


Minor Amendment

- Minor amendments are changes NOT requiring DDTC approval
 - Alteration of Delivery and Performance Schedules
 - Minor Administrative Changes:
 - Address Changes
 - Typo Correction (NOT affecting scope)
 - Party removal prior to execution
 - Still requires execution of conformed agreement by all parties
- Upload minor amendment(s) to most recent DSP-5 vehicle within 30 days



Workflow for U.S. Munitions Cases





Administrative Review Process



- STEP 1- U.S. person (applicant) submits a license/agreement request to DDTC
- STEP 2 - Once received by DDTC, the request is routed to the appropriate team within Licensing
- STEP 3 – An analyst conducts an administrative review of the transaction in preparation for the regulatory review process



Regulatory Review Process



Primary Staffing Agencies:

- DoD (DTSA) – Technical review, National Security issues
- Regional Bureau Desks
 - Western Hemisphere, European and Eurasian, South and Central Asian, African, East Asian and Pacific, and Near Eastern Affairs
- DRL – Reviews for human rights
- RSAT – Regional stability issues

Other Agencies:

- MTEC – Missile Technology
- NASA – NASA-related programs
- ISN/CB – Chemical/biological
- ISN/CATR – Space remote sensing



Adjudication Process

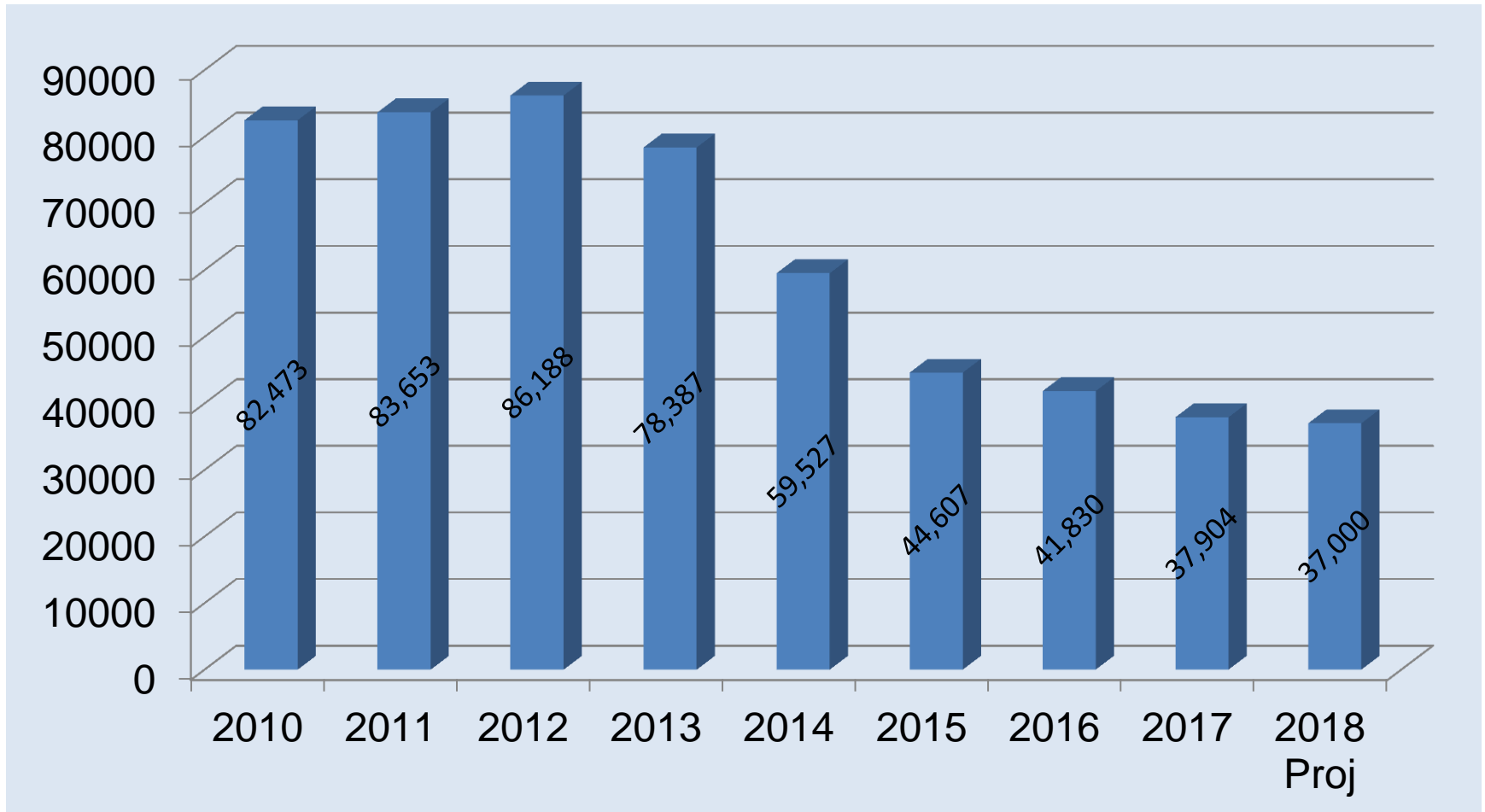


STEP 4 – analysts receive staffing recommendations from other agencies and determines final disposition of cases:

- Approve
- Approve with Provisos (conditions)
- Return Without Action (RWA) – does not meet requirements, but deemed correctable
- Denial – cannot be corrected. Inconsistent with national security or foreign policy



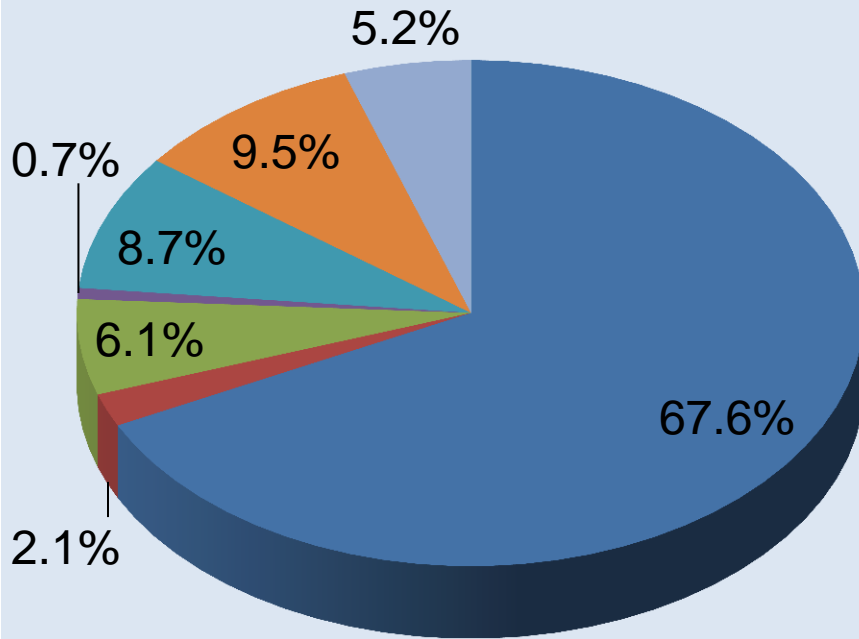
Licenses Submitted to DDTC by Calendar Year



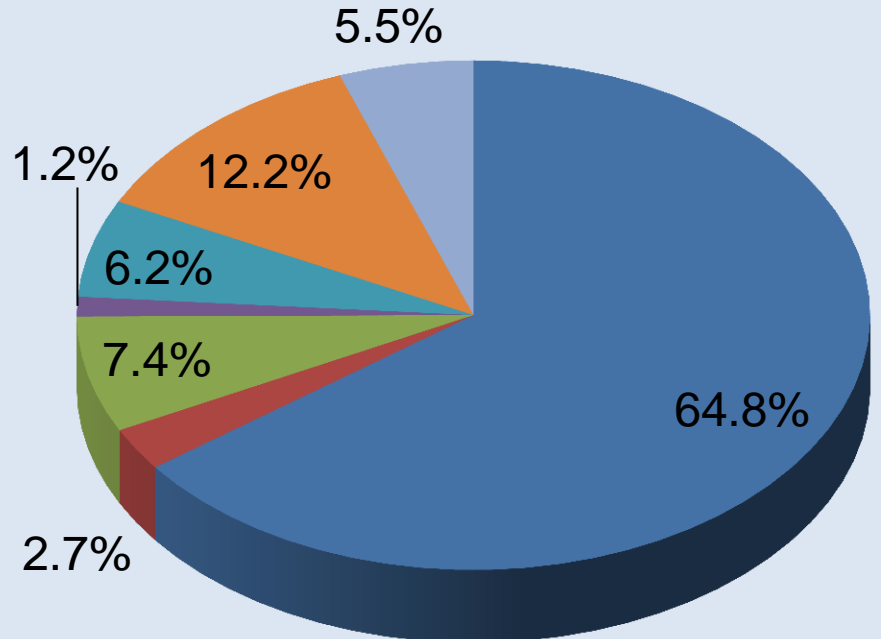


Cases Received

CY 2013 Total Cases: 78,810



CY 2017 Total Cases: 37,904



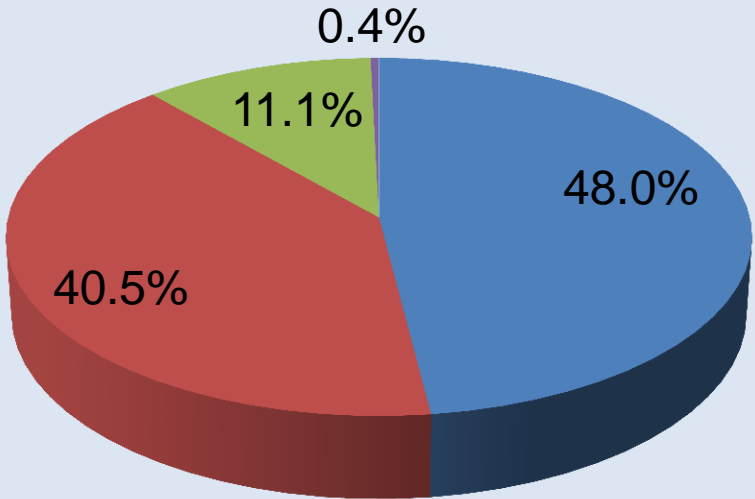
- DSP-5
- DSP-61
- DSP-73
- DSP-85
- Amend.
- AGs
- GC/BL



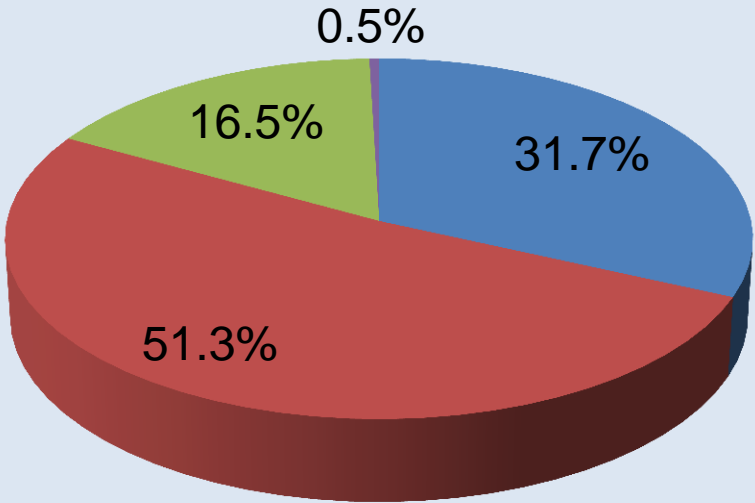
Licensing Decisions



CY 2013



CY 2017



■ Approve ■ Approve w/Provisos ■ RWA ■ Deny



Overall RWA Statistics

Average Annual Stats (CY)

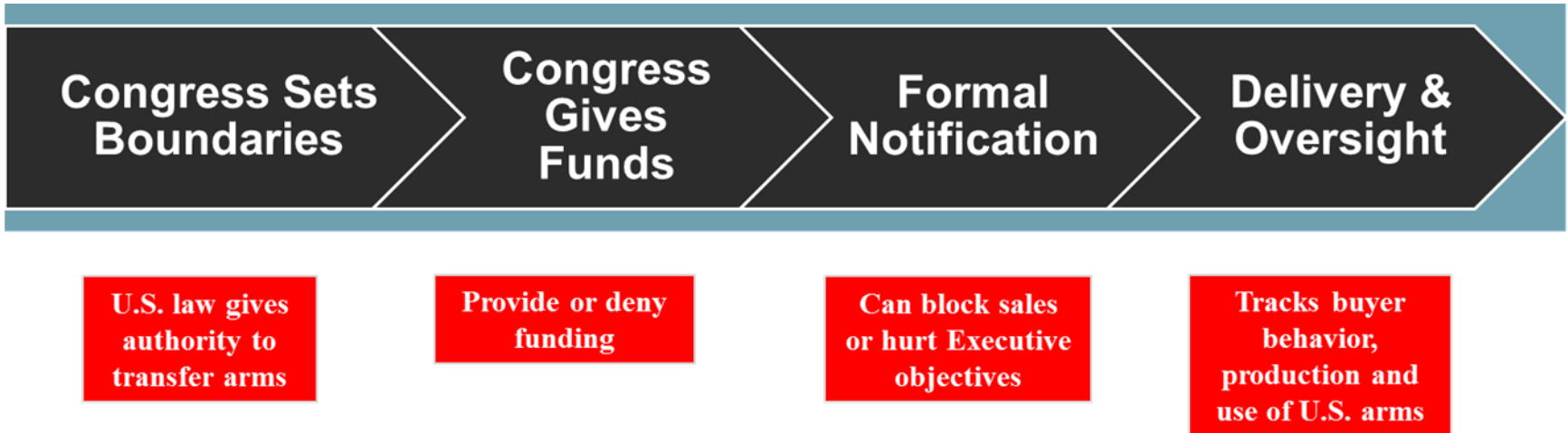
<u>YEAR</u>	<u>CASES</u>	<u>AVG AGE</u>	<u>AVG RWA</u>
2012	86,188	18.6	10.6%
2013	78,387	19.2	11.3%
2014	59,527	21.9	14.5%
2015	44,523	26.58	16.0%
2016	41,830	28.08	15.6%
2017	37,919	27.98	16.5%



Congressional Notification Process



Role of Congress





CN Authorities



- AECA Sections 3(d), 36(c), and 36(d)
- International Traffic in Arms Regulations (ITAR) 22 CFR 123.15 and 124.11



Notification Thresholds



- Value-based notification (ITAR 123.15)
 - NATO + 5 (Japan, Australia, New Zealand, South Korea, Israel)
 - \$25 million Major Defense Equipment (MDE) (ITAR 120.8)
 - \$100 million (non-MDE defense articles, technical data & defense services)
 - Non-NATO + 5
 - \$14 million MDE
 - \$50 million (non-MDE defense articles, technical data & defense services)
 - USML Category I Firearms – \$1 million (regardless of country)
- Manufacturing Abroad of Significant Military Equipment (SME) (ITAR 124.11)



Re-notification Thresholds



- Upgraded capabilities
- Significant expansion of scope
- Increase in value by 10% or more of a prior 36(c) notification
- Increase in authorized sales territory of a prior 36(c) and/or (d) notification
- Increase in value of a prior 36(d) notification when such a value increase exceeds 36(c) thresholds and the prior CN was ONLY for 36(d)



Phase 1: Initial and Interagency Staffing



- Initial Staffing -
 - Ensures cases receive a full national security and foreign policy review.
 - DoD, RSAT, Regional Bureau, DRL (if required)
- Interagency Staffing -
 - Ensures cases receive a legal and senior foreign policy review before formal submission to Congress



Qualitative Military Edge



- Section 201(d) of P.L. 110-429 or “Naval Transfer Act of 2008”
- Stipulates any arms sale to the Middle East subject to CN must include a certification that the sale does not adversely impact Israel’s QME.
- RSAT is the lead for the development of the Determination
- QME must be signed and forwarded prior to the start of Phase 2: “tiered review”



Phase 2: Tiered Review



- Culmination of the tiered review process:
- Tier 1 – 20 days - NATO + 5 (Japan, Australia, New Zealand, South Korea, Israel)
- Tier 2 – 30 days ('Other Countries' not identified above or below)
- Tier 3 – 40 days (NEA Bureau countries, MTCR Category I sales, or problem cases)



Phase 3: Formal Notification



- Assuming no problems exist, formal notification will be made based on the following statutory period:
- 15 calendar days – NATO + 5 countries
- 30 calendar days – Non-NATO + 5
- If no joint resolution of disapproval, cleared to issue the license on day 16 or 31



CN Statistics



- 2017 Statistics
- Total CNs processed – 80
- Processing Times (average):
 - Initial Staffing – 49 days
 - Tiered Review – 53 days
 - Total Time – 214 days



Questions?