



Directorate of Defense Trade Controls BIS Update 2015

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Overview



- Mission Statement
- Delegation of Authority
- Organizational Overview
- Licensing Presentation
- Policy Presentation
- Compliance Presentation
- Contact Information
- Q & A



Mission Statement



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



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
 - Under Secretary for Arms Control and International Security
 - Assistant Secretary for Political Military Affairs
 - Deputy Assistant Secretary for Defense Trade Controls



Department of State



Secretary of State

John F. Kerry

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

Rose Gottemoeller

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

Puneet Talwar

**Deputy Assistant Secretary for
Defense Trade Controls**

Brian Nilsson

Senior Advisors and Staff

Compliance (DTCC)

Sue Gainor

Licensing (DTCL)

Tony Dearth

Policy (DTCP)

Ed Peartree

Management (DTCM)

Lisa Aguirre



Office of Licensing

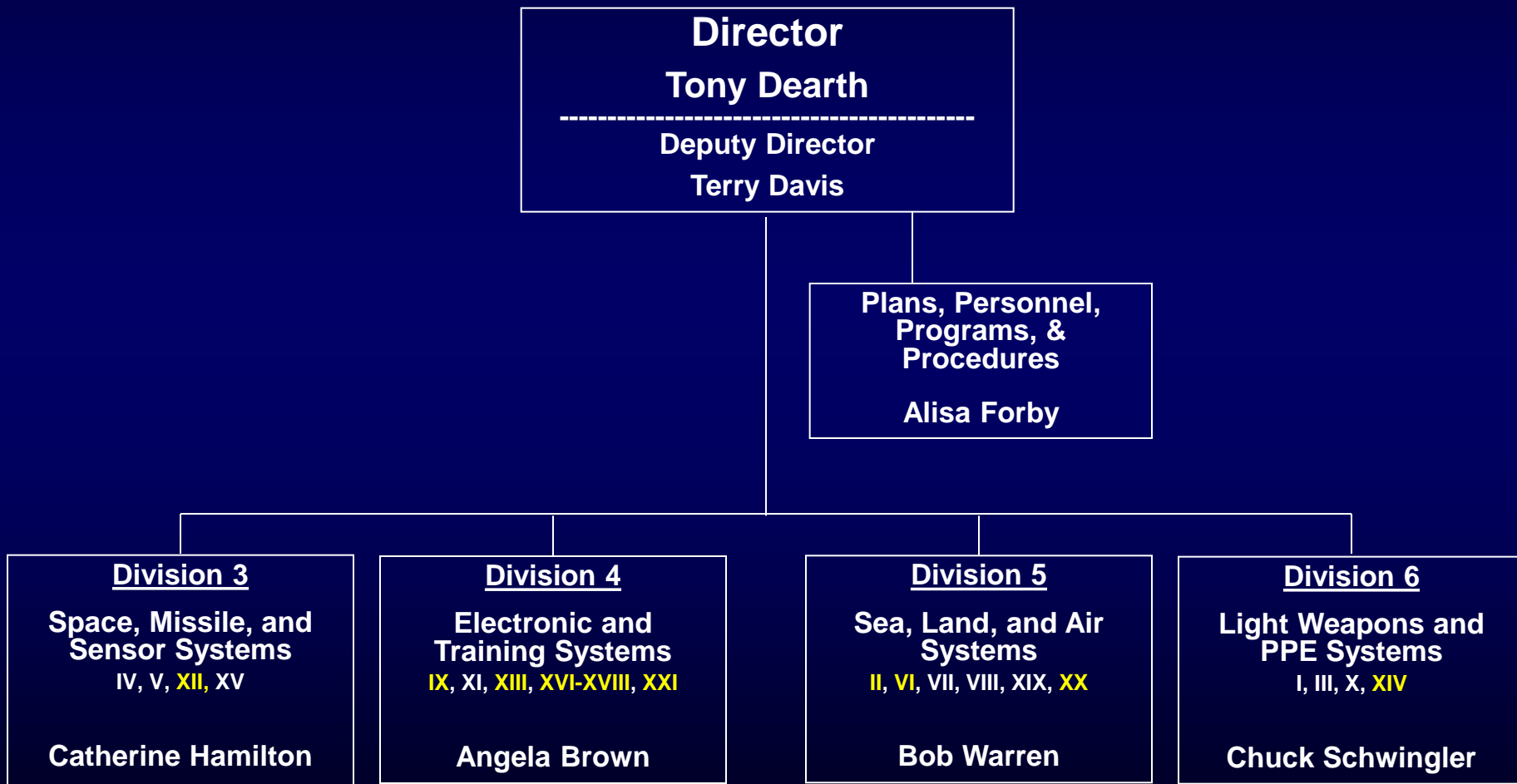


Core Responsibilities

- 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)



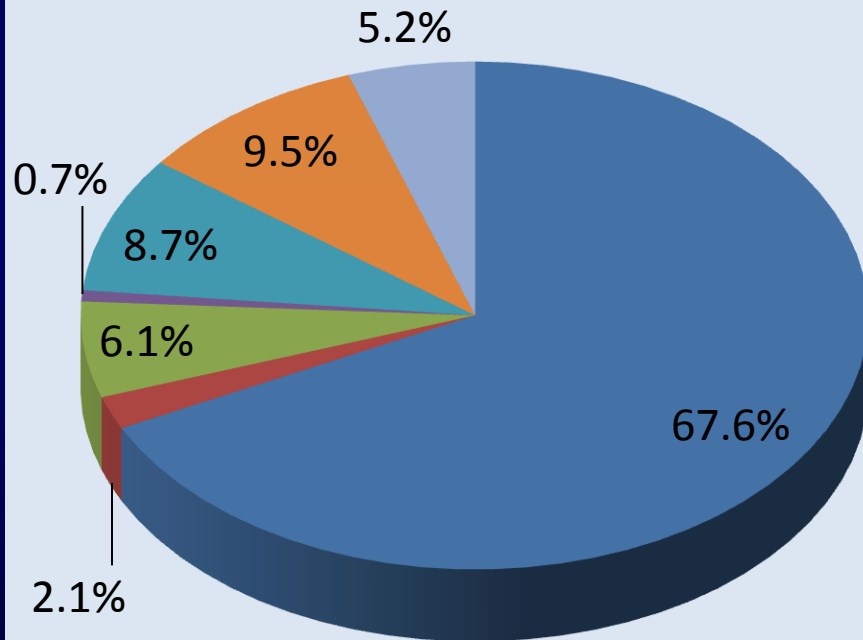
Office of Defense Trade Controls Licensing (PM/DTCL)



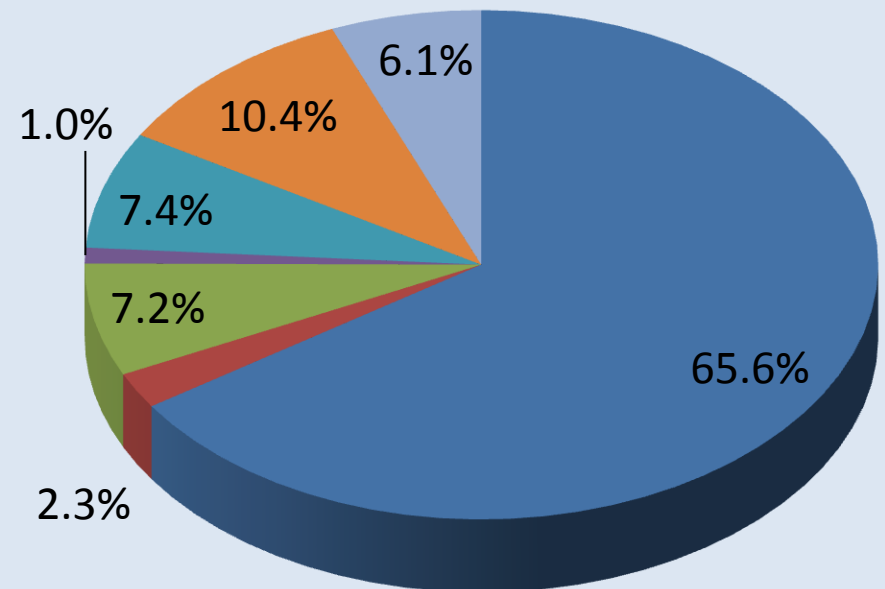


Cases Received

2013 Total Cases: 78,387



2014 Total Cases: 59,527



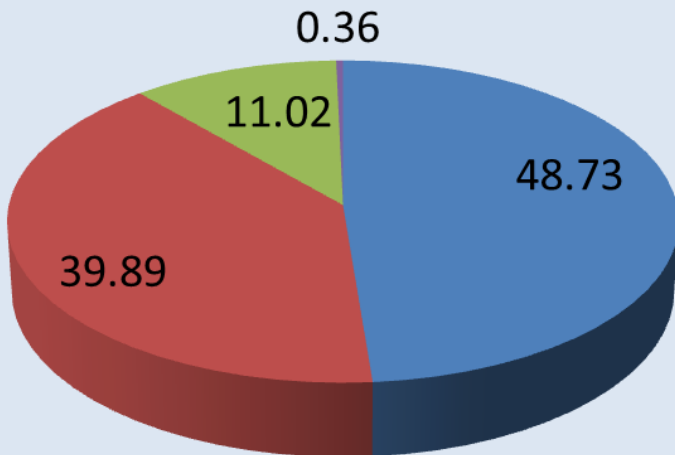
- DSP-5
- DSP-61
- DSP-73
- DSP-85
- Amend.
- AGs
- GC/BL



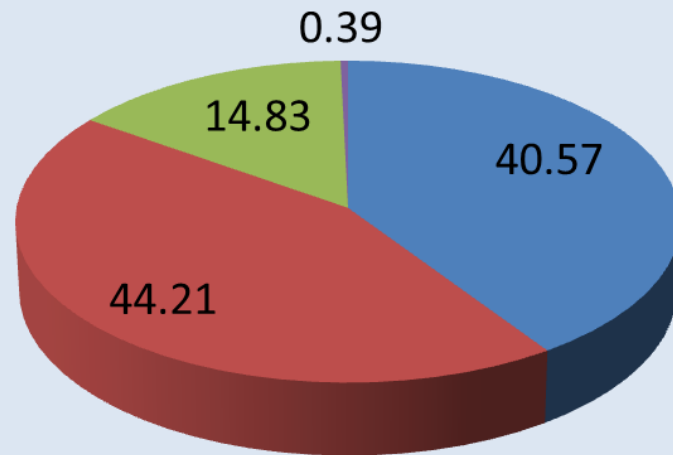
Licensing Decisions



2013 Final Determinations (%)



2014 Final Determinations (%)



- Approve
- Approve w/Provisos
- Return Without Action
- Deny



Overall ECR Statistics

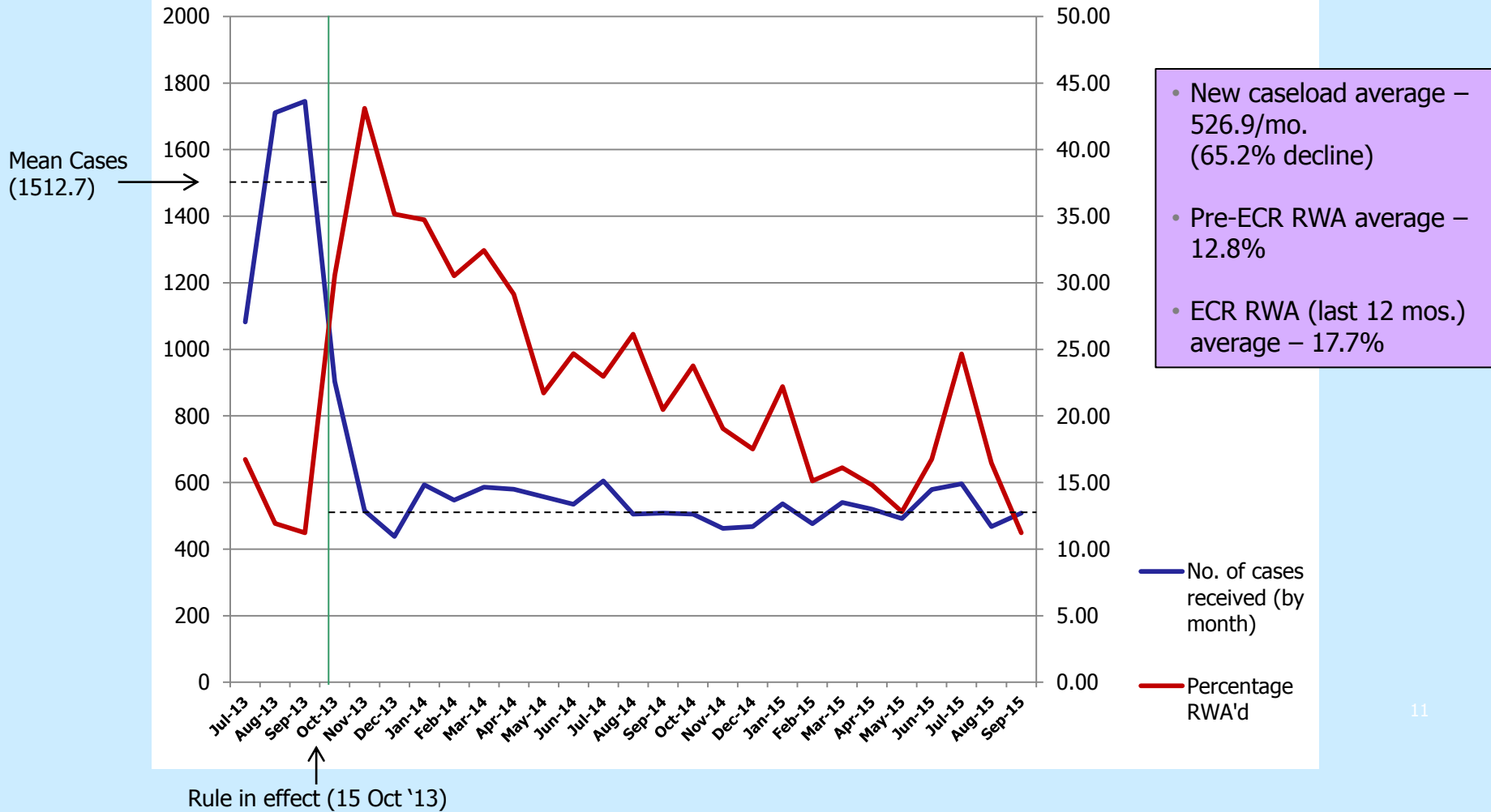


Average Annual Stats

<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 (proj)	46,153	26.3	16.1%

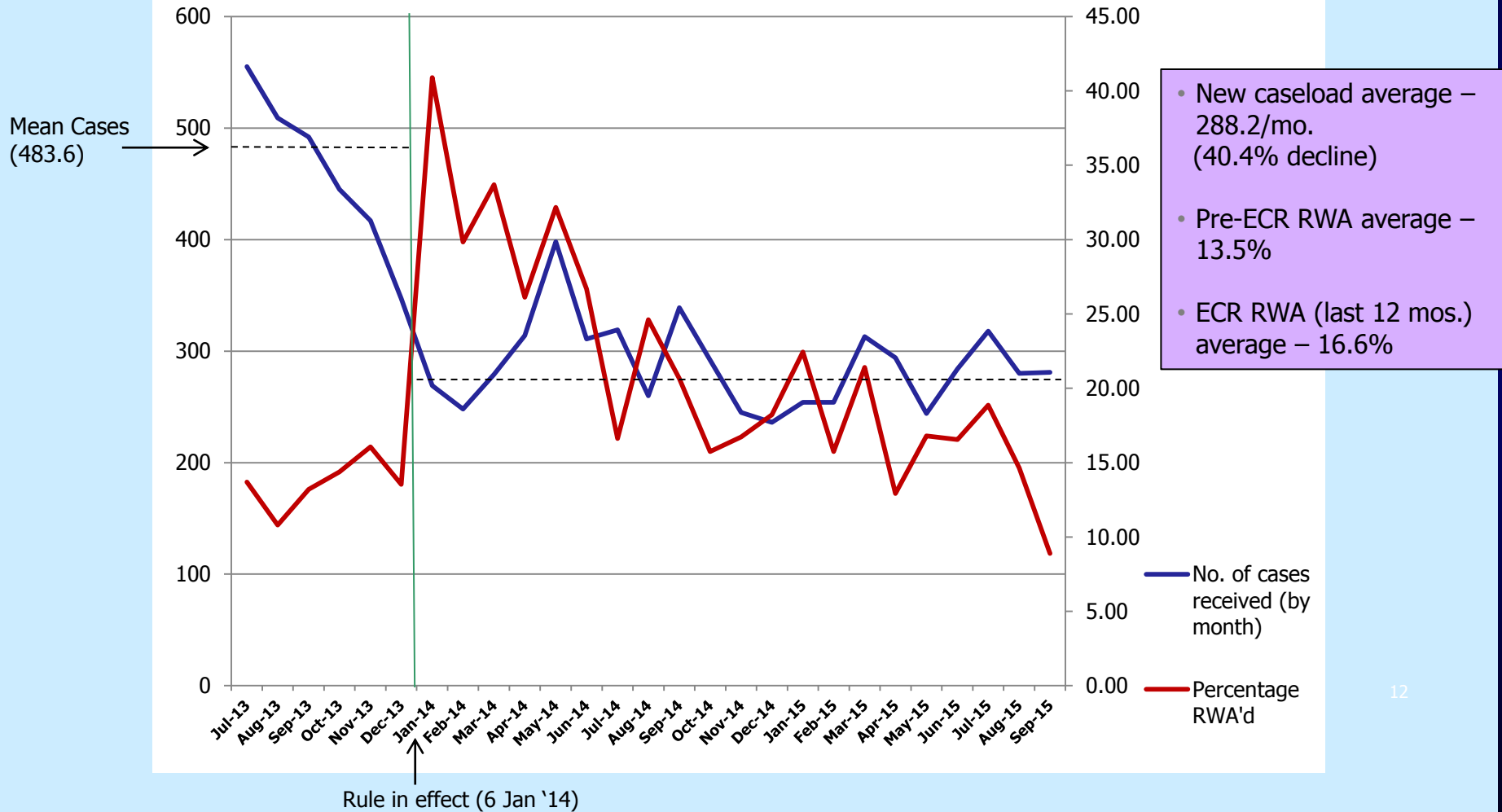


Rule I: Cat VIII & XIX Trends



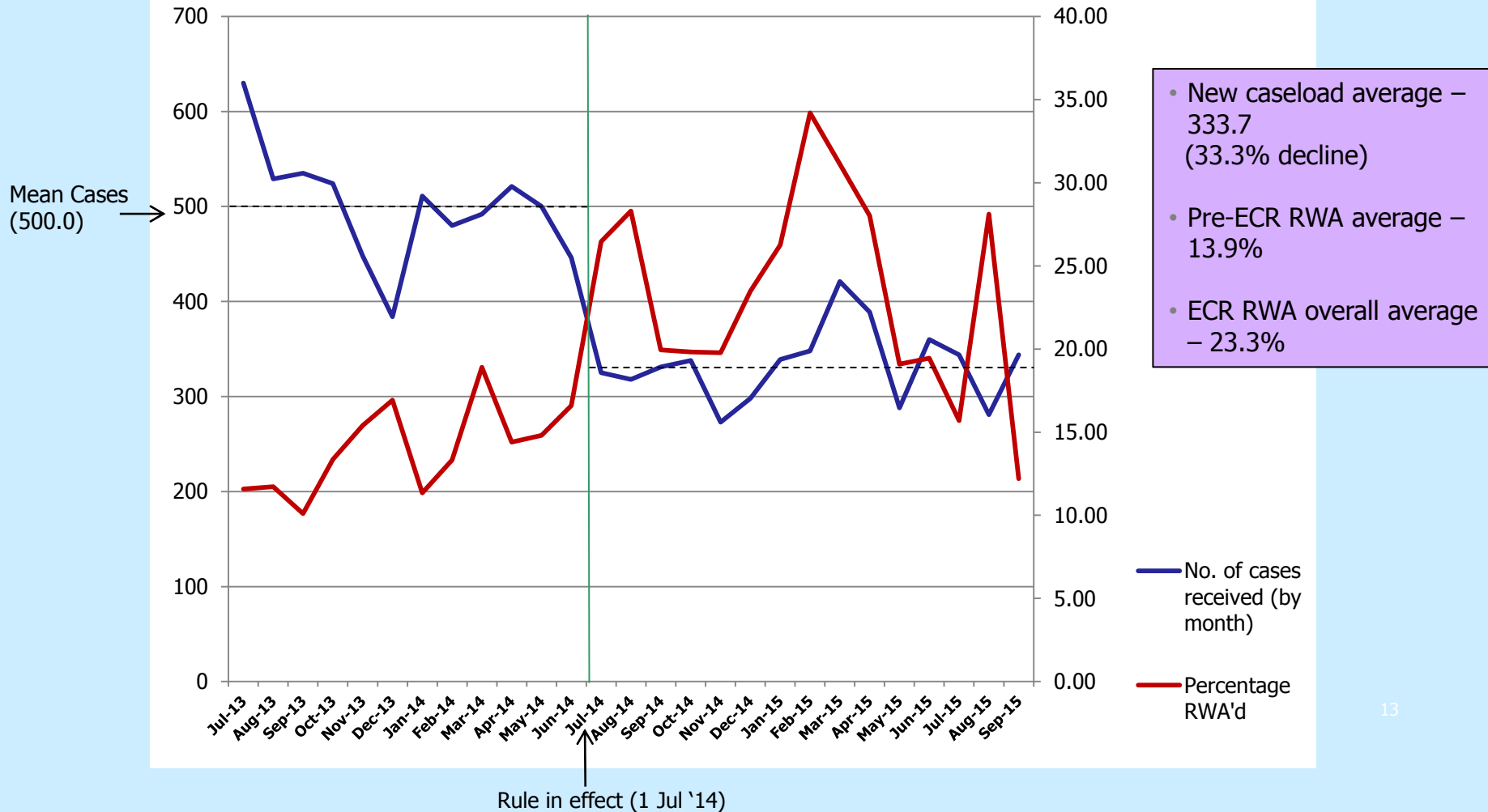


Rule II: Cat VI, VII, XIII, XX Trends



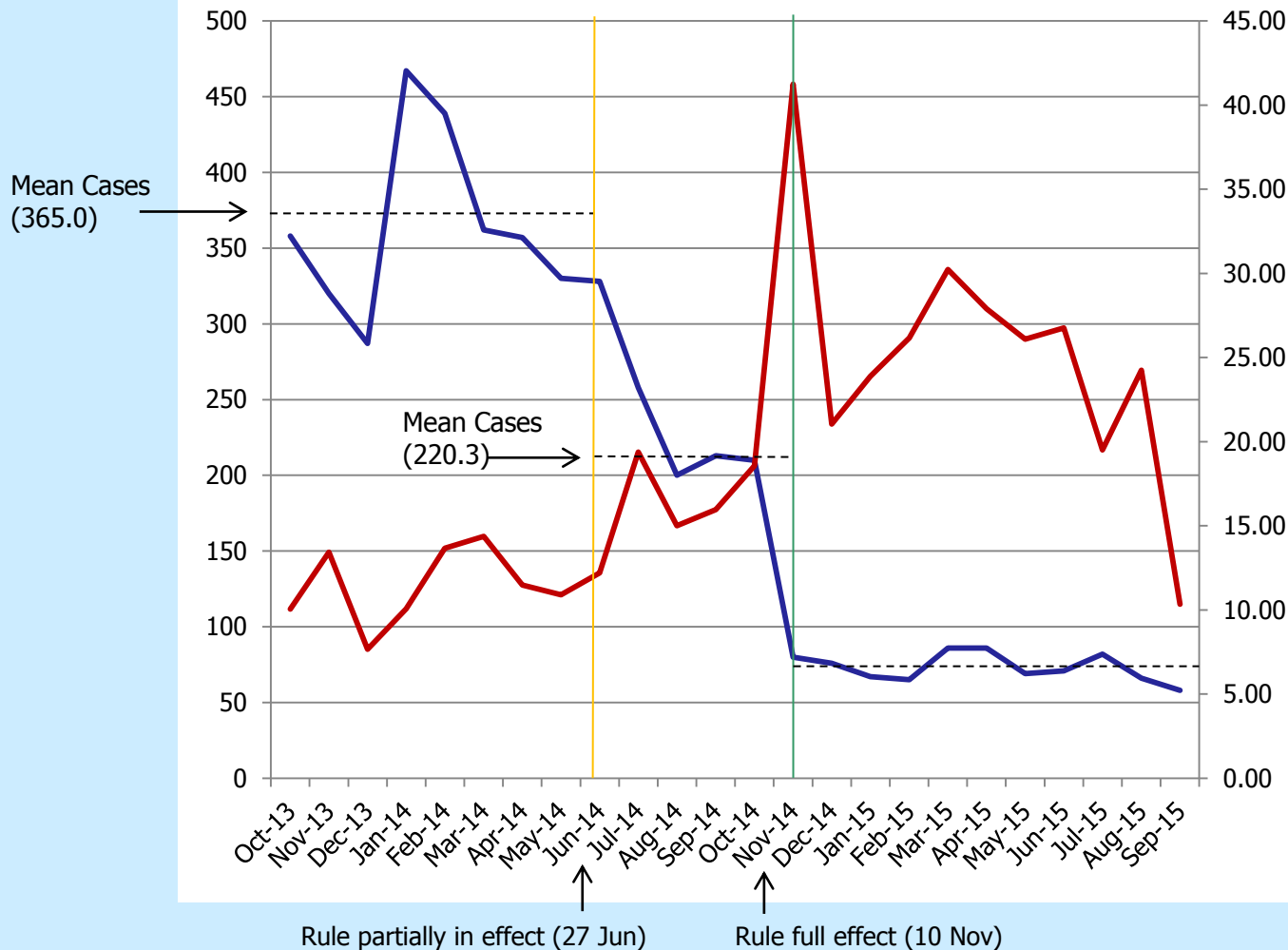


Rule III: Cat IV, V, IX, X, XVI Trends





Rule IV: Cat XV Trends

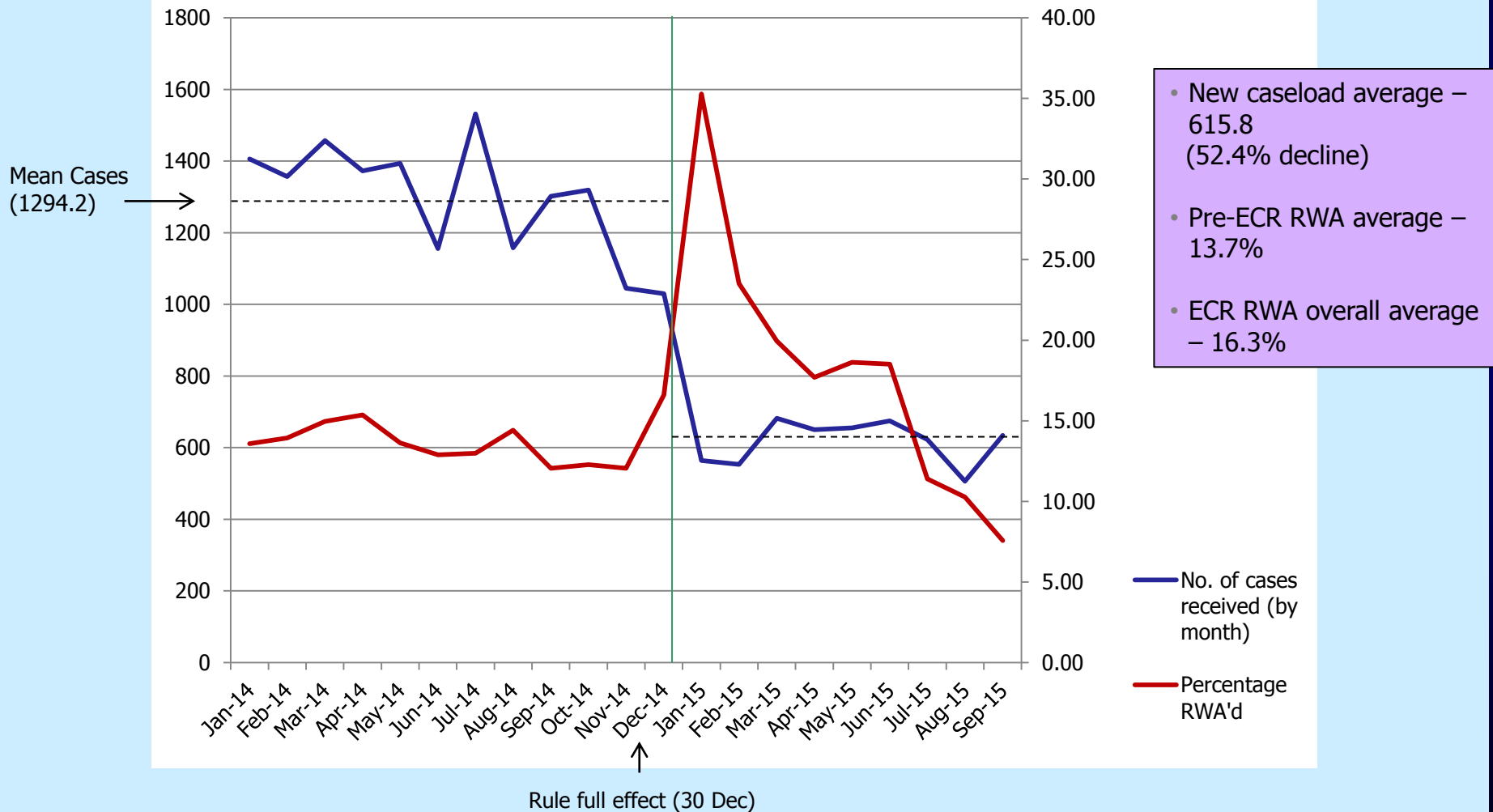


- New caseload avg – 73.3/mo. (79.9% decline)
- Pre-ECR RWA average – 11.5%
- ECR RWA overall avg – 24.2%

- No. of cases received (by month)
- Percentage RWA'd

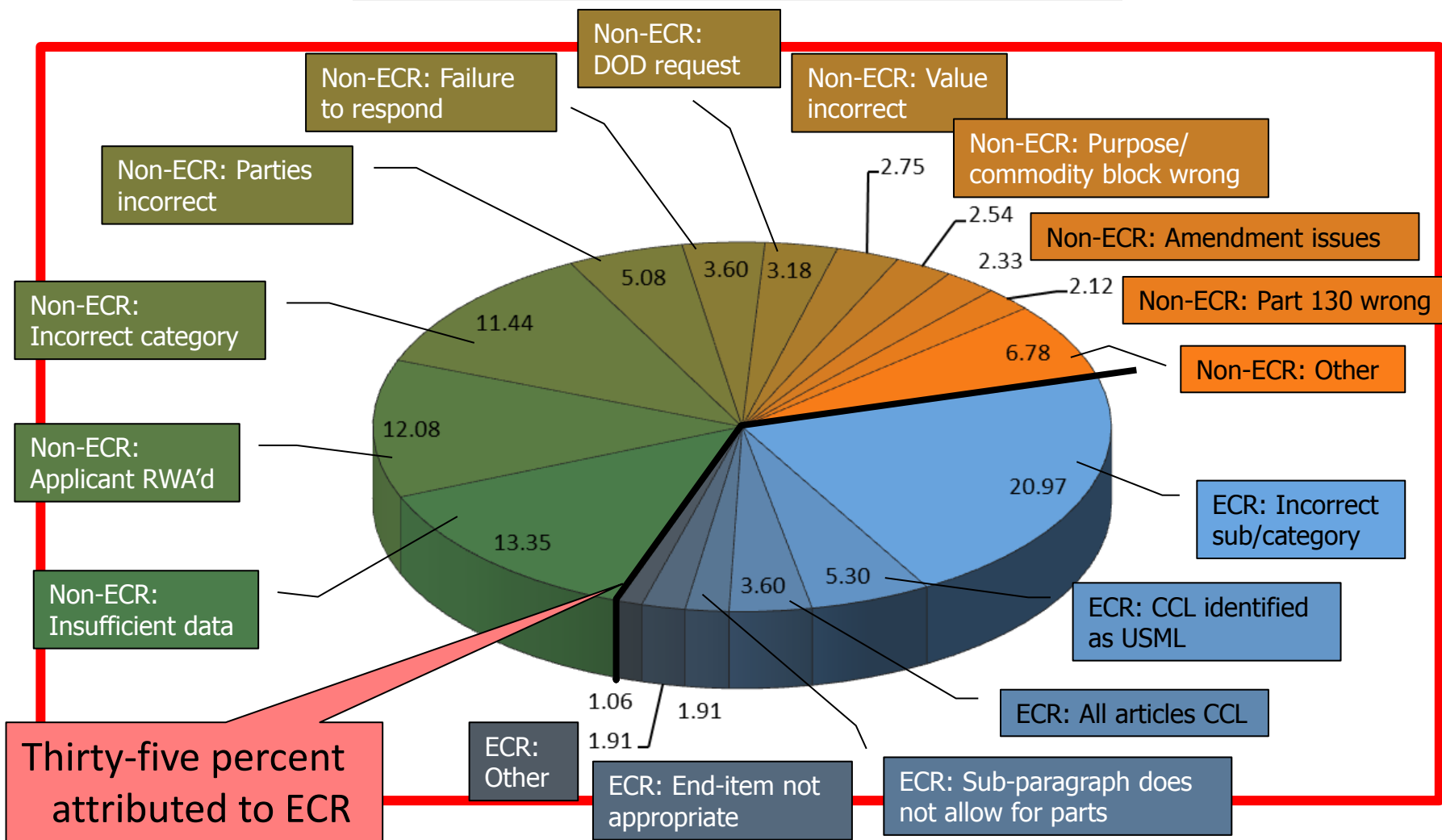


Rule V: Cat XI Trends



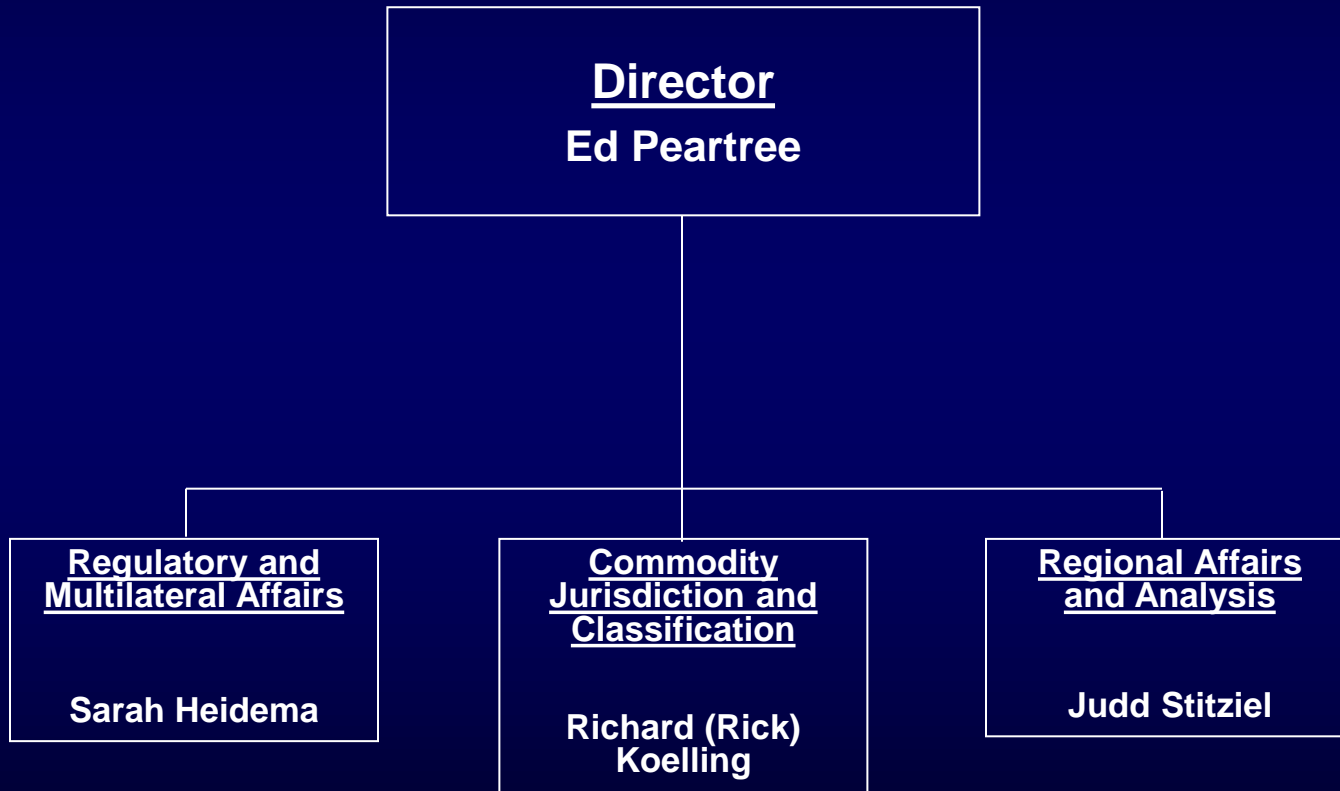


RWA Breakdown





Office of Defense Trade Controls Policy (PM/DTCP)





Office of Policy



Core Responsibilities

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



ECR Rules: Where are we?



USML:

- 15 of 21 USML Categories Revised
 - Categories XII, XIV, XVIII: Public comments received on the proposed rules.
 - Categories I, II, III: Need to be published in proposed form.
- USML Re-review:
 - Notice of Inquiry Process
 - Reviewing public comments on Categories VIII & XIX
 - Categories VI, VII, XIII, & XX now open for comment until 12/8/15



ECR Rules: Where are we?



ITAR:

- Various changes to ITAR language throughout ECR rules
- Rule on to better ITAR & EAR definitions
 - 120.9 Defense Services
 - 120.10 Technical Data
 - 120.17 Export (including intangible/electronic media)
 - Etc.
- ITAR Issues



ECR: What's Next?



- Goal is to finalize initial USML review in 2016
- Continue NOI/re-review process
- Work on U.S. Persons Abroad Rule and Brokering Rule
- Continue regulatory/non-regulatory work to streamline U.S. export controls
- Education and Outreach



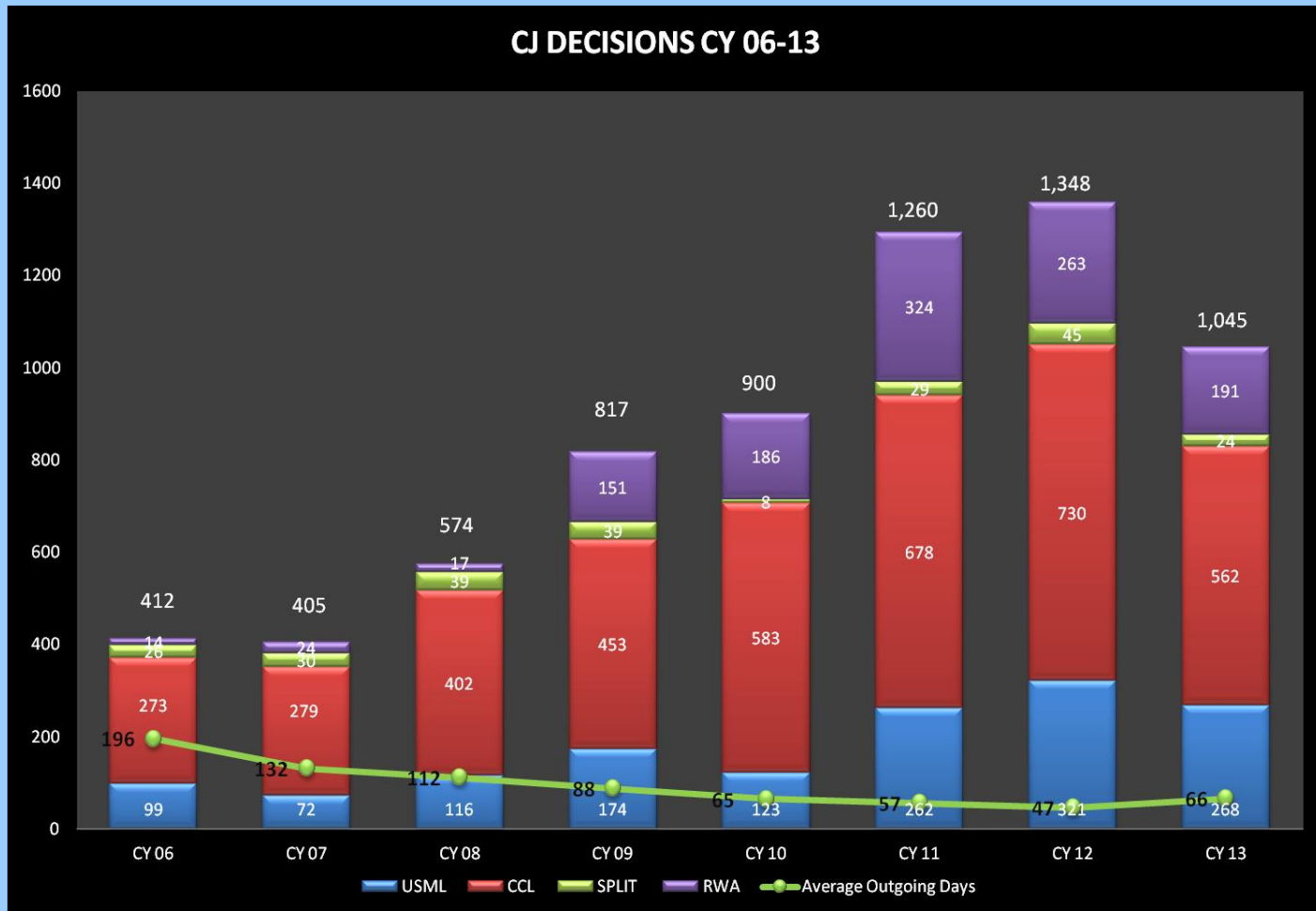
What's happening in Policy



- Increase in advisory opinions
 - Some questions have resulted in future rule changes
 - Decreasing processing times
 - Nexus with FAQs
 - When to file one?
- CJs: no large increase
 - There was some concern with this
 - When to file one?
- Work to modernize & re-vamp Blue Lantern process
- Work with partner countries to address questions/concerns on new regulations
- Work to harmonize the DCS and FMS processes



CJ Statistics





Concluding Thoughts



- ECR: Good progress – but more to do
- Continued harmonization of USG export controls infrastructure, regulations, policy (and culture)
- Partnership with industry
 - The USG is counting on exporters to apply proper controls
 - GCs, CJs, public comments
- ECR is the new normal – no turning back
 - Old ITAR vs. a new dynamic ITAR



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, and administrative or civil penalties when warranted
- Coordinate with law enforcement



Civil Compliance & Enforcement



- Voluntary and directed disclosures
 - Processed ~1,200 disclosures in FY 2015
 - Vast majority of disclosures are voluntary
 - Disclosures decreased after years of steady increases
- Civil enforcement actions: charging letters, consent agreement, agreement monitoring, debarment
 - Monitoring 7 active consent agreements
 - Several potential consent agreements under consideration
 - Current consent agreements have not concluded at anticipated end-dates
- Denials, reinstatements, policy exceptions, 'otherwise ineligible'



Registration, MAD, etc.



- Total Registrants: 12,503 (FY2015)
 - Manufactures/Exporters: 11,385 (FY2015)
 - Brokers: 1,118; 85 % U.S. & 15% Foreign (FY2015)
- Mergers, Acquisitions, & Divestitures (MAD)
 - Reviewed 324 in FY2015
 - 82 foreign MADs in FY2015
 - 42 transactions reviewed under CFIUS process
- Committee on Foreign Investment in the U.S. (CFIUS)
 - About 35-40% of CFIUS cases involve ITAR equities
- Reporting retransfer violations to Congress (pursuant to AECA Section 3)



Enforcement & Compliance Responsibilities



- U.S. government exercises broad authority for civil and criminal enforcement
 - Civil enforcement cases
 - Adjudicated by the Department of State, Office of Defense Trade Controls Compliance (DTCC)
 - Criminal enforcement cases
 - Investigated by the Department of Homeland Security, Homeland Security Investigations (HSI)
 - Prosecuted by the Department of Justice, U.S. Attorney's Office
 - Counter-intelligence cases
 - Investigated by the Federal Bureau of Investigation (FBI)
 - Prosecuted by the U.S. Department of Justice, U.S. Attorney's Office

U.S. and foreign individuals and corporations may be held liable for criminal and civil offenses under the AECA and its enumerated statutes



Assessing Disclosures



- Harm to U.S. foreign policy or national security
- Adherence to law, regulations, and DDTC's licensing and compliance policies
- Severity of violations
 - Minor/substantive versus pervasive/substantial
 - Procedural or judgmental
 - Isolated incident or repeated violation
 - Number of locations, programs, and business units affected



Assessing Disclosures



- Destinations (proscribed countries) and other persons involved
- Whether transaction would have been authorized
- Company's approach and commitment to compliance
 - Unclear or incomplete disclosure
 - Nature of investigation; root causes identified
 - Remedial measures implemented
 - Improved company compliance program



Assessing Disclosures



- Majority of disclosure cases closed without further action
- When warranted, most common DTCC actions include:
 - Request additional information
 - Review company compliance manual
 - Recommend additional compliance measures
 - Recommend audit of compliance program
 - Recommend commodity jurisdiction (CJ) submission
 - Disclosure resolved under a consent agreement



Consent Agreements



- Agreements include a proposed charging letter (PCL), monetary penalty, and enforceable conditions, such as:
 - Appointment of a Special Compliance Official (SCO)
 - Review, audit, and reporting requirements
 - Compliance program improvements
 - Typically 3-4 years (substantial self-initiated measures implemented before Agreement)
- Monitoring by DTCC
 - Review of audits and SCO reports
 - Company visits
- All PCLs and Consent Agreement are posted on DTCC website for public review



Key Facets of A Compliance Program



- Company/organization commitment
- Management support of ITAR compliance
- Sufficient human, financial, and capital resources
- Compliance policies, procedures, manual, implementation
- Broad education and training for all; detailed education and training for some



Compliance -- A Corporate Ethos



- AECA/ITAR compliance is the underpinning of all export activities
 - A competent compliance program is *essential* to maintain the Department's trust and obtain the export authorizations required to successfully conduct and grow business
 - Compliance shouldn't be relegated to the legal or global trade compliance organizations for sole responsibility – everyone is responsible for compliance!
 - Poor compliance will impede business development
 - Direct correlation between a solid compliance program and success in this industry



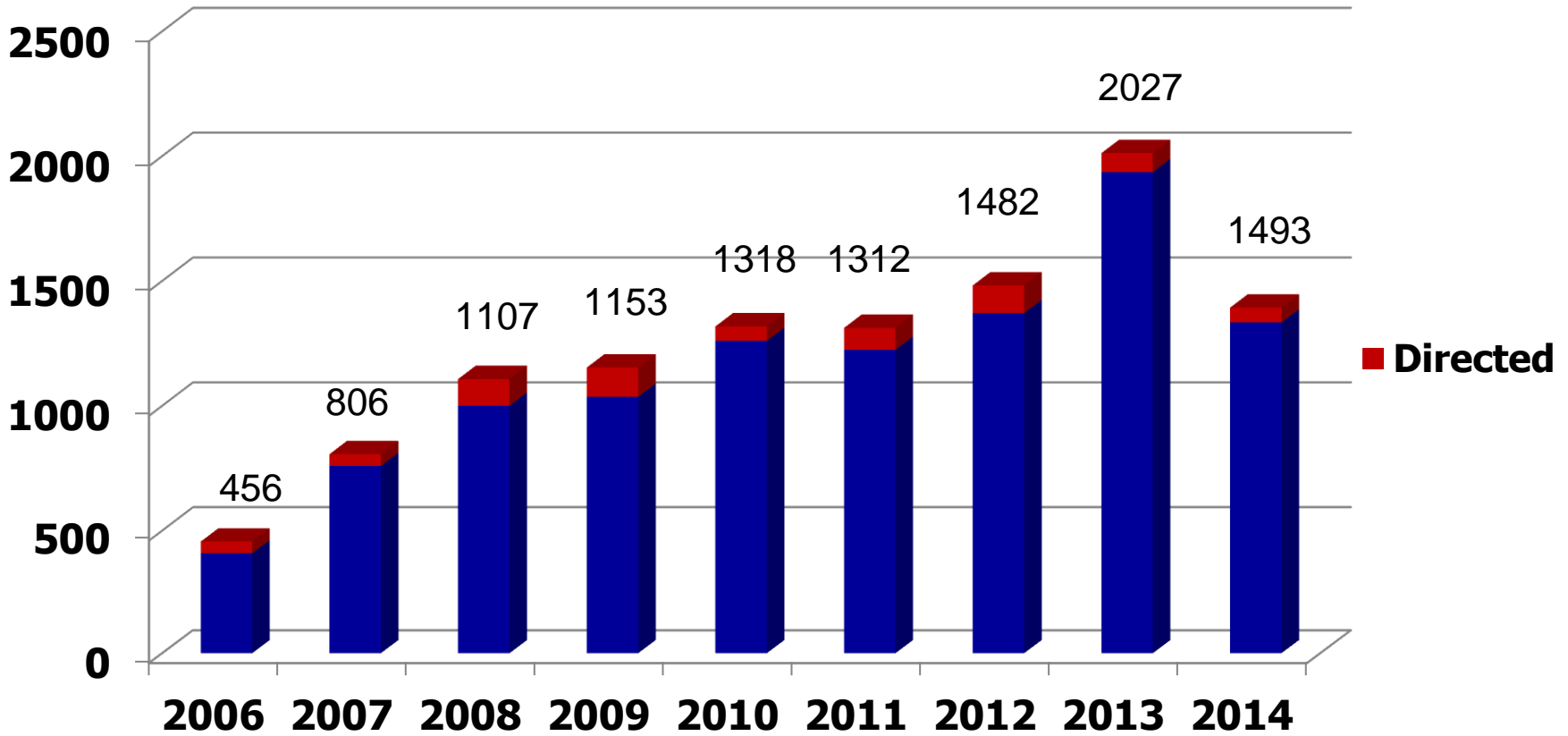
Tailored Program



- Best compliance programs are tailored to the company and its business
- Don't need to be complicated – they need to work
- For general guidelines, see:
http://www.pmddtc.state.gov/compliance/documents/compliance_programs.pdf



Disclosure Trends by FY





Consent Agreements



Active DTCC Consent Agreements (CA)					
Name	Term	Proposed Charges	Penalty Total (Mil)	Suspended Amount (Mil)	Debarment
BAE	2011-2015	2,591	\$79	\$10	Statutory (rescinded) & policy of denial
UTC	2012-2016	576	\$55	\$20	Statutory-P&WC
Meggitt	2013-2016	67	\$25	\$22	None
Esterline	2014-2017	282	\$20	\$10	None
Intersil	2014-2016	339	\$10	\$4	None
Raytheon	2013-2017	125	\$8	\$4	None
Aeroflex	2013-2015	158	\$8	\$4	None



Contact Information



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



Q & A



Questions?