



# BAFA/BIS Export Control and Compliance Update 2017

## **ITAR & DDTC Update**

Frankfurt, Germany  
June 14, 2017

Rob Monjay (Senior FAO, Regulatory and Multilateral Affairs)  
Directorate of Defense Trade Controls (DDTC)



# Department of State



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Controls & International  
Security (T)**

**Vacant**

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

**Amb Tina Kaidanow (A)**

**Assistant Secretary for  
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**Frank Rose**

**Deputy Assistant Secretary  
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Regional Security and  
Security Assistance**

**Vacant**

**Deputy Assistant Secretary  
for  
Defense Trade Controls**

**Brian Nilsson**

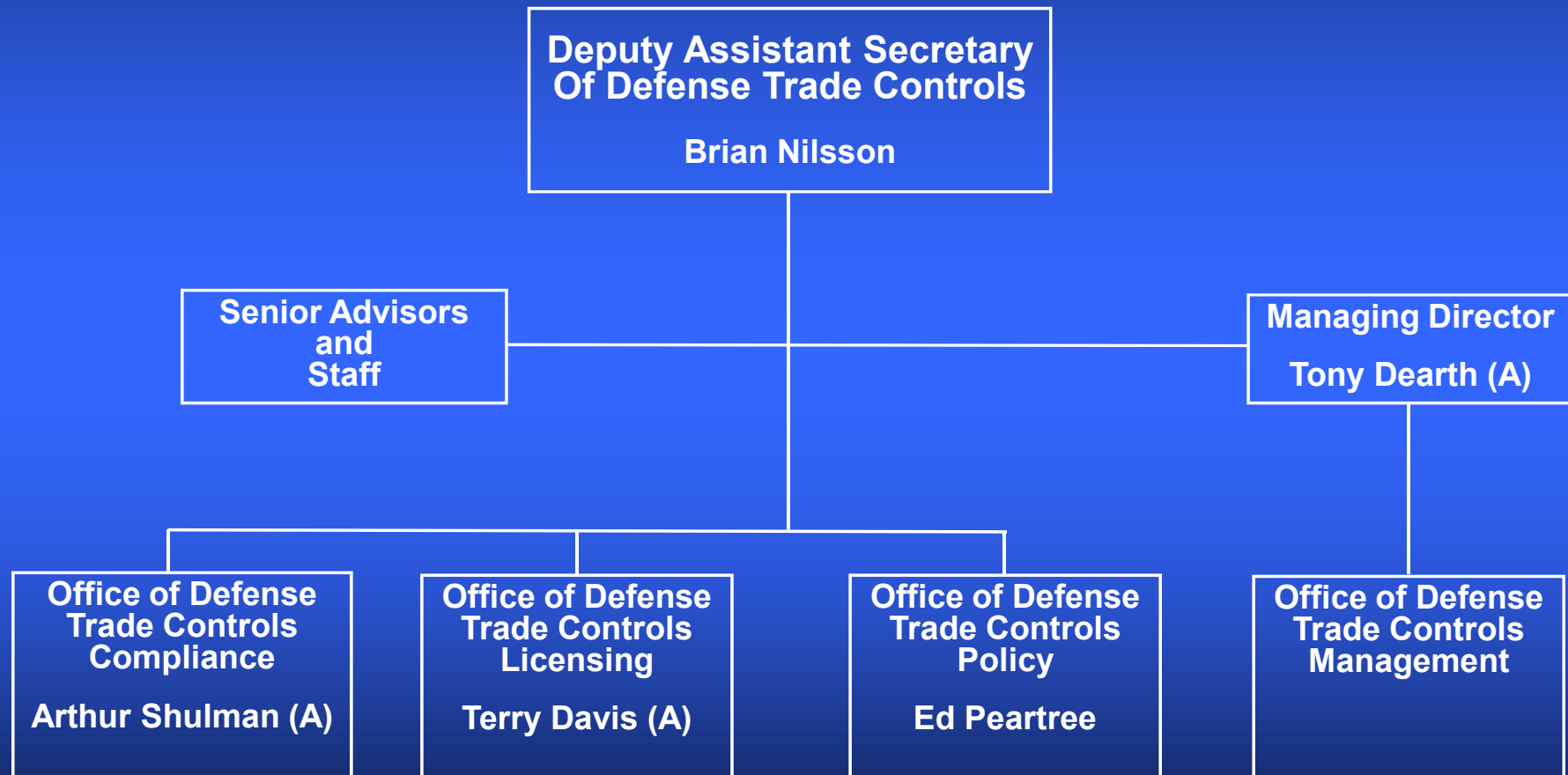
**Deputy Assistant Secretary  
for  
Plans, Programs, and  
Operations**

**Maj Gen Mike Rothstein**



# DDTC Organization

All Non-Political Professional Staff





# State of Play



- Regulatory “freeze” – EOs, WH memo
- Department of State “foreign affairs” exemption – but not for Commerce; companion rules affected
  - EO 13771, 13777
  - L, OMB ok
  - But requires “political-level” clearance



# State of Play (cont'd)



- No ITAR rules published as yet in new Administration
- Impact on advisory opinions (now clearing backlog)
- Senior-level vacancies affecting rulemaking and clearance process
- Hiring freeze impact on staffing



# Upcoming Priorities



- Reform efforts of past 7 years have been about updating our regulatory framework and focusing our energies on securing our most sensitive technologies
- These improvements and efforts to reduce the regulatory burden on exporters and key partners will continue
- Priority 2017 task is IT Modernization Implementation



# IT Modernization Changes



- Single interface for all DDTC online services
- Improved availability, including foreign parties
- Enhanced security
- Use of USG "Cloud"
- Streamlined DDTC business processes and automated workflow
- Automation for data reuse



# Notable New Rules

- Export/re-export/retransfer/release
  - “Theoretical access”
  - ITAR 125.4 (b)(9)
  - “Cloud computing” et al (ITAR vs. EAR)
- 126.1 updates
- ITAR 126.18 (d)
- Cats XIV, XVIII
- Cats VIII and XIX (2.0)
- Cat XII
- Cat XV





# Future Rules



- Cats I-III (w/DOC "bookend")
- ITAR 126.4 ("by or for")
- Exemption for temp export for repair of foreign defense articles
- USML reviews:
  - Cats VI, VII, XIII, XX under interagency review
  - Cats V, X, XI



# Definitions



- **Definition of Export and Related** (6/3/2016, corrected 9/8/16) (81 FR 35611 & 81 FR 62004)
  - 120.17, 120.19 & 120.51 *Export, Reexport and Retransfer*
  - 120.50 *Release* added
  - 126.16 & 126.17 synch definitions of re-export/retransfer with Defense Trade Treaties
  - 126.18 New exemption for NATO+, was 124.16
  - 130.2 clarification of Part 130 requirements



# Export §120.17



- (1) An actual shipment or transmission out of the United States, including the sending or taking of a defense article out of the United States in any manner;
- (2) Releasing or otherwise transferring technical data to a foreign person in the United States (a "deemed export");
- (3) Transferring registration, control, or ownership of any aircraft, vessel, or satellite subject to the ITAR by a U.S. person to a foreign person;
- (4) Releasing or otherwise transferring a defense article to an embassy or to any of its agencies or subdivisions, such as a diplomatic mission or consulate, in the United States;



# Export #2



- (5) Performing a defense service on behalf of, or for the benefit of, a foreign person, whether in the United States or abroad; or
- (6) A launch vehicle or payload shall not, by reason of the launching of such vehicle, be considered an export for purposes of this subchapter. However, for certain limited purposes (see §126.1 of this subchapter), the controls of this subchapter may apply to any sale, transfer or proposal to sell or transfer defense articles or defense services.
- (b) Any release in the United States of technical data to a foreign person is deemed to be an export to all countries in which the foreign person has held or holds citizenship or holds permanent residency.



# Reexport §120.19



- (1) An actual shipment or transmission of a defense article from one foreign country to another foreign country, including the sending or taking of a defense article to or from such countries in any manner;
- (2) Releasing or otherwise transferring technical data to a foreign person who is a citizen or permanent resident of a country other than the foreign country where the release or transfer takes place (a "deemed reexport"); or
- (3) Transferring registration, control, or ownership of any aircraft, vessel, or satellite subject to the ITAR between foreign persons.
- (b) Any release outside the United States of technical data to a foreign person is deemed to be a reexport to all countries in which the foreign person has held or holds citizenship or holds permanent residency.



# Release §120.50



- (a) Technical data is released through:
  - (1) Visual or other inspection by foreign persons of a defense article that reveals technical data to a foreign person; or
  - (2) Oral or written exchanges with foreign persons of technical data in the United States or abroad.



# Retransfer §120.51



- (a) Retransfer, except as set forth in §126.16 or §126.17, means:
  - (1) A change in end use or end user, or a temporary transfer to a third party, of a defense article within the same foreign country; or
  - (2) A release of technical data to a foreign person who is a citizen or permanent resident of the country where the release or transfer takes place.





# NATO+ Exemption - §126.18(d)



- Formerly §124.16 & only for Agreements
- Now an exemption and available for reexports of any technical data
- Requires an NDA for employees of companies that are not signatories or sub licensees to an agreement
- Consolidates the DN/TCN authorizations in one Part of the ITAR





# ITAR Updates



- **Destination Control Statement and Other**  
(8/17/16) (81 FR 54732)
  - 120.5 clarifies authorization to export EAR items “in or with” defense articles under ITAR exemptions
  - 123.9 (124.9 & 124.14) harmonizes DCS with EAR
  - 123.13 “pilot filing” eliminated
  - 124.12 (et al) paperwork/reporting reduction
  - 126.9 expands scope/definition of “advisory opinion”
- 126.1 overhaul/update (9/29/16) (81 FR 66804)
- ITDS Updates (1/3/17) (82 FR 15)



# Destination Control Statement

## §123.9(b)



- Must inform the end-user and all consignees that the defense articles being exported are subject to U.S. export laws and regulations
- Must incorporate as an integral part of the **commercial invoice**, whenever defense articles are to be shipped in tangible form
- Country of ultimate destination, end-user, authorization number, and
- The statement: "These items are controlled by the U.S. government and authorized for export only to the country of ultimate destination for use by the ultimate consignee or end-user(s) herein identified. They may not be resold, transferred, or otherwise disposed of, to any other country or to any person other than the authorized ultimate consignee or end-user(s), either in their original form or after being incorporated into other items, without first obtaining approval from the U.S. government or as otherwise authorized by U.S. law and regulations."



# USML Updates



- New USML Category Revisions, effective 12/31/16
  - USML Categories XIV & XVIII (7/28/16) (81 FR 49531)
  - USML Category XII (10/12/16) (81 FR 70340)
  - USML Categories VIII & XIX (11/21/16) (81 FR 83126)
- USML Category XV (1/10/17) (82 FR 2889), effective 1/15/2017
- USML Category XII NOI (1/13/17), comments due 3/14/2017



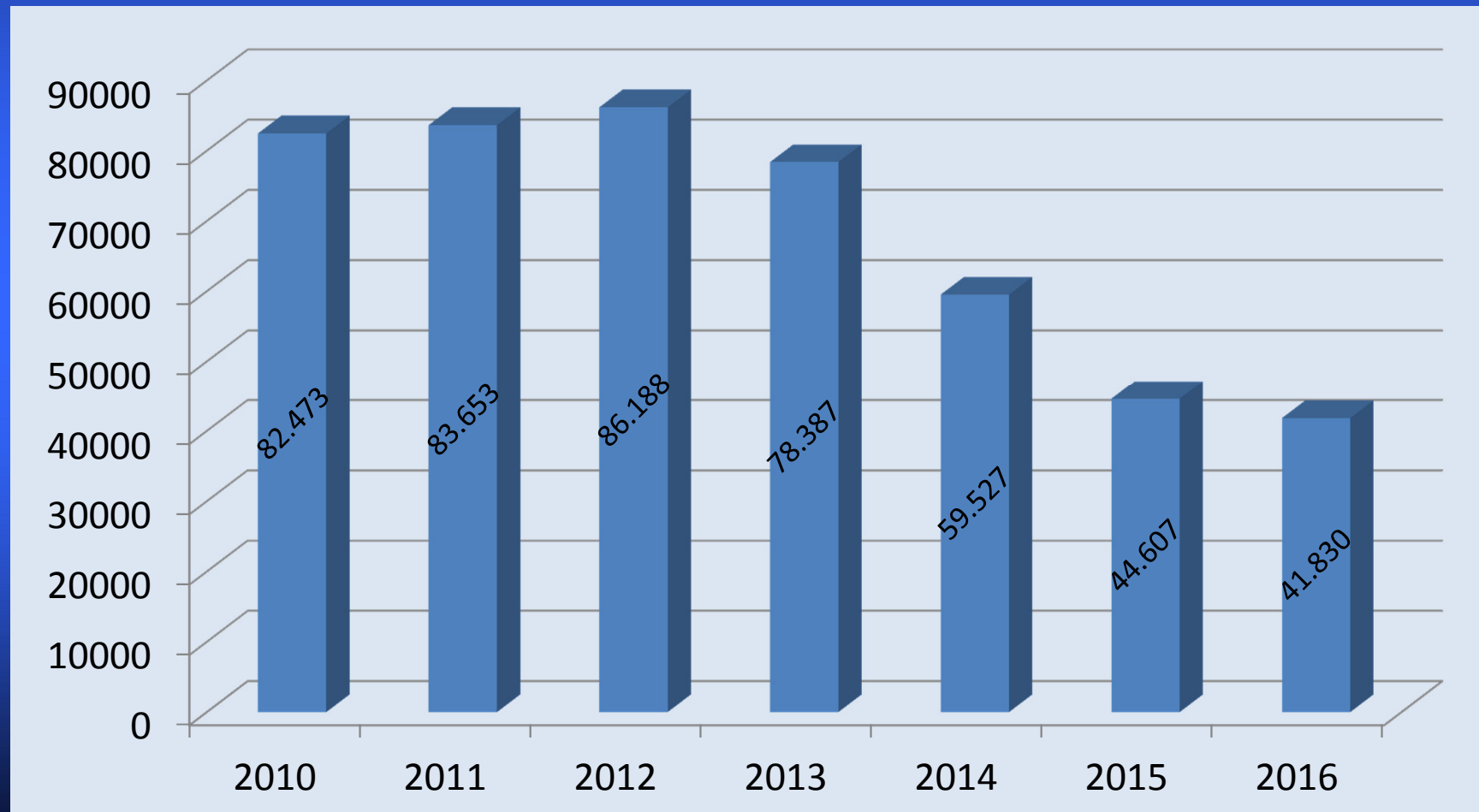
# Licensing Overview



- Organization
- Statistics
- Major Agreement Changes



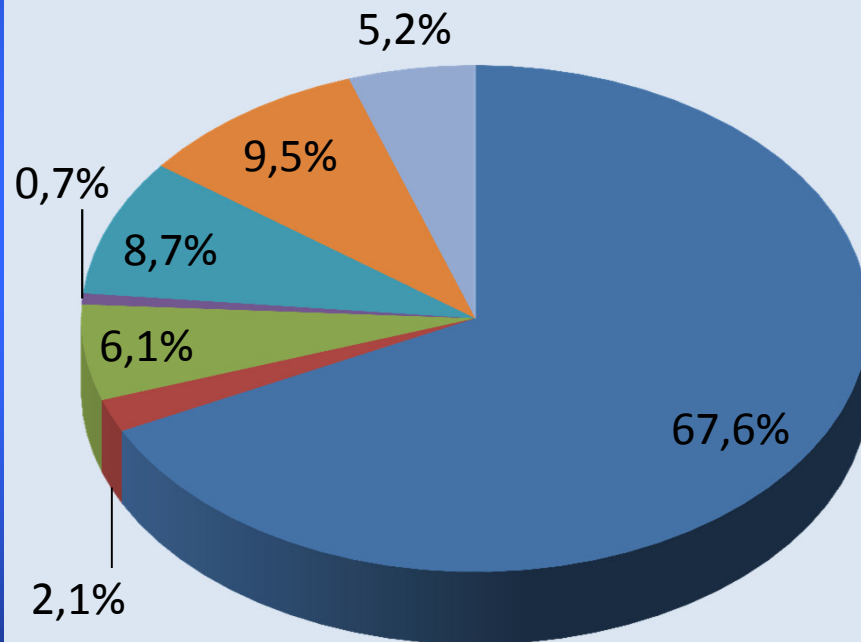
# Licenses Submitted to DDTC by Calendar Year



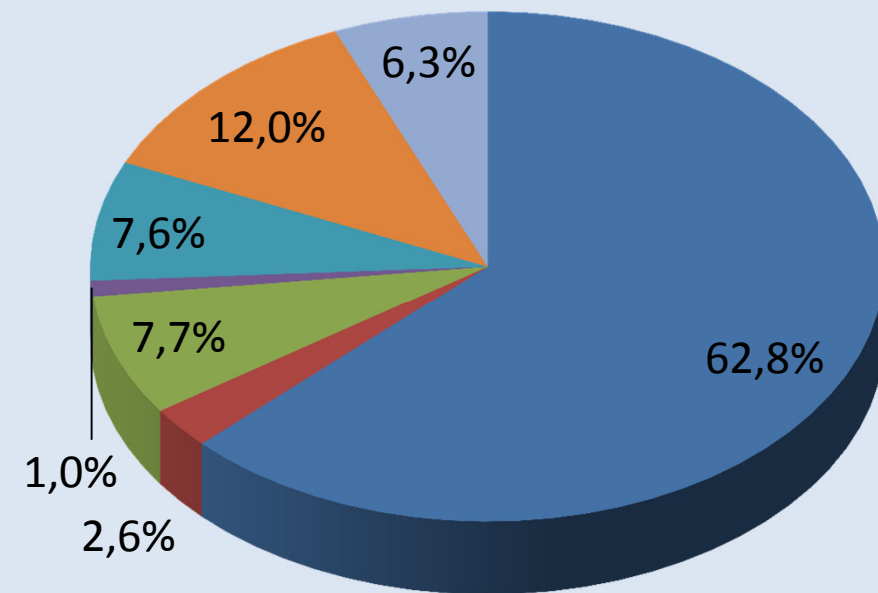


# Cases Received

**2013 Total Cases: 78,810**



**2016 Total Cases: 41830**



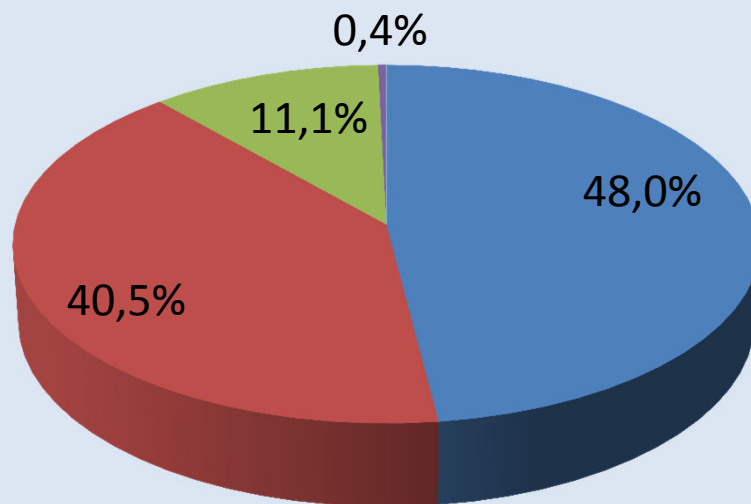
DSP-5   DSP-61   DSP-73   DSP-85  
Amend.   AGs   GC/BL



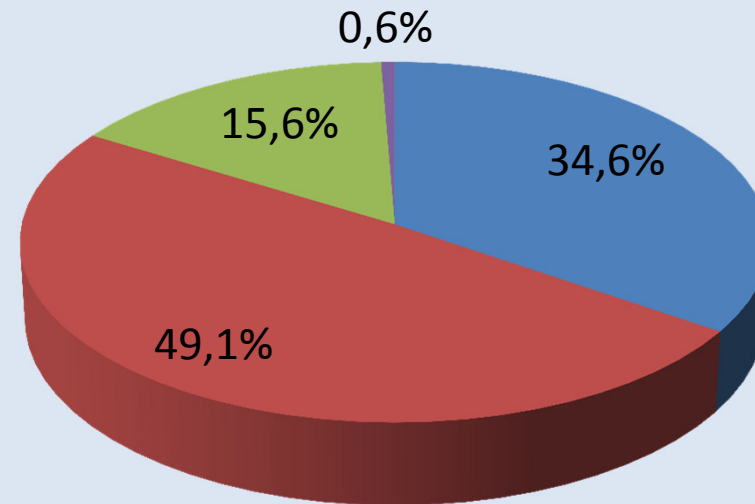
# Licensing Decisions



**2013**



**2016**

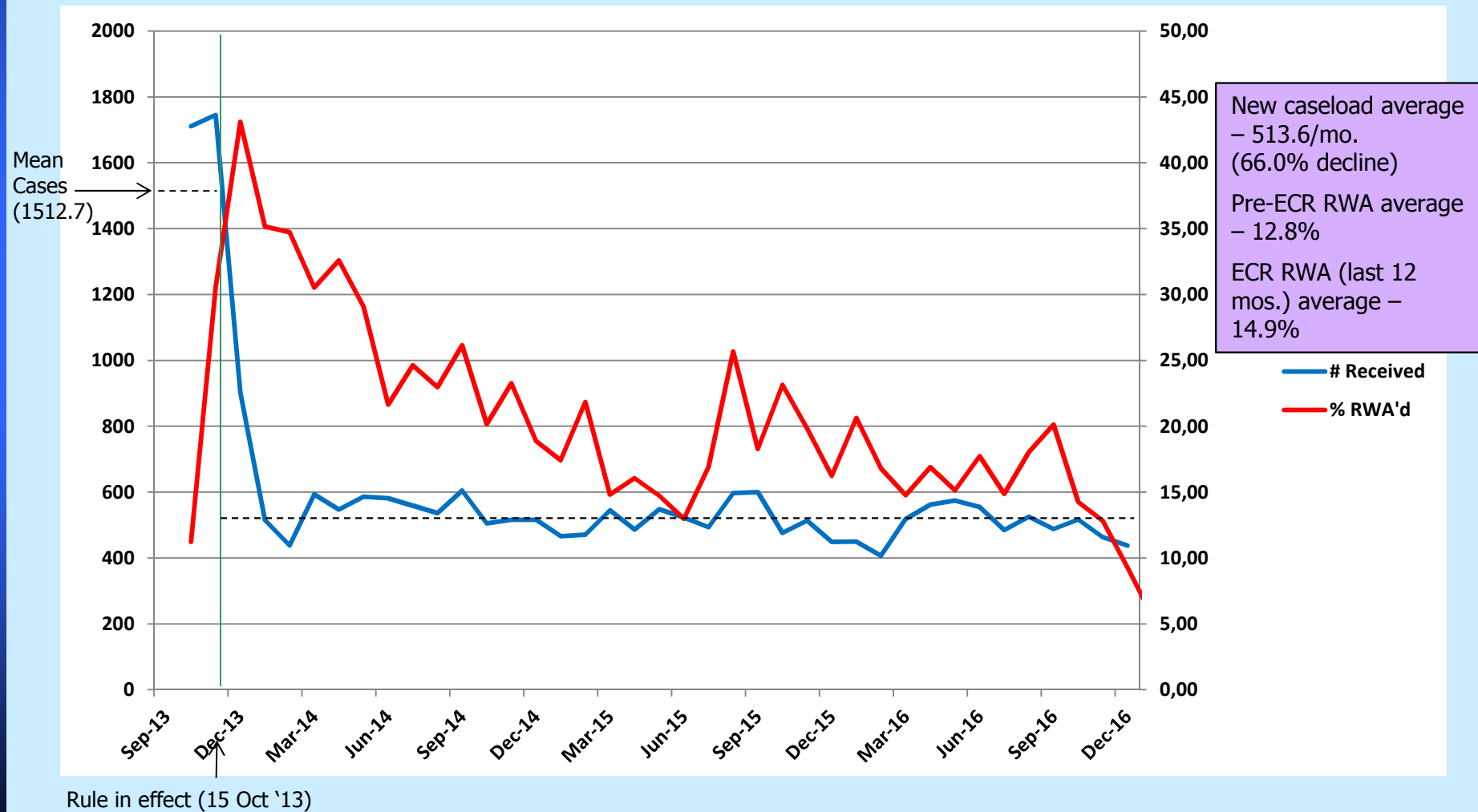


■ Approve ■ Approve w/Provisos ■ RWA ■ Deny





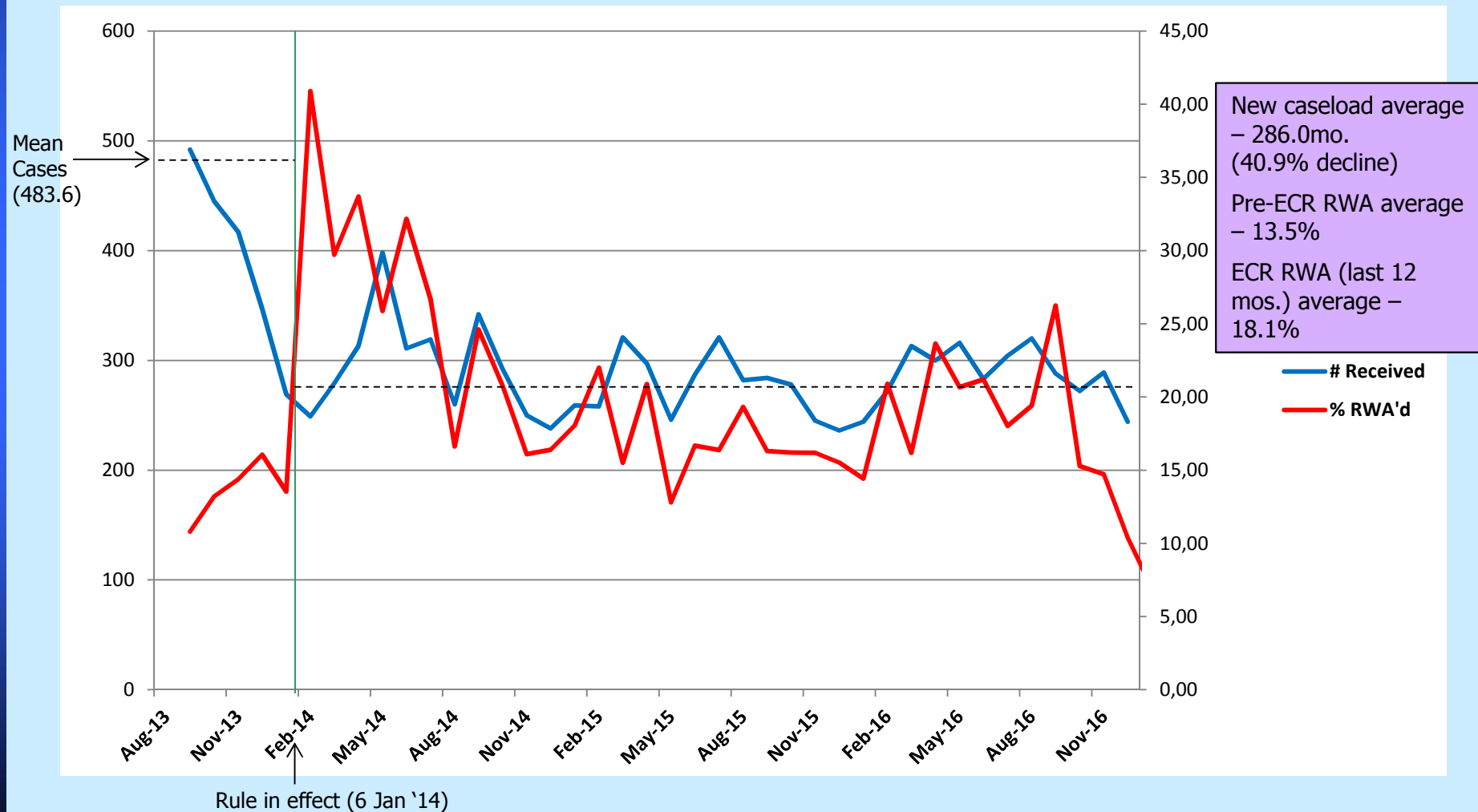
# Cat VIII & XIX Trends





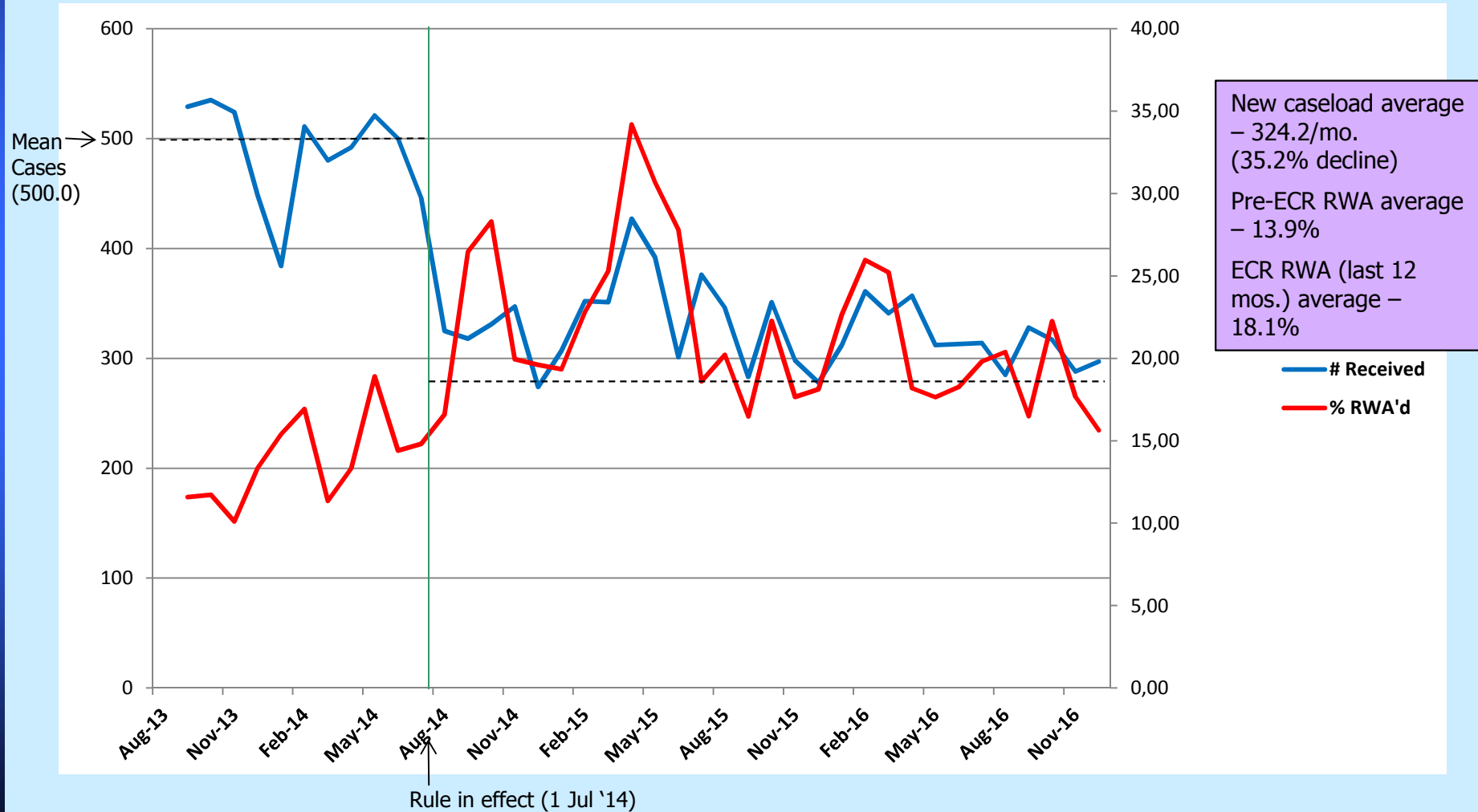


# Cat VI, VII, XIII, XX Trends



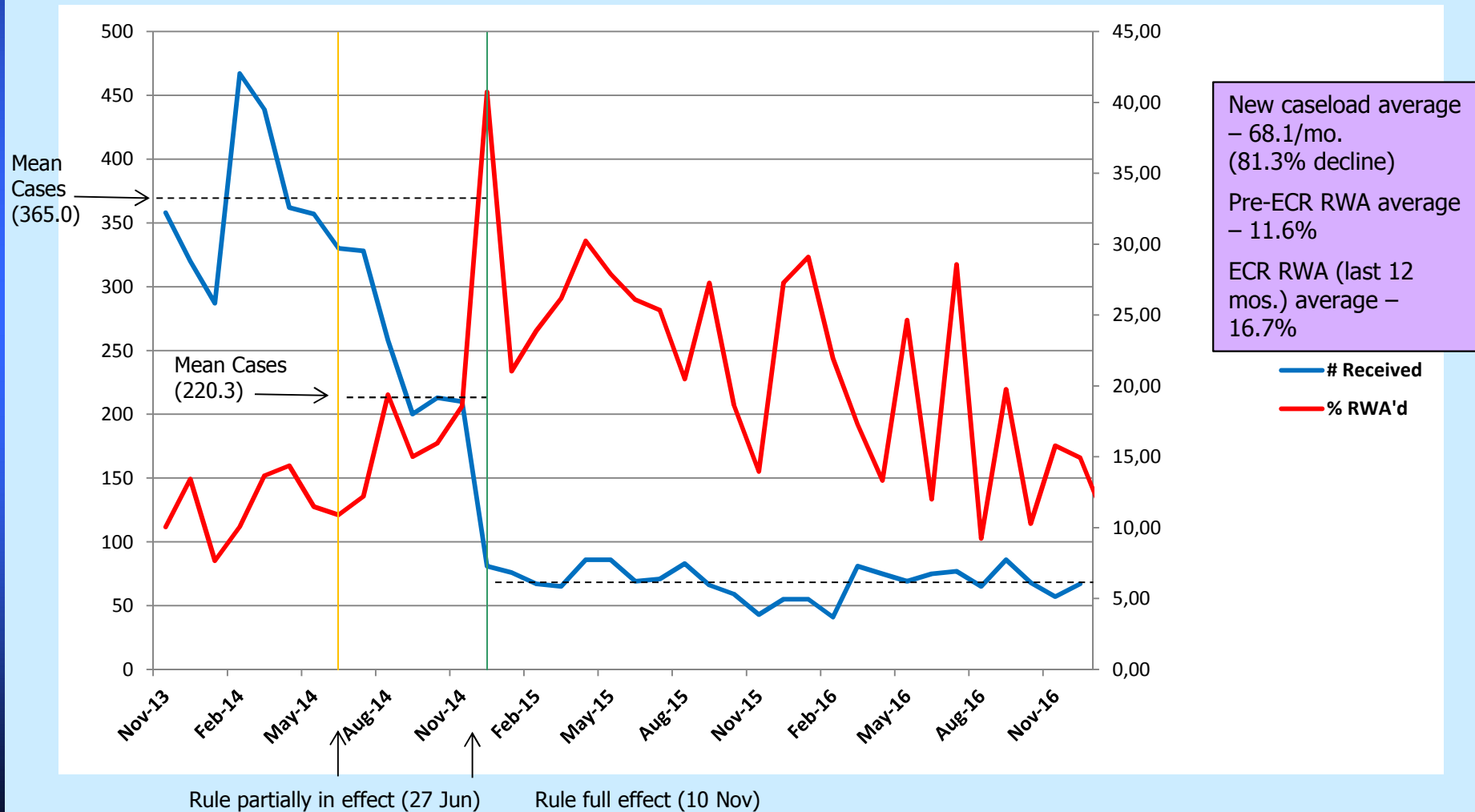


# Cat IV, V, IX, X, XVI Trends



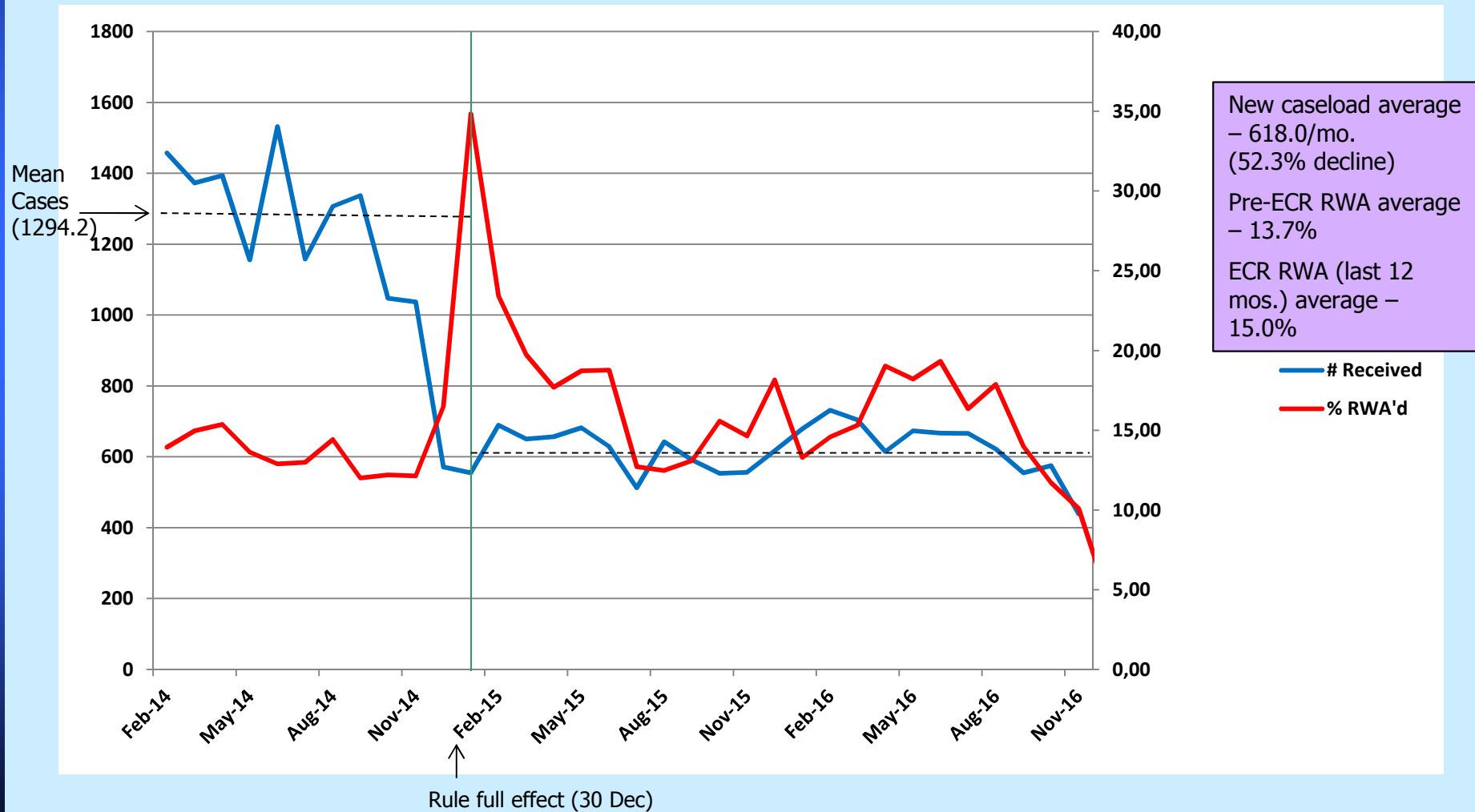


# Cat XV Trends





# Cat XI Trends





# 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	44,523	26.58	16.0%
2016	41,830	28.08	15.6%



# Summary of Agreement Changes (Part 1)



- Current Agreement Guidelines is Version 4.4b
- Lots of conforming changes to implement other FRNs
- Removal of § 124.16 – Provisions are now an exemption under § 126.18(d)
  - Deletion of § 124.16 statement from agreements
  - Deletion of 124.12(a)(10) statement from transmittal letters
- New mandatory statements in agreements:
  - 124.8(a)(5) Verbatim Clause
  - U.S. Sublicensing Statement
  - DN/TCN Request Pursuant to 124.8(a)(5) Statements



# Summary of Agreement Changes (Part 2)



- Distribution control statements in agreements have been updated
  - Changes to the § 124.9(a)(6) and § 124.14(c)(7) verbatim language
- Sales territory statement required in § 124.7(a)(4) paragraph of MLAs
- Update ITAR references in agreements to reflect new designations
  - § 124.7 to § 124.7(a) and § 124.8 to § 124.8(a)



# Summary of Agreement Changes (Part 3)



- Expedited Execution – Streamlines processing if sole purpose of an amendment:
  - Add sublicensees from a previously approved territory, or
  - Change the name or address of an existing sublicensees





# Contact Information



## Questions?

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