



Investigative & Enforcement Services



Animal Care



Biotechnology
Regulatory
Services



Plant Protection
and Quarantine



Veterinary
Services



Customs and
Border Protection



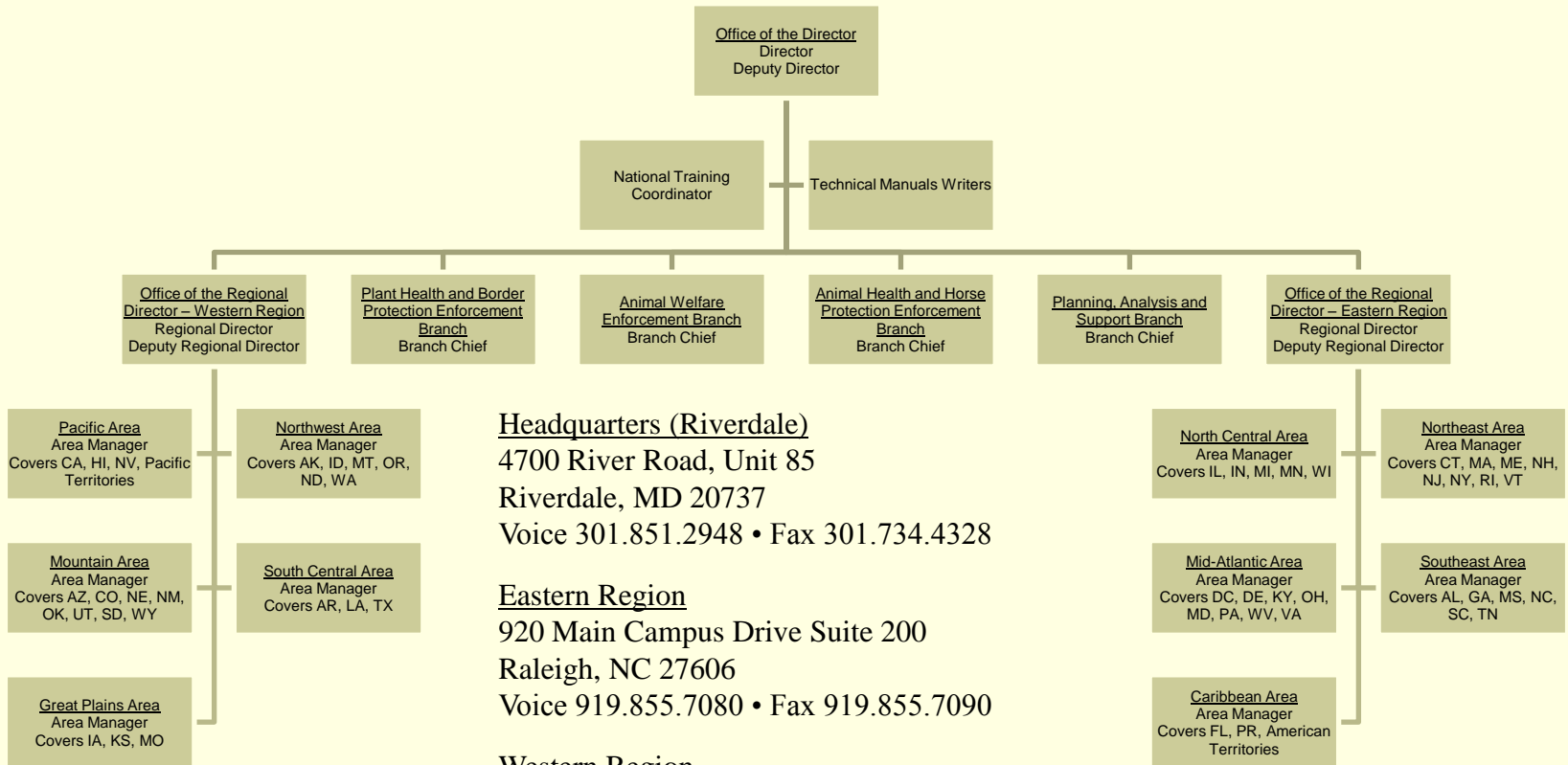
IES Update for the National Plant Board

Bernadette Juarez, Director
July 29, 2014

IES' Mission

“To protect the health and value of American animal, plant, and natural resources through effective and efficient investigative and enforcement services.”

IES' Structure



Headquarters (Riverdale)
 4700 River Road, Unit 85
 Riverdale, MD 20737
 Voice 301.851.2948 • Fax 301.734.4328

Eastern Region
 920 Main Campus Drive Suite 200
 Raleigh, NC 27606
 Voice 919.855.7080 • Fax 919.855.7090

Western Region
 2150 Centre Avenue, Building B-3W10
 Fort Collins, CO 80526
 Voice 970.494.7485 • Fax 970.494.7487

What has IES accomplished since the last NPB Meeting?

- 30 percent reduction in the time to complete an investigation and take action since FY 2013, and a 48 percent reduction since FY 2012:
 - FY 2012: 634 days
 - FY 2013: 467 days (at time of the last NPB meeting)
 - FYTD 2014: 328 days!
- 22 percent reduction in the number of open investigations since FY 2013, and an 80 percent reduction since FY 2012:
 - FY 2012: 2,100 cases
 - FY 2013: 540 cases (at the time of the last NPB meeting)
 - FYTD 2014: 421 cases
- 43 percent reduction in the number of instances in which the agency is unable to pursue action compared to FY 2012:
 - FY 2012: 30 percent of alleged violators
 - FY 2013: 19 percent of alleged violators
 - FYTD 2014: 17 percent of alleged violators
- Nearly an 85 percent success rate in pursuing action against alleged violators, and we did so in nearly half the time relative to FY 2012!

We want specifics!

Promoting Domestic Plant Health

- Second instance of criminal charges under the PPA involving fraudulent WPM stamps: American Pallet Recycling, L.L.C. and its owner Raymond Viola were charged with and pled guilty to counterfeiting IPPC ISPM 15 marks. Sentencing pending.
- First administrative consent decision and order to resolve alleged violations involving the use of fraudulent IPPC ISPM 15 marks resulting in the assessment of a \$24,000 civil penalty (JS Pallet Company, Inc.).
- Filing of a high-profile administrative complaint and cancellation of compliance agreement based on alleged violations of federal order involving the *P. ramorum* program (Greer Gardens, Inc.).
- Pre-litigation settlement agreement resolving alleged violations related to the handling of genetically-engineered material resulting in the assessment of a \$19,250 civil penalty (Washington State).

We want more!

Preventing the Entry of Plant Pests

- First administrative consent decision and order to resolve alleged violations involving transportation and exportation of products through the United States, resulting in the assessment of a \$21,000 civil penalty (Librado Pina, Inc.).
- Administrative consent decision and order to resolve alleged violations involving the failure to hold shipments for agriculture inspection and abide by terms of Emergency Action Notifications resulting in the assessment of a \$300,000 civil penalty (United Airlines, Inc.).
- Administrative consent decision and order to resolved alleged violations involving the failure to hold shipments for inspection resulting in the assessment of a \$350,000 civil penalty (American Airlines, Inc.)
- Strengthening enforcement involving alleged violations related to the handling of international garbage with the payment of a \$26,000 civil penalty through a pre-litigation settlement agreement (Flying Food Group).
- Pre-litigation settlement agreement involving the failure to hold shipments for agriculture inspection resulting in the payment of a \$117,813 civil penalty (FedEx).

Well, ok, But why does it seem like enforcement action takes so long?!

- Due process clauses of the 5th and 14th amendments provide procedural protections when government action deprives a person of life, liberty or property.
- Administrative Procedure Act (APA) governs agency rulemaking, adjudication, and provides federal courts with the ability to review agencies' decisions.

Well, ok, But why does it seem like enforcement action takes so long?!

- APA establishes higher due process thresholds for “formal adjudication.”
- Formal adjudication is generally triggered when the statute calls for a “hearing on the record.”
- “Any person that violates [the Plant Protection Act] . . . may, after notice and opportunity for a **hearing on the record**, be assessed a civil penalty by the Secretary [of Agriculture.]” 7 U.S.C. § 7734(b)(1).

Building a Case that Supports Agency Enforcement Action

- Fact finding mission to build a record upon which the agency can make a well-reasoned and supported decision.
- Consistent and equitable enforcement recommendations using established guidelines.
- Pre-litigation enforcement actions – notice of the alleged violation and applicable law, and potential sanctions (official warnings and “stipulations”).

Formal Adjudication Under the PPA

- Referral to Office of General Counsel
- Filing of administrative complaint and proceedings before USDA (administrative law judge and judicial officer)
- Review of decision by U.S. Courts of Appeals
- U.S. Supreme Court's review of the U.S. Court of Appeals' decision

Plant Health Goals for FY 2015

- Improve efficiency and effectiveness of investigations and enforcement actions.
- Collaborate with PPQ and DHS on one or two high-priority enforcement projects.
- Build investigative workload for plant health and border protection.
 - Increase domestic investigations from 37 open cases to 65-70 open cases.
 - Increase border protection investigations from 157 open cases to 180 open cases.

Questions





The End