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**COOPERATIVE EXTENSION**

Colleges of Agricultural and Environmental Sciences & Family and Consumer Sciences

# **A Guide to National Policy Regarding Alien Workers: 2007 Regulations Simplified**

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## **Background**

The nursery, greenhouse, and landscape industries in the United States have historically relied on low labor costs to maintain their competitiveness in an environment where profit margins have consistently diminished. Many producers and/or landscapers have relied on an alien/immigrant workforce that has provided high productivity at a low cost. While practical from a business standpoint, there are serious consequences for employers who ignore government rules and regulations and either willfully or unknowingly employ illegal alien/immigrant workers.

The goal of this publication is to simplify the exhausting number of federal documents that have been published on alien worker employment. While not the most exciting subject, being informed on up-to-date immigration policies can potentially reduce the headaches associated with countless hours of paperwork and potential criminal and/or civil penalties associated with not following federal regulations.

## **Structure of the “New” United States Immigration and Naturalization Service**

Prior to March 1, 2003, the U.S. Immigration and Naturalization Service (INS) was a subsection of the U.S. Department of Justice and handled legal and illegal immigration and naturalization. On March 1, 2003, INS was formally dissolved as a government agency, and the majority of INS tasks were transferred to three new agencies within the Department of Homeland Security (DHS). The management of immigration services, including permanent residence, naturalization, and asylum became the responsibility of the “U.S. Citizenship and Immigration Services” (USCIS). The border functions of the INS were combined with U.S. Customs Inspectors into the “U.S. Customs and Border Protection” (CBP) office. The law enforcement functions (including investigations, deportation, and intelligence) were combined with U.S. Customs investigators, the Federal Protective Service, and the Federal Air Marshal Service to create “U.S. Immigration and Customs Enforcement” (ICE).

## How May Employers Comply with Government Regulations?

The role of employers, including those in the horticulture industry, is complicated and muddled by the tremendous number of documents published by the federal government on the topic of alien/immigrant workers. In addition to the complexity of documentation provided by the federal government, there is also the confusion generated by the number of governmental agencies involved in alien/immigrant worker policies. At least five agencies and congress are responsible for various aspects of immigration, alien/immigrant worker permits, enforcement of regulations, laws governing alien/immigrant workers, etc. Despite the complexity of the formally written legislation on the topic of alien workers, the actions an employer takes to ensure a legal workforce are neither time-consuming nor pose a financial burden. To simplify the employer's responsibilities, a breakdown of required and optional actions is listed below.

*The following actions are required by all employers to maintain compliance with federal regulations:*

- 1) The employer must provide to the employee, confirm completion of, and submit Internal Revenue Service tax form W-4 to the IRS and keep a copy on file.
- 2) The employer must provide Form I-9 to the employee, confirm completion of the I-9 form within three business days of hire, and file form I-9 and documents provided by the employee for a period of three years from the date of hire. It is also the responsibility of the employer to verify that personal documents submitted by the employee are not "obvious forgeries." This wording, while ambiguous, should be taken as a warning by employers to sufficiently investigate whether the documents provided by the employee are authentic. Direct any questions regarding the required documents to the local USCIS field office (serving Ga., S.C., and N.C.) at 1-404-331-2765 or by mail at 2150 Parklake Drive, Atlanta, GA 30345.

Fulfilling the minimum requirements of employers (stated above) does not ensure employers will not be held legally accountable for employing illegal alien workers. Further proactive measures by the employer can alleviate doubt concerning an employee's immigration status and significantly reduce the legal responsibility of the employer in case a worker is illegally working and/or residing in the United States.

*Suggested (voluntary) actions to ensure the immigration status of employees includes participation in any or all of the following programs:*

- 1) **E-Verify** (formerly Basic Pilot Employment Verification Program) is a free internet-based system operated by the Department of Homeland Security in partnership with the Social Security Administration. It is recognized by the Department of Homeland Security and the U.S. Immigration and Customs Enforcement agency as the best way to verify the validity of social security numbers provided by employees on W-4 and I-9 forms at the onset of employment. Additionally, the E-verify system reportedly will offer photo-screening and

online resources for employers. Registration and detailed information on the program can be found at [http://www.dhs.gov/ximgtgn/programs/gc\\_1185221678150.shtm](http://www.dhs.gov/ximgtgn/programs/gc_1185221678150.shtm)

- 2) **Social Security Number Verification Service (SSNVS)** is another free service provided to employers and is operated by the Social Security Administration's Business Services Office. The service allows employers to verify the Social Security Number of an employee after an employment history has been attained with the company. It also offers W-2 assistance and W-2 file upload. Registration and detailed information on the program can be found by calling 1-800-772-6270 or at <http://www.ssa.gov/employer/ssnv.htm#overview>
- 3) **IMAGE** is a training workshop for employers, presented by Immigration and Customs Enforcement and the U.S. Citizenship and Immigration Services. The goal of the IMAGE program is to assist employers in reducing unauthorized and unlawful employment by training them on proper hiring procedures, fraudulent document detection, anti-discrimination policies, and the use of the E-verify system. In order to register for this workshop, employers must first register with the E-verify system, submit to an I-9 audit, and verify all current employees status by using the Social Security Verification Service. More information can be obtained at [http://www.ice.gov/exec/opaimage/image\\_program\\_request.asp](http://www.ice.gov/exec/opaimage/image_program_request.asp)

### **The “No-match Letter” and “Safe Harbor”**

According to the Social Security Administration, out of approximately 250 million wage requests filed by employers each year, 4 percent belong to employees whose names and corresponding social security numbers do not match. In such cases, the Social Security Administration will send a letter to the employer indicating a “no-match” situation and grant the employer “safe harbor.” Safe harbor is essentially a defined period during which the employer and employee must resolve the discrepancy, currently set at 90 days from receipt of the no-match letter. Once the 90-day period has expired, the employer can be held criminally or civilly liable for employing an illegal worker if the discrepancy is not corrected. As of July 2006, the no-match letter is accompanied by a correspondence from the Department of Homeland Security indicating the procedures an employer must take to respond in accordance with U.S. immigration laws. By using E-verify and/or Social Security Number Verification System offered by the federal government at no charge, the employer should catch any case of mismatched Social Security Number and name at the time of employment. Thus, the employer would rarely if ever receive a no-match letter from the Social Security Administration/ Department of Homeland Security.

Several common and easy-to-correct mistakes may lead to receiving no-match letters. The most common are transcription errors in the spelling of a name or social security number and name changes due to marriage or divorce. It is imperative that employers double-check these common administrative mistakes immediately (within 30 days) after receiving a no-match letter. Termination of an employee without verifying that information was correctly entered by the employer is a violation of the law and can lead to criminal and civil suits against the employer.

The Department of Homeland Security and the Immigration and Customs Enforcement letter describes in detail what steps an employer must take upon receiving a no-match letter.

- 1) Verify within 30 days that the mismatch was not an administrative and/or transcription error.
- 2) Request in writing, preferably by certified mail, that the employee confirm the accuracy of employment records, such as I-9 information and corresponding documentation. Inform the employee that he/she has 90 days from the no-match letter's date to resolve the issue with Immigration and Customs Enforcement and the Social Security Administration.
- 3) Request in writing, preferably by certified mail, the employee resolve the mismatch directly with Immigration and Customs Enforcement and the Social Security Administration and notify the employer when this action is taken.
- 4) If the previous actions resolve the issue, the employer should follow the remaining steps in the no-match letter to correct information with Immigration and Customs Enforcement and the Social Security Administration and retain the Social Security Administration verification stating the issue has been resolved. Most often, the course of action required to complete the process involves verification that the employee's Social Security Number is correct via the Social Security Verification System. A record of the date and time of this inquiry should be filed by the employer.
- 5) In some cases, Immigration and Customs Enforcement and the Social Security Administration may inform the employer that information cannot be corrected in the SSA system, or the issue was not resolved within 90 days of receipt of the no-match letter. When this occurs, the employer should have the employee complete and submit a new I-9 form within three business days as is required with new hires. Documentation presented by the employee on the new I-9 should conform to the I-9 document identity requirements. The employee will be required to submit identification that includes a photograph and other biographic data with the second I-9 form. The questionable social security number should not be used in this process. If a new Social Security Number or ID number is provided by the employee, the employer should proceed with caution and is encouraged to contact the local USCIS/ICE field office (Atlanta, GA field office serving Ga., S.C., and N.C. at 2150 Parklake Drive, Atlanta, GA 30345 and by phone at 1-404-331-2765) to obtain recommendations on how to continue with the I-9 process using a new Social Security Number or ID number.
- 6) If the employer takes all of the above steps and still cannot confirm that the employee is authorized to work, the employer risks civil and/or criminal prosecution by knowingly employing unauthorized workers.

<b>Table 1. General timeline for responding to a No-match letter.</b>	
<b>Action</b>	<b>Final Rule</b>
Employer receives letter from SSA or DHS indicating mismatch of employee, name and Social Security number.	Day 0.
Employer checks own records, makes any necessary corrections of errors, and verifies corrections with SSA or DHS.	0-30 days.
If necessary, employer notifies employee and asks employee to assist in correction.	0-90 days.
If necessary, employer corrects own records and verifies correction with SSA or DHS.	0-90 days.
If necessary, employer performs special I-9 procedure.	90-93 days.
<i>Taken from Federal Register. Vol. 72, No. 157, pp. 45611- 45624.</i>	

For a detailed description of procedures regarding responding to a no-match letter, the entire “Safe-Harbor Procedures for Employers Who Receive a No-Match Letter” rule can be accessed through the Federal Register (Vol. 72, No. 157, pp. 45611- 45624) at:  
<http://a257.g.akamaitech.net/7/257/2422/01jan20071800/edocket.access.gpo.gov/2007/pdf/E7-16066.pdf>

## **Penalties for Violating Department of Homeland Security and/or Immigration and Customs Enforcement Laws**

Many employers believe that by simply obtaining and filing an employee’s I-9 form and accompanying documents at the company level, they are in compliance with the rules and regulations of the Department of Homeland Security and Immigration and Customs Enforcement. *This is not true.* The Department of Homeland Security and Immigration and Customs Enforcement have clearly stated in their policy that it is the employer’s responsibility to maintain a legal workforce. The Social Security Administration, Department of Homeland Security, and Immigration and Customs Enforcement have instituted free programs that help confirm an employee’s immigration and working status. Therefore, they allow little leeway in the courts for employers who hire and retain illegal workers. Additionally, Department of Homeland Security and Immigration and Customs Enforcement have both stated in public hearings and press-releases that the investigation and prosecution of employers will be “ramped up.” Both agencies are petitioning the legislative branch to impose stiffer penalties in the future for violating the law.

Currently, there are both criminal and civil penalties for violating DHS and ICE regulations. Penalties may be applied to the same violation.

*Criminal Penalties:*

Any person or business that engages in a pattern or practice of violations shall be fined not more than \$3,000 for each unauthorized alien worker, imprisoned for no more than six months, or both.

*Civil Penalties:*

First offense	Not less than \$275 and not more than \$2,200 fine for each unauthorized alien.
Second offense	Not less than \$2,200 and not more than \$5,500 fine for each unauthorized alien.
More than two offenses	Not less than \$3,300 and not more than \$11,000 fine for each unauthorized alien.

## References

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**C 921**

**January 2008**

Issued in furtherance of Cooperative Extension work, Acts of May 8 and June 30, 1914, The University of Georgia College of Agricultural and Environmental Sciences and the U.S. Department of Agriculture cooperating.

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