

# The Agriculturalist Lawyer



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## Note From the Chair

By Allen H. Olson, Section Chair  
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**M**y apologies for the delay in getting this newsletter out. The June issue has now become the July issue. The big topic this month is the section's Second Annual Agricultural Law Conference to be held in Macon at the Mercer University law school on Sept. 21. Please read our conference chair's message below for details. Nowell Berreth has done a great job in putting the conference together. I urge all section members to attend and to bring some colleagues with you. We are also looking for a few section members to help with conference logistics. Please call Nowell if you would like to volunteer.

### Revised Bylaws and Nominated Officers

Under the section's revised bylaws, the section will hold its annual election of officers at the conference luncheon. The Executive Committee has proposed the following slate: chair, Beth Crocker; vice-chair, Nowell Berreth; and for secretary, Matt Matilla. Section members may make additional nominations by e-mail to me prior to Sept. 1. The new officers will take over immediately following the conference.

Anyone who hasn't been in a coma the last few months will know that immigration reform has been a "hot button" issue and one in which agriculture has a major interest. This month's newsletter features a timely article by Joe Whitley and Debra Bernstein titled "The ICE-Man Cometh: Crackdown of Immigration in the Meat Processing Industry." Joe is a partner with Alston & Bird, former general counsel for the Department of Homeland Security and former U.S. Attorney in the Middle and Northern Districts of Georgia. Joe will be our luncheon speaker at the Macon conference.

### Recruitment

The Agriculture Law Section is one of the Bar's smallest sections. Section membership continues to grow, but we still need more members if we want to sustain our current activities over the coming years. I would like to ask each section member to commit to getting just one additional person to join the section. Two or three telephone calls is all that will take. I appreciate your help.

### Agriculture Law Section Discussion List

Thanks to the hard work of Executive Committee member Samuel Prim, the section now has an Ag Law Discussion list. The address is <http://groups.yahoo.com/group/GA-Ag-Law/>. Please sign up and participate in agricultural law discussions on topics of your choice. The list will be promoted widely both within Georgia and nationwide and should prove to be a valuable resource that allows agricultural law practitioners to share ideas and information. Please e-mail Samuel at [hsprim3@graceba.net](mailto:hsprim3@graceba.net) if you have any questions or have difficulty signing on.

### Agricultural Law Conference

Please join Ag Law Section Secretary Nowell Berreth and other section members at this year's annual Section CLE Seminar and Luncheon. This year's event will take place at the Walter F. George College of Law at Mercer University in Macon on Sept. 21. Section Chair Allen Olson will give us a Farm Bill update. Jill Stuckey, director of Alternative Fuels for the Georgia Environmental Fuels Authority, will join others in a panel discussion on the hot topic of biofuels. Carbon credit opportunities will be discussed as well. We'll hear a luncheon address from Alston & Bird's Joe Whitley, former U.S. Attorney for the Northern and Middle Districts of Georgia, who also was the first general counsel of the U.S. Department of Homeland Security. He'll be addressing terrorist threats to the food supply system. Walter Kelley, Chapter 12 bankruptcy trustee for the Middle District of Georgia, will address recent developments in ag bankruptcy. Prof. Terry Centner of UGA will address land use issues and the conflicts that arise when people move into traditional agricultural areas. Prof. Susan Schneider, director of the Agricultural Law Program at the University of Arkansas Law School, will discuss food safety law. We'll also discuss immigration issues facing agribusinesses, and we'll serve Georgia meats and produce at the luncheon (with the growers there in booths outside the luncheon room to describe their operations). To register, contact ICLE at 800-422-0893 •

# News, Notes and Cases

Most new Georgia legislation became effective July 1. Several laws of interest to agriculture were enacted by the General Assembly.

## **Act 150/SB 263**

Changes certain provisions relating to district supervisors for soil and conservation districts to provide for staggered terms and to change provisions regarding vacancies.

## **Act 25/SB 165**

Ratifies and confirms the Agricultural Commodity Commissions for Soybeans, Canola, Pecans, Corn, and Vegetables. The Act further provides that prior to April 30, 2009, and every three years thereafter, balloting shall be conducted to determine whether any of the existing commissions will continue to exist and operate under this law.

## **Act 53/HB 122**

Changes the labeling requirements for commercial feeds to exclude equine feed from those feeds for which collective terms of ingredients may be used or which may be exempted from certain requirements.

## **Act 244/SB 220**

Changes certain provisions relating to agricultural warehouse receipt requirements, obtaining printed forms, and the use of electronic receipts.

## **Act 260/SB 226**

Requires that persons have certain qualifications in order to engage in the public practice of soil science and requires the Department of Natural Resources to accept evaluations and reports of qualified soil scientists for certain purposes.

## **Act 27/SB 176**

Requires the State Forestry Commission to submit to the General Assembly annual reports showing the condition of the state's forestry resources.

## **Act 336/HB 433**

Amends the Georgia Meat Inspection Act and its licensing requirements. It eliminates the licensing requirement for dairy processing plants and exempts meat and poultry processing plants operating under a federal grant of inspection from the USDA Food Safety Inspection Service.

## **Act 36/HB 112**

Eliminates fees for licences for milk products, cream

testers, and the manufacture or bottling of soft drinks or soft drink syrup. The Act also requires that manufacturers and bottlers obtain a food sales establishment license from the Commissioner of Agriculture.

## **Act 35/HB 100**

Extensively revises state laws regarding shrimp and shrimping.

## **Act 335/HB 424**

Among other things, extends the definition of the term "farm laborer" for purposes of workers' compensation.

## **Act 144/HB 101**

Revises provisions concerning the treatment of agricultural facilities and operations and forest land as nuisances by changing the definition of a forest products processing plant to include a commercial operation that manufactures, packages, labels, distributes or stores any building material made from gypsum rock.

## **Act 333/HB 321**

Changes certain eligibility requirements with respect to conservation use assessment.

## **Act 33/HB 78**

Sets forth certain additional acts which shall not constitute a breach of a conservation use covenant.

## **Act 234/HB**

Provides for a temporary sales tax exemption on tangible personal property sold to or used in the construction of alternative fuel facilities for the production of ethanol, biodiesel and butanol.

## **Act 49/HB 101**

Provides that, with some exceptions, agricultural or food system records, data, or information that is considered a part of the critical infrastructure and data or information collected, recorded, or otherwise obtained for the purposes of the national animal identification system shall not be subject to disclosure. ●

# The ICE-Man Cometh: Crackdown of Immigration in the Meat Processing Industry

By Joe D. Whitley<sup>1</sup> and Debra D. Bernstein<sup>2</sup>

Immigrations and Customs Enforcement (ICE) has recently enhanced its efforts to prosecute the unlawful employment of aliens through criminal investigations, prosecutions and asset seizures. This new strategy is aimed at deterring employers from hiring illegal aliens, promoting national security, and ensuring fair labor standards. In 2006 alone, ICE issued 3,667 administrative arrests and 718 criminal arrests to illegal aliens during worksite enforcement investigations.<sup>3</sup> In the criminal arena, ICE pursues charges of knowingly hiring illegal aliens, as well as harboring illegal aliens and money laundering.

In recent years, ICE has placed a particular focus on investigations in the meat processing industry, as this industry traditionally employs a high number of Hispanic workers. In 2003, Tyson Foods, the world's largest meat company, was acquitted of federal charges that it conspired to hire illegal immigrant workers. The company is also defending a civil lawsuit by former and current employees who allege that Tyson depressed wages by hiring illegal immigrants. This lawsuit is scheduled to go to trial in March 2008.<sup>4</sup>

More recently, on Dec. 12, 2006, more than 1,297 illegal aliens were arrested at Swift meat processing facilities in six states during an enforcement operation that was the result of an investigation of work-related identity theft. A review of the company's employment eligibility forms, also referred to as I-9 Forms, at Swift facilities nationwide revealed that 30 percent were suspected as being fraudulent. The company has not yet been charged with any wrongdoing, but the raids had a serious economic impact on the company.<sup>5</sup> Swift was forced to temporarily cease operations at the plants following the raids.<sup>6</sup> Ironically, Swift was fined \$2.5 million by the Department of Justice in 2002 for "overzealous" documentation verification procedures.<sup>7</sup> Companies thus have to walk the fine line between complying with both immigration and discrimination labor laws.

In September 2006, federal agents found and deported more than 125 illegal immigrants working at Crider Poultry in Stillmore, Ga., and living in the surrounding area, according to news accounts. The agents went door-to-door looking for illegal immigrants.<sup>8</sup> And, earlier

this year, federal agents arrested 21 workers on immigration charges at Smithfield Foods Inc., the world's largest slaughterhouse. About 10 percent of the plant's 5,000 employees were identified as having unverifiable Social Security identification documents. The day after the raids, the workforce was substantially diminished as many workers stayed away.<sup>9</sup>

It perhaps goes without saying that companies should be careful to comply with the immigration laws. At a minimum, the employer should observe a routine process when receiving a potential employee's I-9 Employment Eligibility Verification Form. Eileen Scofield, of Alston & Bird LLP, has constructed the following checklist:

1. The employee must complete, sign and date Part One of the Employment Eligibility Verification (Form I-9) and tender qualifying identification and verification documents to the employer. These documents must be tendered either at the time the application for employment is made or at the time of hire. Employees must complete part one of the Form I-9 before beginning work.
2. The employer, through its agents, must examine the employee's documents, accurately record identification numbers and expiration dates, and sign and date the Part Two employer attestation provision of the Form I-9. The employer must complete Part Two of the Form I-9 within three business days of the date when an employee actually begins to provide services or labor for a wage or other remuneration. The employee's start date must be included on Part Two.
3. Generally, the I-9 verification process is completed with steps one and two, completion of the Part One and Part Two. If though a situation arises where the employer believes that an employee is authorized to work in the United States, but the employer is not familiar with the document, the legal standard is "does the document appear to be validly issued?" Also, the document must relate to the person presenting the document (does the photo or description look like the person?). What would a reasonable person think regarding the validity of the document or the relationship to the

- person presenting the document? Sometimes an employer may request verification or confirmation of the form of the document from the issuing agency. This verification procedure should be applied only to those cases, if any, where there is a valid question with regard to the document.
4. If, at any time, the issuing authority or the USCIS, or other government agency, formally notifies the employer or its agents that an employee is not authorized for employment, the employer should terminate that unauthorized employee immediately.
  5. Once the employee has completed Part One and the employer has completed Part Two of the I-9 form, the original completed I-9 form will be maintained in the I-9 notebook. This notebook will contain the I-9 forms, in alphabetical order, for each and every current employee of the employer hired after Nov. 7, 1986. In addition, the employer must retain an employee's Form I-9 for three years after the date of hire, or one year after the date of termination of the employee, whichever occurs later. Since IRCA does not require employers to copy the documents presented by the employees during the verification procedures, in order to reduce the paperwork required of the administrative office, it is not necessary to make copies of documents presented by the employee for verification, but again, it is essential that all of the necessary information be completed in the appropriate blanks on the Form I-9.
  6. Day laborers, those hired for less than a three-day period, must be verified before beginning to work. The procedure for verifying the employment authorization of day laborers is the same as for other employees, and the employee and employer must be sure to complete the I-9 form prior to commencement of employment. ●

PRESS, Dec. 12, 2006.

7. See [www.usdoj.gov/opa/pr/2002/November/02\\_crt\\_630.htm](http://www.usdoj.gov/opa/pr/2002/November/02_crt_630.htm).
8. See Mary Lou Pickel, Homeless, Felons Fill Poultry Jobs; Immigration Raids Slash Number of Workers At Plant in Stillmore, THE ATLANTA JOURNAL-CONSTITUTION, Nov. 26, 2006.
9. See Jennifer Plotnick, Immigration Officials to Deport Illegals Arrested in Smithfield Raid, THE FAYETTE OBSERVER, Jan. 26, 2007.

#### Endnotes

1. Joe Whitley is a partner in the Legislative and Public Policy Group at Alston & Bird, LLP where he specializes in white collar criminal defense and government investigations. Joe was General Counsel for the Department of Homeland Security, Acting Associate Attorney General, and U.S. Attorney in the Middle and Northern Federal Districts of Georgia.
2. Debra Bernstein is a partner in the Litigation and Trial Practice Group at Alston & Bird LLP where she specializes in Antitrust, commercial litigation and government investigations.
3. See [www.ice.gov/pi/news/factsheets/worksite.htm](http://www.ice.gov/pi/news/factsheets/worksite.htm).
4. See Bill Poovey, Tyson Foods Illegal Hiring Lawsuit Set for March 2008 Trial, THE ASSOCIATED PRESS STATE AND LOCAL WIRE, Jan. 29, 2007.
5. See [www.ice.gov/pi/news/factsheets/worksite\\_operations.htm](http://www.ice.gov/pi/news/factsheets/worksite_operations.htm).
6. See ID Thieves Targeted in Immigration Raids, ASSOCIATED