

APR 28



U.S. Department Labor
Employment and Training Administration

OMB Control No. 1205-0134
Expiration Date: November 30, 2012

Agricultural and Food Processing Clearance Order Form 790
Pedido de Empleados para Agricultura y Procesamiento de Alimentos

EDSU

1. Employer's Name and Address (Number, Street, City, State, and Zip Code)/
Nombre y Dirección de Empleador (Numero, Calle, Ciudad, Estado y Código Postal)

Zehr Farms Inc.
6178 Jacques Road
Lockport, NY 14094

Attn: Ernest Zehr

Telephone number/Teléfono: (716)778-9872 Fax: (716)778-0502

Nos. 4 - 8 for STATE USE ONLY Números 4 a 8 para USO ESTATAL	
4. Industry Code/Código Industrial 111219	5. Job Order No. /Num. de Orden de Empleo NY0979269
6. Occupational Title and Code /Título Ocupacional y Código <i>Farmworkers & Labourers, Crop 45-2092.02</i>	
7. Clearance Order Issue Date / Fecha de Trámite MAY 03 2011	
8. Job Order Expiration Date / Fecha de Expiración 9-7-11	

9. Anticipated Period of Employment / Periodo Anticipado de Empleo
From/ Desde: 07/04/2011 To/Hasta: 11/11/2011

2. Location and Direction to Work Site/ Ubicación y Dirección al Lugar de Trabajo
6178 Jacques Road, Lockport, NY, Niagara County. 2 1/2 miles north of the intersection of Routes 78 and 104.

(If additional space is needed, use separate sheet of paper/ Si necesitas más espacio, utilices otra hoja de papel)

10. No. of Workers Requested / Num. de Trabajadores Solicitados
15

11. Anticipated Hours of Work per Week/Horas Anticipadas de Trabajo por Semana. Total: 40

Sunday / Domingo 0 Monday / Lunes 7
Tuesday / Martes 7 Wednesday / Miércoles 7
Thursday / Jueves 7 Friday / Viernes 7
Saturday / Sábado 5

12. Collect Calls Accepted from/ Aceptan Llamadas por Cobrar de:

Employer / Empleador Yes/Si No
Local Office / Oficina Local Yes/Si No

3. Location and Description of Housing / Dirección y Descripción de la Vivienda
6178 Jacques Road, Town of Newfane, Niagara County. 2 1/2 miles north of the intersections of Routes 78 and 104. Campsite consists of two cinder block barracks houses with 8 bedrooms, 5 kitchens and dining rooms, 6 bathrooms, and a sitting room. Municipal water and heat. Total occupancy of both buildings is 25.

6178 Jacques Camino el Pueblo de Newfane, Condado de Niagara. 2 /12 millas al norte de la interseccion de las rutas 78 y 104. El camping consta de dos bloques de ceniza cuarteles casas con 8 cuartos de bano, 5 cocinas y salas de comedor, 6 banos, y una sala de estar. El aqua municipal y el calor. La ocupacion total de ambos edificios es de 25.

(If additional space is needed, use separate sheet of paper / Si necesitas más espacio, utilices otra hoja de papel)

13. Board Arrangements / Arreglo de Alojamiento

Workers must purchase and prepare their own food. Employer will provide transportation to assure workers access to stores where they can purchase groceries and/or incidentals. Employer furnishes dishes, cooking utensils and convenient kitchen and cooking facilities.

Los trabajadores deben comprar y deben preparar su propio alimento. El empleador proporcionara transporte para asegurarse de que trabajadores conseguir acceso a a tiendas donde pueden comestibles de compras y/o imprevistos. El empleador proporciona platos, cocinando utiles y cocina conveniente y facilidades de cocina.

14. Referral Instructions / Instrucciones sobre cómo Referir Candidatos

Call employer for appointment - Ernest Zehr (716)778-9872. All applicants should receive full disclosure prior to referral. Complete job order available on the NYS-DOL website or at any One- Stop or DOL office.

Llame al empleador para su nombramiento - Ernest Zehr (716)778-9872. Todos los solicitantes deben recibir informacion completa antes de la remision. Orden de trabajo completa disponible en el sitio web del NYS-DOL o en cualquier One Stop o en la oficina del DOL.

15. Job Specifications / Especificaciones del Trabajo

Workers must be physically able to plant, hand cultivate and harvest vegetables which requires extended periods of bending. Picked vegetables are placed in a variety of appropriate containers, without dropping, scratching or bruising. Workers will be instructed to selectively pick/pack mature produce according to size, color and other USDA grade standard factors and exercise care so to not injure immature produce that will be harvested at another time. Requires heavy lifting. Workers may drive tractors to move wagons in the field. All applicants are required to have one month experience in the duties outlined in this job order.

Los trabajadores deben estar en condiciones fisicas de la planta, cultiva a mano, y la cosecha de legumbres, que requiere largos periodos de flexion. Recopio las verdoras se colocan en una variedad de recipientes adecuados, sin perder, aranzos a hematomas. Los trabajadores se encargaran de recoger selectivamente/paquete maduro producir segun el tamano, color y otros factores del USDA calidad estander y tenga cuidado para no herir a producir inmaduras que se recogerá en otro momento. Requiere levantar objetos pesados. Los trabajadores pueden conducir tractores para mover los vagones en el campo. Todos los solicitantes estan obligados a tener una experiencia de mes en las tareas mencionadas en esta orden de trabajo.

(If more space is needed, summary of Material Job Specifications in ENGLISH can be included in separate document, and may also be included in SPANISH)

16. Wage Rates, Special Pay Information and Deductions / Tarifa de Pago, Información Sobre Pagos Especiales y Deducciones (Rebajas)

Crop Activities	Hourly Wage	Piece Rate / Unit(s)	Special Pay (bonus, etc.)	Deductions	Yes/Si	No	Pay Period Periodo de Pago
Cultivos	Salario por Hora	Pago por Pieza / Unidad(es)	Pagos Especiales (Bono, etc.)	Deducciones			
Cabbage -HARVEST	\$ 10.25	\$ N/A		Social Security / Seguro Social	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Weekly / Semanal
Sweet Corn HARVEST	\$ 10.25	\$ N/A		Federal Tax Impuestos Federales	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Cucumbers HARVEST	\$ 10.25	\$ N/A		State Tax Impuestos Estatales	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Bi-weekly / Quincenal
Bell Peppers HARVEST	\$ 10.25	\$ N/A		Meals / Comidas	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Continued	\$	\$	See Att	Other (specify)/ Otro (especifica)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Other / Otro <input type="checkbox"/>

More Details About the Pay / Mas Detalles Sobre el Pago

(If additional space is needed, use separate sheet of paper. / Si necesitas más espacio, utilice otra hoja de papel)

17. Transportation Arrangements / Arreglos de Transportación

All transportation is arranged by Florida East Coast Travel and the employer at no cost to the workers.

Todo el transporte esta organizado por la costa este de Florida de viaje y el empleador, sin costo para los trabajadores.

Attachment #1 Item 17 a-c

(If additional space is needed, use separate sheet of paper. / Si necesitas más espacio, utilices otra hoja de papel)

18. Is it the prevailing practice to use Farm Labor Contractors (FLC) to recruit, supervise, transport, house, and/or pay workers for this (these) crop activity (ies)? ¿ Es la práctica habitual de usar Contratistas de Trabajo Agrícola para reclutar, supervisar, transportar, dar vivienda, y/o pagarle a los trabajadores para este(os) tipo(s) de cosecha(s)? Yes / Si No

If you have checked yes, what is the FLC wage for each activity? / Si contesto "Si," cual es el salario que le pagas al Contratista de Trabajo Agrícola por cada actividad?

19. Unemployment Insurance provided? Seguro de Desempleo? Yes/Si No

20. Workers' compensation insurance provided? Se le provee seguro de compensación/indemnización al trabajador: Yes/Si No

21. Are tools provided at no charge to the workers? / Se les proveen herramientas sin costo alguno a los trabajadores? Yes/Si No

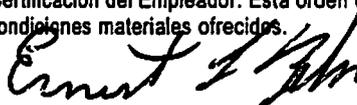
22. List any arrangements which have been made with establishment owners or agents for the payment of a commission or other benefits for sales made to workers. (If there are no such arrangements, enter "None") / Enumere todos los acuerdos o convenios hechos con los propietarios del establecimiento o sus agentes para el pago de una comisión u otros beneficios por ventas hechas a los trabajadores. (Si no hay ningún acuerdo o convenio, indique "Ninguno")

None/Ninguno

23. List any strike, work stoppage, slowdown, or interruption of operation by the employees at the place where the workers will be employed.
(If there are no such incidents, enter "None") / Enumere toda huelga, paro o interrupción de operaciones de trabajo por parte de los empleados en el lugar de empleo. (Si no hay incidentes de este tipo, indique "Ninguno")
None/Ninguna

24. Address of Order Holding Office (include Telephone number)/Dirección de la Oficina donde se radica la oferta (incluya el número de teléfono)
NYS-DOL One Stop Office nearest you

25. Name of Local Office Representative (include direct dial telephone number) / Nombre del Representante de la Oficina Local (Incluya el número de teléfono de su línea directa)
NYS-DOL One stop Office nearest you

26. Employer's Certification: This job order describes the actual terms and conditions of the employment being offered by me and contains all the material terms and conditions of the job.
Certificación del Empleador: Esta orden de trabajo describe los términos y condiciones del empleo que se le ofrece, y contiene todos los términos y condiciones materiales ofrecidos.

Employer's Signature & Title/ Firma y Título del Empleador
Date: 4-25-11

READ CAREFULLY, In view of the statutorily established basic function of the Employment Service as a no-fee labor exchange, that is, as a forum for bringing together employers and job seekers, neither the ETA nor the State agencies are guarantors of the accuracy or truthfulness of information contained on job orders submitted by employers. Nor does any job order accepted or recruited upon by the One-Stop Career Center constitute a contractual job offer to which the One-Stop Career Center, ETA or a State agency is in any way a party.
LEA CON CUIDADO, En vista de la función básica del Servicio de Empleo establecida por ley, como una entidad de intercambio laboral sin comisiones, es decir, como un foro para reunir a los empleadores y los solicitantes de empleo, ni ETA ni las agencias del estado pueden garantizar la exactitud o veracidad de la información contenida en las órdenes de trabajo sometidas por los empleadores. Ni ninguna orden de trabajo aceptado o contratado en el Centro de Carreras (One-Stop Career Center) constituyen una oferta de trabajo contractuales a las que el One-Stop Career Center, ETA o un organismo estatal es de ninguna manera una de las partes.

Public Burden Statement
The public reporting burden for responding to ETA Form 790, which is required to obtain or retain benefits (44 USC 3501), is estimated to be approximately 60 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and reviewing the collection. The public need not respond to this collection of information unless it displays a currently valid OMB Control Number. This is public information and there is no expectation of confidentiality. Send comments regarding this burden estimate or any other aspect of this collection, including suggestions for reducing this burden, to the U.S. Department of Labor, Migrant and Seasonal Farmworker Program, Room S4209, 200 Constitution Avenue, NW, Washington, DC 20210.

**New York State Department of Labor
FORM ETA 790 Attachment #1
Terms and Conditions/Clarifications and Assurances**

Job Order Number: NY0979269

A: CLARIFICATION OF ITEMS ON FORM ETA 790

Item 3: Housing

- a. Housing and utilities are provided at no cost to H-2A workers and those workers in corresponding employment who are unable to return to their place of residence the same day.
- b. Housing beds, bedding and mattresses will be furnished at no cost to the workers.
- c. Housing will be clean and meet the applicable federal and State housing standards.
- d. Workers will be responsible for maintaining housing and surrounding areas in a neat, clean manner.

Item 13: Board Arrangements

- a. Employer **will not** provide three meals per day. Workers must buy and prepare own food.
- b. Employer **will** furnish free dishes, cooking utensils and convenient kitchen and cooking facilities.
- c. Employer **will** provide transportation to assure workers access to stores where they can purchase groceries and/or incidentals and/or medical necessities.

Item 14: Referral Instructions

Workers hired under this job order will be required to show evidence of right to work in the United States of America.

Due to health and safety requirements, applicants must be able to speak and understand basic English.

Item 15: Job Specifications

- a. Workers must be able to demonstrate that they are physically able to perform the work as described.
- b. Employer may terminate worker with timely notification to the NPC and DHS, if the worker:
 - 1) Refuses, without cause, to perform work for which the worker was recruited and hired;
 - 2) Commits serious acts of misconduct; or
 - 3) Fails, after completing any training or break-in period, to reach production standards
 - 4) Abandons Job ("Job Abandonment") – is absent for five consecutive previously scheduled days without prior notification to employer.

Item 16: Wage Rates, Special Pay Information and Deductions

Wage Rates: Continued

<u>Crop Activity/ Cultivos</u>	<u>Hourly Wage Salario por Hora</u>	<u>Piece Rate/Unit(s) Pago por Pieza/Unidad(es)</u>	<u>Special Pay (bonus, etc.) Pagos Especiales (bono, etc.)</u>
Tomatoes- Harvest	\$10.25	N/A	None
General Field Work	\$10.25	N/A	None
Packing Produce	\$10.25	N/A	None

The worker may perform any combination of tasks involved in planting, cultivating, and harvesting. Alternative/additional work: Trimming and packing of produce, general field work consisting of pulling plants for transplanting, transplanting, field hoeing, weeding, setting and moving irrigation pipe, some equipment operation, hand loading and unloading wagons and trucks.

- a. In the event the DOL promulgates a new AEWB during the recruitment of work contract period which is lower than the current AEWB at the time of application, this lower AEWB will become the guaranteed minimum.
- b. If a piece rate is offered on the Job Order and if piece rate earnings for total hours of work at a piece-rate during a pay period do not result in average hourly earnings equal to the guaranteed minimum hourly rate, the worker will receive make-up pay to the guaranteed minimum wage rate.
- c. An hourly rate of not less than the Federal or state Minimum, the current AEWB or the employer's hourly rate, The prevailing wage, or the agreed upon collective bargaining wage, which ever is highest, is guaranteed to the worker for the period of employment.
- d. In New York State, the only deductions that can be taken from worker pay are:
 1. Those required by law, such as Social Security, income tax, and garnishment of wages;
 2. Those that benefit workers and are authorized in writing, such as life insurance, or a savings account

Any other deductions are illegal. This includes deductions:

- (or deposits) for tools, boots, raincoats, or uniforms necessary for the job
 - As fines or penalties for being late, misconduct, or quitting without giving notice
 - For cash shortages
 - For spoilage or breakage
 - For damages or losses of any kind
- e. The employer guarantees to offer employment for a minimum of $\frac{3}{4}$ ("three fourths guarantee") of the hours in the workdays during the period of the contract, and all extensions thereof. This guarantee begins with the first workday after the worker's arrival at the place of employment and ends on the date specified on the job order or extensions thereof. In Act of God terminations, the $\frac{3}{4}$ guarantee period ends on the date of termination. Workers will not be required to work more than the number of hours specified in the job order for a workday or on their Sabbath or federal holidays to meet

this guarantee. The worker's average hourly earnings will be used under this guarantee where wages are paid on a piece-rate basis. Workers who are terminated for cause or who voluntarily abandon their job are not entitled to this guarantee if employer provides timely notification to the Chicago National Processing Center (CNPC) and Department of Homeland Security (DHS).

- f. Workers with school age children who have migrated with such children and who depart in time to return home for the beginning of the school year shall be paid, in addition to the basic wages, any bonus or other incentive payments or other expenses to which they would be entitled had they stayed the entire job order period.
- g. The employer will provide workers referred through the interstate clearance system **40** hours of work for the week beginning with the anticipated date of need, unless employer has amended the date of need by notifying the local office no later than 10 business days before the date of need. If the employer fails to notify the NYS Department of Labor office then employer shall pay an eligible worker referred through the clearance system **\$410.00 Gross (\$10.25 per 40 hours)** for the first week starting with the originally anticipated date of need or **\$82 per day if partial week**. If worker referred fails to notify the NYS Department of Labor (preferably the order-holding office) of continued interest in the job at least 5 days before date of need, worker will be disqualified from this assurance. Employer will require worker to perform alternative work if the guarantee cited in this section is invoked.

Alternative work: planting, cultivating, harvesting, packing, pulling plants for transplanting, transplanting, field hoeing, weeding, setting and moving irrigation pipe, some equipment operation, hand loading and unloading wagons and trucks.

- h. Employer will not pay overtime
- i. Employer will maintain adequate payroll records. Workers will be paid weekly on **Friday** for work through the previous **Wednesday**.

Item 17: Transportation

- a. Employer agrees to reimburse inbound transportation and subsistence expenses (minimum \$10.73 per day without receipts minimum, maximum of \$46.00 per day with receipts) to each worker, or any person, government agency or private organization which, on behalf of the worker has paid or advanced such transportation and subsistence expenses, from the place from which the worker has come to work for the employer, whether in the U.S. or abroad to the place of employment, after the worker has completed 15 consecutive calendar days of employment or 50% of the stipulated period of employment, whichever is shorter, from initial date of need or from the day after actual arrival of worker if later than the stated date to report.
- b. Employer will provide or pay the cost of return transportation and subsistence to each worker who completes the employment period, or who is terminated for medical reasons, or as the result of an Act of God, from place of employment to place of recruitment, except if the worker is not returning to his place of recruitment and had subsequent employment with an employer who will bear transportation expenses, in which case this employer only pays for the transportation to the next job.
- c. Employer will not be responsible for providing return cost of transportation and subsistence from place of employment to place of recruitment if the worker voluntarily abandons the job or is terminated for cause and employer provides timely notification to the NPC and DHS.
- d. The amount of the transportation payment will be equal to the most economical and reasonable similar common carrier transportation charges for the distance involved. All

transportation provided by the employer will be by common carrier or other transportation facilities which conform to the applicable regulations of the Interstate Commerce Commission or the United States Department of Labor. If requested by the worker, the employer will assist in making transportation arrangements. The amount of daily subsistence will be in accordance with current rates published in the *Federal Register* (for workers with and without receipts).

- e. Employer will provide transportation, at no cost to the worker, from the employer provided housing to the actual work site and return at the end of the day.

Item 20: Workers' Compensation

Employer's proof of Workers' Compensation Insurance coverage will be provided to the Chicago Processing Center before certification is granted and to the worker upon arrival at point of hire.

Item 21: Tools and Equipment

The employer will furnish without cost all tools, supplies, or equipment required in the performance of work.

B: OTHER CLARIFICATIONS AND ASSURANCES

1. The employer agrees to abide by the regulations at 20 CFR 653.501 and 20 CFR 655.135.
2. The employer will expeditiously notify the State agency by telephone immediately upon learning that a crop is maturing earlier or later, or that weather conditions, over-recruitment, or other factors have changed the terms and conditions of employment.
3. Outreach workers shall have reasonable access to the worker in the conduct of outreach activities pursuant to 20 CFR 653.501(xvi).
4. Where appropriate, the employer is certified in the use and application of pesticides per Federal Environmental Protection Agency and State Department of Environmental Conservation requirements. The employer assures that workers hired under this order who will be handling pesticides will be provided appropriate training.
5. The employer will provide to an H-2A worker no later than the time at which the worker applies for the visa, or to a worker in corresponding employment no later than on the day work commences, a copy of the work contract between the employer and the workers in a language understood by the worker
6. The employer assures that if acting as a farm labor contractor (FLC) or farm labor contractor employee (FLCE) on the order, he has a valid federal FLC certificate or FLCE identification card.
7. The applicant assures that he/she complies with NYS registration requirements. Farm labor contractors anticipating employment contracting with growers or processors in New York State, growers or processors in New York State who use the services of a farm labor contractor, and growers or processors in New York State who, without using the services of a farm labor contractor, are responsible for bringing into the state five or more out-of-state migrant farm or food processing workers, including H-2A workers, are required to register with the New York State Department of Labor and pay a registration fee in addition to any other fees that may be applicable.

Employer Signature  4/25/11