

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

U.S. Department of Labor
Employment and Training Administration
 OMB Approval No. 1205-0134, Expires 11/30/2012

1. Employer's Name and Address (Number, Street, City, State, Zip Code, and telephone number) / Nombre y Dirección del Empleador (Numero, calle, ciudad, código postal y teléfono) Wagner Farms, Inc. (Peter Wagner) 2672 Lockport Rd. Sanborn, NY. 14132 (716) 731-4440	Numbers 4, 5, 6, 7 and 8 for State use only.	
	4. Industry Code/Código de Industria 111331	5. Job Order #/No. Orden de Empleo NY0982785
2. Location and Direction to Work Site/Dirección del lugar de trabajo 2672 Lockport Road, Sanborn, New York. State route 78 to Robinson Road. West 10.5 miles, Wagner Farms on South side of road. Robinson road becomes Lockport Road Ruta estatal 78 a Robinson Rd. Al oeste 10.5 millas (aprox. 18 km) el rancho esta al lado sur del camino. Robinson Rd. se convierte en Lockport Rd.	6. Occupational Title and Code / Título Ocupacional y Código <i>Farmworkers Laborers, Crop 45-2092.02</i>	
	7. Clearance Order Issue Date / Fecha de Tramite JUN 03 2011	8. Job Order Expiration Date / Fecha de vencimiento 9/16/11
3. Location and Description of Housing / Dirección y Descripción de la Vivienda 2672 Lockport Road, Sanborn, New York. Housing consists of one 14' X 70' mobile home with 3 bedrooms, kitchen, dining area, and bathroom with the capacity for 3 workers. La casa consiste en una casa trailer de 14' X 70' y tiene 3 recamaras, cocina, comedor y baño con capacidad de 3 trabajadores.	9. Anticipated Period of Employment / Periodo Anticipado de Empleo From/ Desde: 8/01/2011 To/Hasta: 11/01/2011	
	10. No. of Worker's Requested / No. de Trabajadores Pedidos 3	
(If additional space is needed, use separate sheet of paper). / Si necesita más espacio, utilice documento adicional.)	11. Anticipated Hours of Work per Week / Horas Anticipadas de Trabajo por Semana. Total: <u>48</u> Sunday / Domingo <u>0</u> Monday / Lunes <u>8</u> Tuesday / Martes <u>8</u> Wednesday / Miércoles <u>8</u> Thursday / Jueves <u>8</u> Friday / Viernes <u>8</u> Saturday / Sábado <u>8</u>	
	12. Collect Calls Accepted from / Se Aceptan Llamadas a Cobrar de: Employer / El Empleador Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Local Office / La Oficina Local Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	

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13. Board Arrangements / Arreglo de Alojamiento Workers buy and prepare their own food. Weekly trips to a grocery store provided at no cost to workers. Trabajadores de comprar y preparar sus propios alimentos. Semanal de viajes a una tienda de comestibles proporcionan sin costo alguno para los trabajadores.

14. Referral Instructions / Instrucciones para el Referimiento de Candidatos Call employer for appointment. 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. Peter Wagner (716) 731-4440. Llame al empleador para su nombramiento. Todos los solicitantes deben recibir información completa y antes de acudir. orden de trabajo completa disponible en la página web del estado de NY-DOL o en cualquier otro One-Stop o la oficina DOL. Peter Wagner (716) 731-4440

15. Job Specifications / Descripción del Trabajo: During the anticipated period of employment, the primary activity on this farm will be the hand harvest of apples. Other harvesting fruit or vegetables (prunes, squash, pumpkins, and sweet corn) other job duties, if required, are shown on attachments #1 Apple harvest productivity is measured in 1 & 1/8 bushel boxes and must be at least 4 bins per day for fresh market apples and 5 bins per day for juice. Workers must be physically able to pick fruit, most of which is done from ladders with lower branches being picked from the ground. Picked fruit is placed in a metal-framed, canvas-covered picking bucket with canvas straps that slip over the head and rest on the shoulders. The bucket when filled weighs up to 40 lbs. And is emptied into bulk boxes known as "tote boxes". Each tote box has a capacity of 20 (twenty) 1 & 1/8 bushel boxes. Workers are required to handle ladders up to 24 feet long and weighing about 2 lbs. Per foot. In apple harvest work, workers may be instructed to selectively pick mature fruit according to size, color, and grade standards factors. All applicants must have 1 month experience in the jobs described in this job order.

Durante el periodo anticipado de empleo, la actividad principal en este rancho es la cosecha a mano de manzanas. Otras cosechas de fruta y vegetales (ciruelas, diferentes clases de calabazas y maiz dulce. La productividad de manzanas se mide en 1 y 1/8 canastos y deber de producir por lo menos 4 cajas al día de fruta manzana fresca para el mercado y 5 cajas al día de fruta el jugo de la misma. Los trabajadores deben de estar físicamente habiles para la cosecha de la fruta la cual se hace con escaleras y ramas bajas desde el suelo. La fruta cosechada es puesta en cestos con marco de metal y cubiertos de lona. Los tirantes de lona se deslizan por la cabeza y reposa sobre los hombros. El cesto pesa hasta 40 lbs. (aprx.20 kgs.) y se vacia en cajas recolectoras con una capacidad a 20 cestos de 1 y 1/8. Se requiere que los trabajadores manejen escaleras que miden hasta 24 pies de altura (aprx.4.5 mts) y pesan como 2 lbs por pie (1 kg por 30 ctrms). Puede que se le instruya al trabajador cosechar fruta de acuerdo al tamaño, color y otros factores reglamentarios. 1 mese de experiencia en los trabajos descritos 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 / Cultivos	Hourly Wage	Piece Rate / Unit(s)	Special Pay (bonus, etc.)	Deductions /	YES / SI	NO	Pay Period / Periodo de Pago
	Salario por Hora	Pago por Pieza / Unidad(es)	Pagos Especiales (Bono, etc.)	Deducciones			
Apples / Fresh Market	\$10.25	\$0.850 / Bu.		Social Security / Seguro Social	X		Weekly / Semanal
Apples/Juice	\$10.25	\$0.500 / Bu.		Federal Tax Impuestos Federales	X		X
Pears	\$10.25	\$.		State Tax Impuestos Estatales	X		Bi-weekly / cada 2 semanas
Prunes	\$10.25	\$		Meals / Comidas		X	N/A
Sweet Corn	\$10.25	\$		Other (specify)/ Otro		X	Other / Otro N/A

More Details About the Pay / Mas Detalles Sobre el Pago (If additional space is needed, use separate sheet of paper. / Si necesita más espacio, utilice documento adicional.)

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 está organizado por Florida East Coast Viajes y el empleador, sin costo para los trabajadores.
 (If additional space is needed, use separate sheet of paper. / Si necesita más espacio, utilice documento adicional.)

18. Is it the prevailing practice to use Farm Labor Contractors (FLC) to recruit, supervise, transport, house, or pay workers for this (these) crop activity(ies)? Es la costumbre en el área de usar Contratistas Agrícolas para reclutar, supervisar, transportar, dar vivienda, o pagarle a los trabajadores en estos tipos 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 paga al Contratista Agrícola por cada actividad?

19. Unemployment insurance provided? Seguro de Desempleo? Yes No
 20. Workers' compensation insurance provided? Indemnización por accidente de trabajo: Yes No
 21. Are tools provided at no charge to the workers? / Se le proveen las herramientas de trabajo a los trabajadores sin cargo alguno? Yes 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") / Indique todo acuerdo o convenio con los propietarios del establecimiento o sus representantes con respecto al 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") / NONE
 Enumere toda huelga, paro o interrupción de las operaciones por parte de los empleados en el lugar de empleo. (Si no hay, indique "Ninguno") Ninguno

24. Address of Order Holding Office (include Telephone number)/Dirección de la Oficina donde se Radica la Oferta (incluya numero de teléfono) NYS-DOL, Office of WOTC/FLC, Building 12, Room 200, State Campus, Albany, New York 12240
 25. Name of Local Office Representative (include direct dial telephone number) / Nombre del Representante de la Oficina Local (Incluya numero de teléfono) NYS-DOL, Office of WOTC/FLC, Building 12, Room 200, State Campus, Albany, New York 12240

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 de trabajo, y contiene todos los materiales, términos, y condiciones ofrecidos.
 Employer's Signature & Title/ Firma y Título del Empleador
Peter J. Wagner Lee

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.

Public Burden Statement Public reporting burden for the ETA Form 790 is estimated to be approximately 60 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and reviewing the collection. Respondents' obligation to reply to these requirements is obligatory by 20 CFR 653.500 and 44 U.S.C. 3501. Persons are not required to respond to this collection of information unless it displays a currently valid OMB Control Number. Public reporting burden for this collection is estimated to average 8 minutes per response, including the time to review instructions, search ng data sources, gather and maintain the data needed, and complete and review the collection of information. 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 S4208, 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: NX.0982785

Employer Wagner Farms

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 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

The employer will offer, advertise in its recruitment, and pay a wage that is the highest of the AEW, the prevailing hourly wage or piece rate, the agreed upon collective bargaining wage, or the Federal or State minimum wage, except where a special procedure is approved for an occupation or specific class of agricultural employment. Employer assures that if a change in the AEW requires an increase such increase will be paid as of the effective date of the increase. Also if the AEW is decreased this will become the wage effective of the date of the decrease.

- a. If, during a pay period, piece rate earnings for total hours of work at a piece-rate do not result in average hourly earnings equal to or greater than the guaranteed minimum hourly rate, the worker will receive make-up pay to the guaranteed minimum wage rate.
- b. 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.

- c. 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 fire, weather, or Act of God terminations, the $\frac{3}{4}$ guarantee period ends on the date of termination. The employer must make efforts to transfer the worker to other comparable employment acceptable to the worker, consistent with existing immigration law. If such transfer is not affected, the employer must return the worker, at the employers expense, to the place from which the worker (disregarding intervening employment) came to work for the employer, or transport the worker to the workers next certified H 2A employer, whichever the worker prefers; reimburse the workers the full amount of any deductions made from the worker's pay by the employer for transportation and subsistence expenses to the place of employment; and pay the worker for any costs incurred by the worker for transportation and daily subsistence to that employer's place of employment. The amount of daily subsistence will be in accordance with current rates published in the *Federal Register* (for workers with and without receipts). The amount of the transportation payment must not be less (and is not required to be more) than the most economical and reasonable common carrier transportation charges for the distance involved.
- d. 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. A worker who is terminated for cause or who voluntarily abandons his/her job is not entitled to this guarantee if employer provides timely notification to the NPC and DHS.
- e. 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.

Item 17: Transportation

Employer agrees to reimburse inbound transportation and subsistence expenses (\$10.73 per day minimum to a maximum of \$46.00 per day) 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 50% of the stipulated period of employment, from initial date of need or from the day after actual arrival of worker if later than the stated date to report.

- a. 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.
- b. 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.
- c. If requested by the worker, the employer will assist in making transportation arrangements.
- d. 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 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 655.135 and 20 CFR 653.501.
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 _____

Peter J. Wagner Sec.

Date

5/31/11

New York State Department of Labor
Form ETA 790 Attachment #2 – Additional Information

Item 1:

Employer Email: Wagnersfarmmarket7@frontiernet.net

Agent Email:

Employer Fax: (716) 731-4036

Agent Fax:

Item 13: Board Arrangements

Employer will will not provide three meals per day and will deduct \$ 0.00 per day.

Employer will will not furnish free dishes, cooking utensils and convenient kitchen and cooking facilities.

Employer will will not provide transportation to assure workers access to stores where they can purchase groceries and/or other 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

Worker places ladder firmly against or within tree in a secure position so as not to break limbs or knock off fruit and to prevent slipping or falling. All fruit to be handled with care to avoid causing bruising. Each worker's picked fruit will be inspected according to instructions given each day by the orchard foreman. Workers will be directed to strip all fruit from tree at one picking or to spot pick (selective picking) according to size and color depending on crop conditions and state of maturity. Fruit picked as drops is never mixed with tree fruit.

May also perform any combination of tasks involved in planting, cultivating and harvesting of fruits such as tilling soil, planting stock, pruning trees and bushes, removing suckers and runners from trees, vines and plants. Other duties may include laying out irrigation pipe and installing sprinklers, assisting in repairing fences, unloading trucks, clearing fields, burning brush, and hand thinning fruit and smudging. Will use appropriate tools such as shovels, hoes, tampers, pruning hooks and shears. Employer will furnish to workers, without cost, all tools and equipment required in the performance of the duties assigned. Workers should report for work with their own suitable work clothing. Field temperatures may range from 30 degrees to 85 degrees with possible wet morning conditions.

- a. Workers must be able to demonstrate that they are physically able to perform the work as described.
- b. Employer may terminate worker with notification to the New York State Department of Labor, if the worker:
 - 1) refuses, without just 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.
- c. The employer will provide 3 days of training and/or allow 3 days of work for worker to reach production standards if applicable.
- d. Production Standards (if applicable): *4 bins per day for fresh market apples and 5 bins per day for juice*

Item 16: Wage Rates, Special Pay Information and Deductions

The employer will provide workers referred through the interstate clearance system 48 hours of work for the week beginning with the anticipated date of need, unless employer has amended the date of need by notifying the State agency no later than 10 business days before the date of need. If the employer fails to notify NYS Department of Labor office, then employer shall pay an eligible worker referred through the clearance system \$492.00 for the first week starting with the originally anticipated date of need. If worker referred fails to notify the NYS Department of Labor of continued interest in the job at least 5 days before date of need, worker will be disqualified from this assurance. Employer will will not require worker to perform alternative work if the guarantee cited in this section is invoked.

Alternative work: Trim Fruit Trees, hand thin, weeding, hoeing, succoring, and summer thinning. May also repair boxes.

Employer will maintain adequate payroll records. Workers will be paid weekly on Sunday for work through the previous Friday.

Item 20: Workers' Compensation

The employer assures that Policy # Z 406 249-3 issued by NYS Insurance Fund provides the required insurance for injuries arising out of and in the course of employment.

Employer's proof of insurance coverage will be provided to the Chicago Processing Center before certification is granted.