



**U.S. Department Labor  
Employment and Training Administration**

OMB Control No. 1205-0134  
Expiration Date: October 31, 2015

**Agricultural and Food Processing Clearance Order ETA Form 790  
Orden de Empleo para Obreros/Trabajadores Agrícolas y Procesamiento de Alimentos**

(Print or type in each field block – To include additional information, go to block # 28 – Please follow Step-By-Step Instructions)  
(Favor de usar letra de molde en la solicitud – Para incluir información adicional vea el punto # 28 – Favor de seguir las instrucciones paso-a-paso)

<p>1. Employer's and/or Agent's Name and Address (Number, Street, City, State and Zip Code / Nombre y Dirección del Empleador/Patrón y/o Agente (Número, Calle, Ciudad, Estado y Código Postal ):</p> <p>Wayside Nursery, Inc. 8962 Porter Road Niagara Falls, NY 14304</p> <p>a) Federal Employer Identification Number (FEIN) / Número federal de Identificación del Empleador:</p> <p>54-2164604</p> <p>b) Telephone Number / Número de Teléfono:</p> <p>(716) 297-3811</p> <p>c) Fax Number / Número de Fax:</p> <p>(716) 297-6169</p> <p>d) E-mail Address / Dirección de Correo Electrónico:</p> <p>WAYSIDEINC@GMAIL.COM</p>	<p><b>Nos. 4 through 8 for STATE USE ONLY Números 4 a 8 para USO ESTATAL</b></p> <p>4. SOC (O*NET/OES) Occupational Code / Código Industrial: 45209200</p> <p>a. SOC (ONET/OES) Occupational Title / Título Ocupacional Farm workers and laborers - Crop, Nursery &amp; Greenhouse</p> <p>5. Job Order No. / Num. de Orden de Empleo: NY1115838</p> <p>6. Address of Order Holding Office (include Telephone number) / Dirección de la Oficina donde se radico la oferta (incluya el número de teléfono): 877-466-9757</p> <p>a. 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). 877-466-9757</p>
<p>2. Address and Directions to Work Site / Domicilio y Direcciones al lugar de trabajo:</p> <p>Wayside Nursery, Inc. 8962 Porter Road Niagara Falls, NY 14304</p> <p>Take Exit 23 from I-190 turn right on Packard Road for .03 miles and turn right on Porter for 1.3 miles. Work site owned and operated by employer.</p>	<p>7. Clearance Order Issue Date / Fecha de Emisión de la Orden de Empleo: 1/21/2015</p> <p>8. Job Order Expiration Date / Fecha de Vencimiento o Expiración de la Orden de Empleo: 7/24/2015</p> <p>9. Anticipated Period of Employment / Periodo anticipado o previsto de Empleo: From / Desde: 04/1/15 To / Hasta: 11/15/15</p> <p>10. Number of Workers Requested / Número de Trabajadores Solicitados: 1 Worker</p>
<p>3. Address and Directions to Housing / Domicilio y Direcciones al lugar de vivienda:</p> <p>Rental Home provided at 7431 Porter Road, Niagara Falls, N.Y. 14304</p> <p>a) Description of Housing / Descripción de la vivienda:</p> <p>Dwelling is 2,000 SF with 3 bedrooms, one bathroom, full kitchen, furnished, laundry facilities available close proximity. All housing meets local, state and federal housing standards.</p>	<p>11. Anticipated Hours of Work per Week / Horas Anticipadas/Previstas de Trabajo por Semana. Total: 36</p> <p>Sunday / Domingo 0 Thursday / Jueves 6 Monday / Lunes 6 Friday / Viernes 6 Tuesday / Martes 6 Saturday / Sábado 6 Wednesday / Miércoles 6</p> <p>12. Anticipated range of hours for different seasonal activities: / Rango previsto de horas par alas diferentes actividades de la temporada: 2-7 hours per day, per task and season</p> <p>13. Collect Calls Accepted from: / Aceptan Llamadas por Cobrar de: Employer / Empleador: Yes / Si <input type="checkbox"/> No X</p>

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14. Describe how the employer intends to provide either 3 meals a day to each worker or furnish free and convenient cooking and kitchen facilities for workers to prepare meals / Describa cómo el empleador tiene la intención de ofrecer, ya sea 3 comidas al día a cada trabajador, o proporcionar gratuitamente instalaciones para cocinar.

The apartment is fully furnished with a full kitchen, stove, refrigerator, pots and pans, cooking utensils, cups, plates, bowls and silverware at no charge to the workers. Workers will buy own groceries and prepare own meals. Once a week the employer will offer to provide (on a voluntary basis by the workers) free transportation to assure workers access to the closest store where they can purchase groceries.

Housing is provided at no cost to workers who are not reasonably able to return the same day to their place of residence. This paragraph applies to such workers only. Housing is not provided to non-workers. Housing capacity is strictly regulated by the US Department of Labor, and no person, other than the eligible employees authorized by the employer, may occupy or remain overnight in employer-provided housing. Employer-provided housing must meet the full set of DOL Occupational Safety and Health Administration (OSHA) standards set forth at 29 CFR 1910.142, or the full set of standards set at 654.404 through 654.417, whichever are applicable under 654.401. The housing is offered as temporary in-season (during the employment period only) housing provided for migrant agricultural workers while they are employed at farms beyond normal commuting distance from their residence. Workers provided housing by the employer must promptly vacate the housing upon termination of employment. The housing is group housing in which any and all workers will share all common areas of housing without regard to gender. Workers who reside in such housing agree to be responsible for maintaining the housing in a neat and clean manner. Housing will be subject to inspections by the employer at any time of employer's choosing. Workers residing in employer's housing may have mail directed to them the employer's address.

15. Referral Instructions and Hiring Information / Instrucciones sobre cómo Referir Candidatos/Solicitantes - (Explain how applicants are to be hired or referred, and the Employer's/Agent's available hour to interview workers / Explique cómo los candidatos serán contratados o referidos, y las horas disponibles del empleador/agente para entrevistar a los trabajadores). See instructions for more details / Vea las instrucciones para más detalles.

Workers are screened for compliance with the following criteria: 1) confirm ability, availability, qualifications and willingness to perform work described and confirm intention to work the entire season and confirm punctuality, 2) local workers confirm availability of reliable daily transportation to and from the job site for the entire season, 3) Confirmation of full disclosure of all terms, conditions and nature of work-job by local employment staff, 4) affirmative confirmation of legal qualifications to work in the US as described below. The employer may terminate the worker (foreign and/or domestic) with notification to the employment service if employers discovers a criminal conviction record or status as a registered sex offender that employer reasonably believes, consistent with current law, will impair the safety and living conditions of other workers. Workers recruited against the Job Offer within normal commuting distance will not be provided with housing, subsistence and transportation.

Only workers legally entitled to work in the US and possess' original identity and employment eligibility documents sufficient to complete INS Form I-9, as required by the Immigration and Nationality Act, will be permitted to complete the hiring process. Workers referred against this order should be informed that they must have the documents in their possession when they arrive at the place of employment. Provided that the workers complete section 1 of form I-9, workers will have 3 business days to produce the required documentation to complete section 2 of form I-9, as provided in the act. Workers not providing this documentation will not be allowed to go to work on the fourth business day of employment, or any subsequent days until the documentation is provided, as provided in the Act.

Applicants may call Michael Rotella (716) 297-3811 to set up an appointment for an interview. (9am-<sup>2</sup>pm) MB 1/2015

16. Job description and requirements / Descripción y requisitos del trabajo:

Greenhouse /Nursery: Perform any combination of the following duties concerned with preparing soil and growth media, and cultivating under close supervision on acreage or in nursery. Hauls and spread topsoil, fertilizer, peatmoss to condition land. Digs, rakes and screens soil and fills cold frames and beds to prepare them for planting. Fills growing tanks with water. Plants, weeds and water plants, shrubs and trees. Burlap trees and shrubs. Perform loading and unloading of nursery stock. Worker will follow directions provided by supervisor for tasks; worker is expected to follow tasks as directed.

ETA attachment 790 Drug test may be required, post-hire, at employer's expense. MB 1/2015

1. Is previous work experience preferred? / Se prefiere previa experiencia? Yes / Si  No  If yes, number of months preferred: / Si es así, número de meses de experiencia: 3 months

Experience working in a Greenhouse/Nursery

2. Check all requirements that apply:

- |   |   |
|---|---|
| <input type="checkbox"/> Certification/License Requirements / Certificación/Licencia Requisitos   | <input type="checkbox"/> Criminal Background Check / Verificación de antecedentes penales                         |
| <input type="checkbox"/> Driver Requirements / Requisitos del conductor                           | <input checked="" type="checkbox"/> Drug Screen / Detección de Drogas   |
| <input type="checkbox"/> Employer Will Train / Empleador entrenará o adiestrará                   | <input checked="" type="checkbox"/> Extensive Pushing and Pulling / Empujar y Jalar Extensamente                  |
| <input type="checkbox"/> Extensive Sitting / Estar sentado largos ratos                           | <input checked="" type="checkbox"/> Extensive Walking / Caminar por largos ratos                                  |
| <input checked="" type="checkbox"/> Exposure to Extreme Temp. / Expuesto a Temperaturas Extremas  | <input type="checkbox"/> Frequent Stooping / Inclinandose o agachándose con frecuencia                            |
| <input checked="" type="checkbox"/> Lifting requirement / Levantar o Cargar <u>75</u> lbs./libras | <input type="checkbox"/> OT/Holiday is not mandatory / Horas Extras (sobre tiempo) / Días Feriados no obligatorio |
| <input checked="" type="checkbox"/> Repetitive Movements / Movimientos repetitivos                |   |

17. 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			/ /
Greenhouse/Nursery	<del>\$11.22</del> \$11.26	\$NA	NA	Social Security / Seguro Social	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Weekly / Semanal
	\$ MB 1/20/15	\$		Federal Tax / Impuestos Federales	<input checked="" type="checkbox"/>	<input type="checkbox"/>	X <input type="checkbox"/>
	\$	\$		State Tax / Impuestos Estatales	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Bi-weekly / Quincenal
	\$	\$		Meals / Comidas	<input type="checkbox"/>	X <input type="checkbox"/>	<input type="checkbox"/>
	\$	\$		Other (specify) / Otro (especifica)	<input type="checkbox"/>	X <input type="checkbox"/>	Monthly/Mensual
							Other/Otro
							<input type="checkbox"/>

MB  
1/20/15

18. More Details About the Pay / Mas Detalles Sobre el Pago:  
NA

19. Transportation Arrangements / Arreglos de Transportación

The Employer will not advance transportation and subsistence costs to workers for transportation to the place of employment. All eligible applicants will have their inbound reasonable transportation costs reimbursed, one time only. Employer will not pay for voluntary trips back to their residence due to family emergencies, or vacation.

20. 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 usar Contratistas de Trabajo Agrícola para reclutar, supervisar, transportar, dar vivienda, y/o pagarle a los trabajadores para este(los) tipo(s) de cosecha(s)? Yes / Si  No X

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

21. Are workers covered for Unemployment Insurance? / ¿Se le proporcionan Seguro de Desempleo a los trabajadores? Yes/Si X No

22. Are workers covered by workers' compensation? / ¿Se le provee seguro de compensación/indemnización al trabajador: Yes/Si X No

23. Are tools, supplies, and equipment provided at no charge to the workers? / ¿Se les proveen herramientas y equipos sin costo alguno a los trabajadores? Yes/Si X No

24. 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

25. 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

26. Is this job order to be placed in connection with a future Application for Temporary Employment Certification for H-2A workers? / ¿Esta orden de empleo ha sido puesta en conexión con una futura solicitud de certificación de empleo temporal para trabajadores H-2A?

Yes/SI  No

27. 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.

Michael Artella Vice President  
Employer's Printed Name & Title / Nombre y Título en Letra de Molde/Imprenta del Empleador

Michael Artella  
Employer's Signature / Firma y Título del Empleador

1/15  
Date / Fecha

**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 Employment and Training Administration (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 American Job Center constitute a contractual job offer to which the American Job 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 (American Job Center) constituyen una oferta de trabajo contractuales a las que el American Job 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, Employment and Training Administration, Office of Workforce Investment, Room C-4510, 200 Constitution Avenue, NW, Washington, DC 20210.

#### DECLARACION DE CARGA PÚBLICA

La carga de información pública para responder a la Forma ETA 790, que se requiere para obtener o retener beneficios (44 USC 3501), se estima en aproximadamente 60 minutos por respuesta, incluyendo el tiempo para revisar las instrucciones, buscar fuentes de datos existentes, recopilar y revisar la colección. El público no tiene por qué responder a esta recopilación de información a menos que muestre un número de control OMB válido. Esta información es pública y no hay ninguna expectativa de confidencialidad. Envíe sus comentarios acerca de esta carga o cualquier otro aspecto de esta colección, incluyendo sugerencias para reducir esta carga, al U.S. Department of Labor, Employment and Training Administration, Office of Workforce Investment, Room C-4510, 200 Constitution Avenue, NW, Washington, DC 20210.

28. Use this section to provide additional supporting information (including section Box number). Include attachments, if necessary. / Utilice esta sección para proporcionar información adicional de apoyo; incluya el número de la sección e incluya archivos adjuntos, si es necesario.

See attachment ETA 790 for details

**20 CFR 653.501  
Assurances**

**INTRASTATE AND INTERSTATE CLEARANCE ORDER**

The employer agrees to provide to workers referred through the clearance system the number of hours of work per week cited in Item 10 of the clearance order for the week beginning with the anticipated date of need, unless the employer has amended the date of need at least 10 working days prior to the original date of need by so notifying the Order-Holding Office (OHO). If the employer fails to notify the OHO at least 10 working days prior to the original date of need, the employer shall pay eligible workers referred through the intrastate/interstate clearance system the specified hourly rate or pay, or in the absence of a specified hourly rate or pay, the higher of the Federal or State minimum wage rate for the first week starting with the original anticipated date of need. The employer may require workers to perform alternative work if the guarantee is invoked and if such alternative work is stated on the job order.

The employer agrees that no extension of employment beyond the period of employment shown on the job order will relieve the employer from paying the wages already earned, or specified in the job order as a term of employment, providing transportation or paying transportation expenses to the worker's home.

The employer assures that all working conditions comply with applicable Federal and State minimum wage, child labor, social security, health and safety, farm labor contractor registration and other employment-related laws.

The employer agrees to expeditiously notify the OHO or 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.

The employer, if acting as a farm labor contractor, has a valid farm labor contractor registration certificate.

The employer assures the availability of no cost or public housing which meets applicable Federal and State standards and which is sufficient to house the specified number of workers requested through the clearance system.

The employer also assures that outreach workers shall have reasonable access to the workers in the conduct of outreach activities pursuant to 20 CFR 653.107.

Employer's Name Wagon Wheel, Inc. Date: 4/11/15  
INTERSTATE CONTRACT

Employer's Signature [Signature]

**Besides the material terms and conditions of the employment, the employer must agree to these assurances if the job order is to be placed as part of the Agricultural Recruitment System. This assurance statement must be signed by the employer, and it must accompany the ETA Form 790.**

## Attachment to ETA 790

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1/24/15  
11. Anticipated hours of work: worker will report to work at the designated time and place as directed by the Grower each day. The standard work week is 6 hours per day Monday through Sunday; however, workers may be requested to work 10 hours per day depending upon conditions in the fields and maturity of the crops but will not be required to do so. Workers may volunteer to work additional hours when work is available. Down time: Workers should expect occasional periods of little or no work because of weather, crop or other conditions beyond the employer's control. These periods can occur anytime throughout the season.

15. All applicants are to apply directly to the employer, between the hours of 9:00 am-2:00 pm (EST) Monday –Thursday. Applicants must call the employer at 716-297-3811 prior to coming, to schedule an appointment. No applicants are to go to the employer's place without a scheduled interview. Applicants may apply at any local state workforce agency (SWA).

16. Job Specifications: applicants must have 3 months verifiable experience working in a greenhouse/nursery.

Duties performed in the field will be sporadic all through the contract due to various duties. **The worker must have knowledge in preparing soil and planting. Worker must be able to know when the following needs to be performed: pruning, cutting, deadheading, pinching, trimming to shape, spacing plants, fertilizing with granular or liquid fertilizer.** Workers must be physically capable to perform the listed duties in a timely manner. Worker will be responsible for cleaning work areas, transporting plant materials in the nursery/greenhouse areas, loading and unloading plants and all other duties associated with nursery/greenhouse. Workers will also unload pallets from trucks or wagons to prepare for transplanting or resale. Worker will also unload and restock for storage.

Daily and individual work assignments, crew assignments will be made by and at the sole discretion of the supervisor.

Workers may be asked to work on Sundays, but it is not required.

### Other Conditions of Employment:

Termination: Employer may terminate the worker for lawful job-related reasons if the worker: a) refuses without justified cause to perform work for which the worker was recruited and hired, b) commit serious act(s) of misconduct or serious or repeated violation(s) of the assigned grower's work rules; the employer may make and post work rules which shall apply to the employment; the worker shall abide by such rules, c) failure to perform the assign work to the standards specified or d) refuses without justified cause to perform as directed the work for which the worker was recruited and hired; e) provides other lawful job related reason(s) for termination of employment f) abandons this employment, 2 consecutive scheduled workdays of unexcused absence shall be an abandonment of employment g) falsifying identification, h) fails to take random drug tests for all employees, i) commits acts of insubordination.

## Work Rules

The following work rules are intended to provide guidance to workers on the standards of conduct and performance expected of them by the employer. Violation of these rules or other lawful job related employer requirements, including these work rules, would be considered grounds for discipline or immediate discharge. Penalties for infractions may include suspension from work without pay for the remainder of the day, or for up to three days, in the sole judgment of the Employer's depending on the seriousness of the infraction, the worker's prior record, and other relevant factors. Repeated, serious, or aggravated infraction may result in immediate discharge. Workers are expected to comply with all rules relating to discipline, attendance, work quality and quantity, and the maintenance of all property.

1. Workers must perform their assigned work in a careful, workman-like manner in accordance with the provision of the work contract. Sloppy work will not be tolerated.
2. Use or possession of alcoholic beverages or illegal drugs is strictly prohibited during work time or during any workday before work is completed for the day (such as during meals); workers may not report to work under the influence of alcoholic beverages or illegal drugs. Illegal drugs may not be used or kept on any employer premises', including housing at any time. Use or possession of illegal drugs, **failing or refusing to take a drug test will be cause for immediate termination.**
3. Excessive absences and or tardiness will not be permitted. Employees are expected to be present, on time, able and willing to perform the assigned work every scheduled work day. This is not sporadic or "day work". Excessive absences are defined as: Three unexcused absences in a 30-day period. Five consecutive days of unexcused absences is considered abandonment of their position. Violation will be cause for immediate termination. Workers must report at assigned time each workday as directed by the supervisor. **Workers will be discharged for excessive tardies in a row or 5 tardies in a period of thirty days.**
4. Workers who reside in such housing agree to be responsible for maintaining the housing in a neat and clean manner. Workers shall cooperate with other workers assigned to such housing in maintaining common kitchen and living areas in good condition. Workers will be required to keep the exterior area surrounding the house, clean and clear of debris. Workers shall promptly report any problems with housing to the employer or designated supervisor.
5. Workers living in employer's housing assigned to bunk beds may not separate bunk beds, as floor space in sleeping rooms in needed by any/all occupants.
6. Workers living in employer's housing may not cook in sleeping rooms or any other non-kitchen areas. Workers are forbidden from removing batteries from smoke detectors for any reason. Violation will be cause for immediate termination.
7. Workers must not drop paper, can, bottles and other trash in fields, packing house or on housing premises. Trash and waste receptacles must be used.
8. Workers may not take unauthorized breaks from work.
9. Workers may not leave the field or other assigned work area without permission of farmer or person in charge.
10. Workers may not enter employer's premises without authorization.
11. Workers may not begin work prior to scheduled starting time or continue working after stopping time unless authorized by the employer.
12. Workers living in employer's housing may not have guests in housing premises after 10:00 pm except on Saturday, in which guest hour's end at 12:00 am. No persons, other than workers assigned by employer, may sleep in any room.
13. Workers may not deliberately restrict production.
14. Any worker who verbally or physically threatens another worker, the farmer or any supervisor with any tool or weapon will be subject to immediate discharge.

15. Workers will be discharged for fighting on the employers premises, including housing, and any time.
16. Workers may not post or remove any notices, signs or other instructions from the employer's bulletin boards or the employer's property without specific authority from the employer.
17. Workers will be discharged if they steal from fellow workers or from the employer.
18. Workers may not falsify identification, personnel, medical, production or other work-related records. Violators will be subject to immediate discharged.
19. Workers may not willfully abuse or destroy and machinery, truck or other vehicle, equipment, tools or other property belonging to the employer or to other employees.
20. Workers may not use or operate trucks or other vehicles, machines, tools or other equipment and property to which the worker has not been specifically assigned by his supervisor.
21. Workers may not misuse or remove from the farm premises without authorization from his supervisor and employer property such as trucks and other vehicles, beds, refrigerators, tools, ect. Violators will be subject to discharge immediately.
22. Workers must obey all safety rules and common safety practices and must report any injury or accident to their supervisor of the employer as soon a reasonably possible. Unsafe work behavior may subject the violator to discharge.
23. Workers must follow supervisor's instructions.
24. Workers may not commit acts of insubordination-failure to regard authority.
25. Workers are expected to possess the skills necessary to perform the job described in the work agreement and to the standard set by the employer.
26. Workers may not interrupt other workers rest/sleep period by excessive noise or commotion. Workers must not play loud music after 9:00 pm on work nights or after 12:00 am on Saturday night.
27. Workers will not knowingly engage in any type of behavior or take any action that might cause the grower to be out of compliance with any local, state, or federal law.

New York State Department of Labor  
Form ETA 790 Attachment  
Terms and Conditions/Clarifications and Assurances/  
Additional Information

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 14: 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 16: Job Specifications

- a. Workers must be able to demonstrate that they are physically able to perform the work as described.
- b. The employer will provide 0 days of training and/or allow 0 days of work for worker to reach production standards if applicable.
- c. ~~Production Standards (if applicable): After completion of training or break-in period, employer will expect worker to:~~
- d. 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;
  - 3) ~~Fails, after completing any training or break-in period, to reach production standards (if applicable); or~~
  - 4) Abandons Job ("Job Abandonment") – is absent for five consecutive previously scheduled days without prior notification to employer.

MB  
1/20/15

Item 17: 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 on the date of the decrease.

- a. 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.
- 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; and
  - 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 (as determined by the Certifying Officer) 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, as applicable. If such a transfer is not affected, the employer must (1) return the worker, at the employer's expense, to the place from which the worker (disregarding intervening employment) came to work for the employer, or transport the worker to the worker's next certified H-2A employer, whichever the worker prefers; (2) reimburse the worker 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 (3) pay the worker for any costs incurred by the worker for transportation and daily subsistence to that employer's place of employment. Daily subsistence must be computed as set forth in paragraph (h) of 655.122. 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 distances involved provide the guarantees in Item 19 (a) below.
- 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. 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 NPC and DHS.
- e. On or before each payday the employer will provide to each worker in one or more written statements the following information: (1) the worker's total earnings for the pay period; (2) the worker's hourly rate and/or piece rate of pay; (3) the hours of employment offered to the worker (showing offers in accordance with the  $\frac{3}{4}$  guarantee as determined in paragraph (i) of the regulations at 20 CFR sec. 655.122(k), separate from any hours offered over and above the guarantee); (4) the hours actually worked by the worker; (5) an itemization of all deductions made from the worker's wages; (6) if piece rates are used, the units produced daily; (7) beginning and ending dates of the pay period; and (8) the employer's name, address, and FEIN.
- 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 36 hours of work for the week beginning with the anticipated date of need, unless employer has amended the date of need by notifying the SWA no later than 10 business days before the date of need. If the employer fails to notify the NYS Department of Labor, then the employer shall pay an eligible worker referred through the clearance system \$ ~~726~~ 405.36 (number of hours of work x AEWR/prevaling wage/minimum wage) 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: small equipment / machine maintenance
- h. Employer will maintain adequate payroll records. Workers will be paid weekly on Friday for work through the previous Sunday

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**Item 19: Transportation**

Employer agrees to reimburse inbound transportation and subsistence expenses (\$11.58 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 fire, weather, or an Act of God (as determined by the Certifying Officer), from place of employment to place of recruitment, except if the worker prefers not to return to his place of recruitment and has subsequent employment with an employer – see Item 17 (c) above. 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.
- b. 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. The amount of daily subsistence will be in accordance with current rates published in the *Federal Register* (for workers with and without receipts).
- c. If requested by the worker, 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 22: Workers' Compensation**

The employer assures that Policy # 000000387 issued by National General 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. CCM Insurance Company

**Item 23: 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. If applicable, 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, if applicable.

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/she 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, **not 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. This statement applies only to H-2A employers who also employ five or more out-of-state migrant workers.

Employer Signature Marcus R. [Signature] 1/17/15