U.S. Department of 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/Trajajadores Agricolas 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 ve el punto # 28-Favor de seguirlas instrucciones paso a paso

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 (Numero, Calle, Estado y Código Postal):

McLusky Orchard LLC
4603 McLusky Rd.
Lafayette, NY 13084

a) Federal Employer Identification Number (FEIN)/Número federal de identificación del Empleador
27-1952364

b) Telephone Number/Numero de Teléfono
(315) 677-5176

c) *Fax Number/ Numero de Fax*

d) E-Mail Address/ Dirección de Correo Electrónico:
Mcluskyj@gmail.com

2. Address and Directions to Worksite/ Domicilio y Direcciones al lugar de trabajo
At 4603 McLusky Rd., 5.2 miles west of LaFayette, New York 13084.

Worksite owned and operated by the employer

3. Address and Directions to Housing / Domicilio y Direcciones al lugar de vivienda
4571 Kingsley Rd., Lafayette, NY. 13084 Housing is 2 miles south on Hitchings Road to Kingsley. ¼ mile West on Kingsley to housing.

a) *Description of Housing / Descripción de la vivienda*
1 wood frame unit- barracks style with housing capacity of 40. All furnishings and equipment supplied by the employer, e.g., furniture, eating and cooking utensils; and utilities available, such as gas, electricity, heat.

Barracks/Barracas Number/Numero	Total Capacity/Capacidad Total
1	40

Nos. 4 through 8 for STATE USE ONLY
Numeros 4 a 8 para USO ESTATAL

4. SOC(O*Net/OES) Occupational Code/Código Industrial:
45-2092.02

a. SOC (O*Net/OES) Occupational Title/Titulo Ocupacional
Farmworker and Laborer, Crop

5. Job Order No./Num. de Orden de Empleo
MI132941

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

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

7. Clearance Order Issue Date / Fecha de Emisión de la Orden de Empleo
6/2/15

8. Job Order Expiration Date / Fecha de Vencimiento o Expiración de la Orden de Empleo
~~9/20/15~~ 8/6/15

9. Anticipated Period of Employment / Período anticipado o previsto de Empleo
From/ Desde: 8/9/15 To / Hasta: 11/1/15

10. Number of Workers Requested / Número de Trabajadores Solicitados
8

11. Anticipated Hours of Work per Week / Horas Anticipadas/Previstas de Trabajo por Semana. Total:42

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

12. Anticipated range of hours for different seasonal activities: / Rango previsto de horas par alas diferentes actividades de la temporada
42

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

Employer / Empleador: Yes / Si ☐ No X

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 dia a cada trabajador, o proporcionar gratuitamente instalaciones para cocinar

Yes/Si Workers must buy and prepare own meals. Kitchen facilities, pots, pans, dishes and utensils provided

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JUN 01 2015

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.

Contact Employer, Jamie McLusky, directly, at (315) 677-5146 or Nearest One Stop Office at (877) 466-9757

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

1. Is previous work experience preferred? / Se prefiere previa experiencia? Yes / Si X No ☐ If yes, number of months preferred: / Si es así, numero de meses de experiencia- 1 month experience

Manually plant, cultivate, and harvest ~~fruits~~ apples. Use hand tools, such as shovels, trowels, hoes, tampers, pruning hooks, shears, and knives. Duties ~~may~~ include tilling soil and applying fertilizers; transplanting, weeding, thinning, or pruning crops; applying pesticides; cleaning, packing, and loading harvested products. ~~May~~ repair fences and farm buildings, or participate in irrigation activities. Set up and operate irrigation equipment. Operate tractors, tractor-drawn machinery, and self-propelled machinery to plow, harrow and fertilize soil, or to plant, cultivate, spray and harvest crops. Repair and maintain farm vehicles, implements, and mechanical equipment. Harvest apples by hand. Apply pesticides, herbicides or fertilizers to crops. Inform farmers or farm managers of crop progress. Identify plants, pests, and weeds to determine the selection and application of pesticides and fertilizers. Record information about crops, such as pesticide use, yields, or costs. Apples injured by bruising during picking shall not exceed 1% (WNY) for fresh and 1% (WNY) for processing as defined in the U.S. standard for grades.. Workers must be physically able to lift up to 80 pounds. 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 0 to 90+ degrees (F) with possible wet morning conditions. After hiring, employer may conduct random drug tests at employer's expense. Due to health and safety concerns relating to pesticide application and the operation of equipment on our farm, workers are required to have the ability to comprehend simple instructions in English.

EH 01/21/15

2 Check all requirements that apply

☐ Certification/License Requirements / Certificación/Licencia Requisitos	☐ Criminal Background Check / Verificación de antecedentes penales
X Driver Requirements / Requisitos del conductor**	X Drug Screen / Detección de Drogas
☐ Employer Will Train / Empleador entrenará o adiestrará	X Extensive Pushing and Pulling / Empujar y Jalar Extensamente
☐ Extensive Sitting / Estar sentado largos ratos	XExtensive Walking / Caminar por largos ratos
X Exposure to Extreme Temp. / Expuesto a Temperaturas Extremas	☐ Frequent Stooping / Inclinándose o agachándose con frecuencia
X Lifting requirement / Levantar o Cargar 80lbs./libras	☐ OT/Holiday is not mandatory / Horas Extras (sobre tiempo) / Días Feriados no obligatorio
X Repetitive Movements / Movimientos repetitivos	
** No Drivers license required	

Productivity must be at least 4 bins fresh market and/or 6 bins processing fruit per day.

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

Crop Activities Cultivos	Hourly Wage Salario por Hora	Piece Rate/Unit(s) Pago por Pieza / Unidad(es)	Special Pay (bonus,etc) Pagos Especiales (Bono, etc.)
Farm equipment operation	$11.26		
Apples-Fresh Market	$11.26	$.90 per bu.	
Apples-Processing	$11.26	$.65 per bu.	
Apples-Drops	$11.26	$.60 per bu.	

Deductions Deducciones	Yes/Si	No	Pay Period/ Periodo de Pago
Social Security / Seguro Social	X	☐	Weekly / Semanal X
Federal Tax / Impuestos Federales	X	☐	
State Tax /Impuestos Estatales	X	☐	Bi-weekly/ Quincenal ☐
Meals / Comidas	☐	X	
Other (specify) / Otro (especifica)	☐	X	Monthly/Mensual ☐
			Other/Otro ☐

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

None/Ninguno

19. Transportation Arrangements / Arreglos de Transportación

Employer will provide transportation from the employer provided housing to the actual work site and return at the end of the day. Transportation will meet all requirements at CFR 655.122(h)

(See Attachments/Vea Anexos #2 & # 3)

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 Agricola para reclutar, supervisar, transportar, dar vivienda, y/o pagarle a los trabajadores para este(os) tipo(s) de cosecha(s)? Yes / Si☐ No X

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/SiX 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/Ninguno

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/Ninguno

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 X 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

Jamie McLusky Owner

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

Employer's Signature / Firma y Título del Empleador

5/29/15

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 numero de la sección e incluya archivos adjuntos, si es necesario

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.

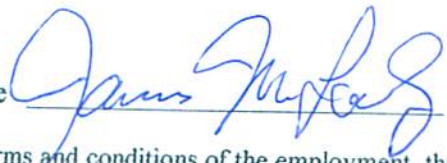
The employer agrees to expeditiously notify the OHO or State agency by telephone immediately upon learning that a crop is maturing earlier or later, or that weather conditions, over recruitment, or other factors have changed the terms and conditions of employment.

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 Jamie McLusky Date: 5/29/15

Employer's 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.

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 $ N/A 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.
c. Production Standards (if applicable, employer will expect worker to: Harvest 4-20 bushel bins fresh market apples; 6-20 bushel bins processing apples per day.
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, to reach production standards (if applicable);
    4) Abandons Job ("Job Abandonment") – is absent for five consecutive previously scheduled days without prior notification to employer.

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 AEWR, 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 AEWR requires an increase such increase will be paid as of the effective date of the increase. Also if the AEWR 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 ¾ ("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 ¾ 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 ¾ 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 42 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 $472.92 (number of hours of work x AEWR/prevailing 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:

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

Item 19: Transportation

Employer agrees to reimburse inbound transportation and subsistence expenses ($11.86 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

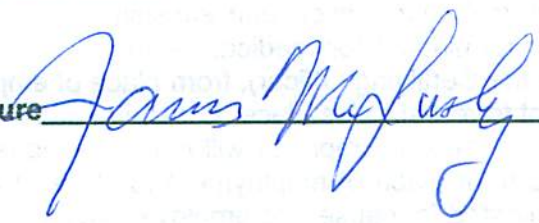
The employer assures that Policy # Z 2223 137-7 issued by NYSIF provides the required insurance for injuries arising out of and in the course of employment.
Employer's proof of insurance coverage will be provided to the Chicago Processing Center before certification is granted.

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. 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 instruction.

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. This statement applies only to H-2A employers who also employ five or more out-of-state migrant workers.

Employer Signature