

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

**07 2010**

**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) J & R Fruit Farms Joe Heberle 17255 Lakeshore Road Hamlin, New York 14464 (585) 659-2500	Numbers 4, 5, 6, 7 and 8 for State use only.	
	4. Industry Code/Código de Industria 11199	5. Job Order #/No. Orden de Empleo NY0448258
2. Location and Direction to Work Site/Dirección del lugar de trabajo 17255 Lakeshore Road, Hamlin, New York 14464, Rt. 98 North to Rt. 18, West 5 miles  (If additional space is needed, use separate sheet of paper)	6. Occupational Title and Code /Título Ocupacional y Código Farmworkers + Laborers, Crop 45-2092.00	
	7. Clearance Order Issue Date / Fecha de Tramite JUL 15 2010	
2. Location and Description of Housing / Dirección y Descripción de la Vivienda  17247 Lakeshore Road, Hamlin, NY 14464, One story house, two bedrooms, bath, kitchen, dining room & living room, fully furnished.  17247 Lakeshore Road, Hamlin, NY 14464, Una casa de una planta, dos dormitorios, baño, cocina, comedor y salón, totalmente amueblado  <i>housing capacity</i>	8. Job Order Expiration Date / Fecha de vencimiento 10/25/2010	
	9. Anticipated Period of Employment / Periodo Anticipado de Empleo From/ Desde: 9/15/2010 To/Hasta: 11/15/2010	
(If additional space is needed, use separate sheet of paper). / Si necesita más espacio, utilice documento adicional.)	10. No. of Worker's Requested / No. de Trabajadores Pedidos 7	
	11. Anticipated Hours of Work per Week/Horas Anticipadas de Trabajo por Semana. Total: 42 Sunday / Domingo 0 Monday / Lunes 7 Tuesday / Martes 7 Wednesday / Miércoles 7 Thursday / Jueves 7 Friday / Viernes 7 Saturday / Sábado 7	
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"/>		

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 offices. Joe Heberle (585) 659-2500. Llama 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. Joe Heberle (585) 659-2500

15. Job Specifications / Descripción del Trabajo:  
 Dates of need 9/15-11/15/2010. Pick apples for fresh market and/or processing. Other crop work, if required, is shown as Attachment #1. Productivity must be at least 5 bins per day of fresh market apples and 6 bins per day of processing apples. Workers must be physically able to pick tree fruit, most of which is done from ladders, with lower branches being picked from 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. Filled bucket weighing up to 40 lbs., is emptied into bulk bins with a capacity equal to 20 1 1/8 bushel boxes. Workers required to handle ladders up to 24' long and weighing about 2 lbs. per foot. Workers may drive tractors to move boxes in orchard and bus to transport workers from housing to work locations. Cabbage, and Squash are harvested by stooping in the field, cutting the cabbage and squash from the stem with a knife, lifting the produce and carefully placing it in a box without dropping, scratching, or bruising. In Squash & Cabbage harvest work, workers may be instructed to selectively pick/pack mature crops according to size, color, and other USDA grade standard factors and exercise care so to NOT injure immature produce that may be harvested at a later time. *Must have valid drivers license.*  
*S.H. 8/2/10*  
 Se necesitan 15/9 al 15/11/09. Cosechar manzanas frescas para el Mercado o para el proceso. Otro trabajo de cosecha se encuentra en el adjunto #1. La productividad debe ser por lo menos contenedores 5, por día de manzanas frescas para el Mercado y contenedores 6, por día para el proceso de la misma. Los trabajadores deben de estar físicamente hábiles para la cosecha del árbol frutal lo cual se hace con escaleras y las ramas más bajas se cosechan estando parado en el terreno. La fruta cosechada es puesta en cestos de cosecha con marco de metal cubierto de lona y tiene tirantes de lona que se deslizan sobre la cabeza y reposan en los hombros. El cesto ya lleno peso hasta 40 lbs (approx 20 kgs) y se vacía en contenedores recolectores con una capacidad igual a 20 1 y 1/8 cestos. Se requiere que los trabajadores manejen escaleras que miden hasta 24 pies (approx. 4.5 mts) y pesan como 2lbs por pie (approx. 1kg por 30 cms) Puede que los trabajadores conduzcan tractores para mover cajas recolectoras de la huerta a la bodega. Repollo, y calabaza se recoogen en el campo estando agachado cortando el tallo del repollo y de la calabaza con un cuchillo levantando la legumbre y cuidadosamente colocarla en la caja sin dejarla caer, sin maltratarla. En la cosecha del tomate, durazno, calabaza y repollo puede que se le indique al trabajador que seleccione cuando coseche/empaque cosecha madura de acuerdo a su tamaño, color y otras normas estipuladas por el USDA. Tiene que tener en práctica para NO dañar la legumbre que no esté aún madura para que se coseche en un tiempo más tarde.

(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 (Rabajas)							
Crop Activities / Cultivos	Hourly Wage	Piece Rate / Unit(s)	Special Pay (bonus, etc.)	Deductions /	YES / SI	NO	Pay Period Período de Pago
	Salario por Hora	Pago por Pieza / Unidad(es)	Pagos Especiales (Bono, etc.)	Deducciones			
Apples /Fresh Market	\$10.16	\$0.850 / Bu.		Social Security / Seguro Social	X		Weekly / Semanal
Apples /Processing	\$10.16	\$0.600 / Bu.		Federal Tax Impuestos Federales	X		X
Apples /Drops	\$10.16	\$0.500 / Bu.		State Tax Impuestos Estatales	X		Bi-weekly / cada 2 semanas
Vegetables	\$10.16	\$		Meals / Comidas		X	N/A
	\$	\$		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) New York State - Department of Labor One Stop Office Nearest you  
 25. Name of Local Office Representative (include direct dial telephone number) / Nombre del Representante de la Oficina Local (Incluya numero de teléfono) New York State - Department of Labor One Stop Office Nearest you

26. Employer's Certification: This job order describes the actual terms and conditions of the employment being offered by me and contains all the material terms and conditions of the job.  
 Certificación del Empleador: Esta orden de trabajo describe los términos y condiciones de trabajo, y contiene todos los materiales, términos, y condiciones ofrecidos.  
 Employer's Signature & Title/ Firma y Título del Empleador  
*Joseph E Heberich Partner*

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 653.600 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.

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**New York State Department of Labor  
FORM ETA 790  
Attachment 1**

Job Order Number N.Y. 0948258**A: CLARIFICATION OF ITEMS ON FORM ETA 790**Item 1: E mail address preis@rochester.rr.com**Item 3: Housing**

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

**Item 13: Board Arrangements**

- a. Employer will \_\_\_ will not X provide three meals per day and will deduct \$ N/A per day. Employer will X will not \_\_\_ furnish free dishes, cooking utensils and convenient kitchen and cooking facilities.
- b. Employer will X will not \_\_\_ provide transportation to assure workers access to stores where they can purchase groceries and/or other incidentals and/or medical necessities.
- c. Amount of meal charges will be consistent with 20 CFR 355.173.

**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.

**Item 15: Job Specifications**

(con't) 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.

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.

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- 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): After completion of training or break-in period, employer will expect worker to: pick enough fruit to meet min. wage per hour.

### Item 16: Wage Rates, Special Pay Information and Deductions

- 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 the event the DOL promulgates a new AEWR during the recruitment or work contract period which is lower than the current AEWR at the time of application, ~~this lower AEWR will become the guaranteed minimum~~, *will pay the highest of the AEWR, prevailing hourly wage, piece rate, collective bargaining rate and/or federal/state minimum wage at the time the work is performed. It will be the new minimum wage.*
- c. 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 deduction is illegal. This includes deductions:

  - (or deposits) for tools, boots, raincoats, or uniforms necessary for the job;
  - As fines or penalties for being late, misconduct, or quitting without giving notice;
  - For cash shortages;
  - For spoilage or breakage; or
  - For damages or losses of any kind.
- d. The employer guarantees to offer employment for a minimum of  $\frac{3}{4}$  of the hours in the workdays during the period of the contract, and all extensions thereof. This guarantee begins with the first workday after the worker's arrival at the place of employment and ends on the date specified on the job order or extensions thereof. In Act of God terminations, the  $\frac{3}{4}$  guarantee period ends on the date of termination. Workers will not be required to work more than the number of hours specified in the job order for a workday or on their Sabbath or Federal holidays to meet this guarantee. The worker's average hourly earnings will be used under this guarantee where wages are paid on a piece rate basis. Workers who are terminated for cause or who voluntarily abandon their job are not entitled to this guarantee.
- 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.
- f. 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 local office no later than 10 business days before the date of need. If the employer fails to notify the ~~local office~~ *central office*, then employer shall pay an eligible worker referred through the clearance system \$462.72 for the first week starting with the originally anticipated date of need. If worker referred fails to

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notify the NYS Department of Labor (preferably ~~at the local office~~) of continued interest in the job at least 5 days before date of need, worker will be disqualified from this assurance. Employer will X 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.

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

#### Item 17: Transportation

- a. Employer agrees to reimburse inbound transportation and subsistence expenses (\$10.64 per day without receipts, max. of \$46.00 per day with receipts) to each worker, or any person, government agency or private organization which, on behalf of the worker has paid or advanced such transportation and subsistence expenses, from the residence, place of last employment or place of recruitment to the job site 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.
- b. Employer will provide or pay the cost of return transportation and subsistence to each worker who completes the employment period, or who is terminated for medical reasons, or as the result of an Act of God, from place of employment to place of recruitment, except when the worker is not returning to his place of recruitment and had subsequent employment with an employer who will bear transportation expenses, in which case this employer only pays for the transportation to the next job.
- c. Employer will not be responsible for providing return cost of transportation and subsistence from place of employment to place of recruitment if the worker voluntarily abandons the job or is terminated for cause and employer provides timely notification to the NPC and DHS.
- d. The amount of the transportation payment will be equal to the most economical and reasonable similar common carrier transportation charges for the distance involved. All transportation provided by the employer will be by common carrier or other transportation facilities which conform to the applicable regulations of the Interstate Commerce Commission or the United States Department of Labor. If requested by worker, the employer will assist in making transportation arrangements. The amount of daily subsistence will be in accordance with current rates published in Federal Register (for workers with and without receipts).
- e. Employer will provide transportation, at no cost to the worker, from the employer provided housing to the actual work site and return at the end of the day.

#### Item 20: Workers' Compensation

The employer assures that Policy # Z 1304-993-7 issued by NYS Insurance Fund provides the required insurance for injuries arising out of and in the course of employment. Employer's

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

**Item 21: Tools and Equipment**

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

**B. OTHER CLARIFICATIONS AND ASSURANCES**

1. The employer agrees to abide by the regulations at 20 CFR 653.501 and 20 CFR 655.103.
2. The employer will expeditiously notify the order-holding office 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 in 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. A copy of the contract or this Job Clearance Order will be provided to the worker by the employer no later than on the day the work commences.
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 also 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.