

VIRGINIA EMPLOYMENT COMMISSION

MEMORANDUM TO:

DATE 7/27/2010

Florida <u>X</u>	North Carolina <u>X</u>	Kentucky <u>X</u>	Pennsylvania <u>X</u>
Texas <u>X</u>	South Carolina <u>X</u>	West Va. <u>X</u>	Maryland <u>X</u>
Georgia <u>X</u>	Puerto Rico <u>X</u>	Delaware <u>X</u>	Other <u>Alabama</u>

FROM: Rural Services Manager
Virginia Employment Commission
P. O. Box 1358
Richmond, Virginia 23211

SUBJECT: Request for Extension of Clearance Order No. VA 169880

Extension is requested for the 1 cop(ies) of the order which is/are attached,
dated 7/27/2010 for 210, Farmworker, Fruit 45-2092-02
(No. of Openings) (Occupational Title and Code)

to be sent to the offices of your choice.

COMMENTS: Please indicate below the action taken by your office.

Michael Abraham
(signature)

* * * * *

DATE _____

The above request has been reviewed and action taken as indicated below:

ACCEPTED _____ Location(s) to which extend:

REJECTED _____ Reason for Rejection: _____

COMMENTS:

Number of additional copies required. _____

(signature)

More Details About the Pay / Mas Detalles Sobre el Pago ** Pay rates for work in WVa orchards only.

* if applicable, excludes H-2A workers

(See attachment 2/para mas detalles vea 2)

(If additional space is needed, use separate sheet of paper. / Si necesita más espacio, utilice documento adicional.)

17. Transportation Arrangements / Arreglos de Transportación

Employer will reimburse individual workers for reasonable transportation expenses and subsistence expenses from the worker's place of recruitment to Winchester, Va, who continues under employment for 50% of the employment period.

Transportation from the worker's employer provided housing to the place where the work will be performed each day, will be provided by the employer without cost to the worker.

(See attachment 3&4/para mas detalles vea 3&4)

(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 X

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 X

20. Workers' compensation insurance provided? Indemnización por accidente de trabajo:

Yes X 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 X 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") /

Enumere toda huelga, paro o interrupción de las operaciones por parte de los empleados en el lugar de empleo. (Si no hay, indique "Ninguno")

None/Ninguno

24. Address of Order Holding Office (include Telephone number)/Dirección de la Oficina donde se Radica la Oferta (incluya numero de teléfono)

VA Employment Commission
100 Premier Place
Winchester VA, 22602

(540) 722-3415

25. Name of Local Office Representative (include direct dial telephone number) / Nombre del Representante de la Oficina Local (Incluya numero de teléfono)

Ken Shaver (434) 984-7640

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 Titulo del Empleador

Charles Grams President

READ CAREFULLY, In view of the statutorily established basic function of the Employment Service as a no-fee labor exchange, that is, as a forum for bringing together employers and job seekers, neither the ETA nor the State agencies are guarantors of the accuracy or truthfulness of information contained on job orders submitted by employers. Nor does any job order accepted or recruited upon by the One-Stop Career Center constitute a contractual job offer to which the One-Stop Career Center, ETA or a State agency is in any way a party.

Public Burden Statement

Public reporting burden for the ETA Form 790 is estimated to be approximately 60 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and reviewing the collection. Respondents' obligation to reply to these requirements is obligatory by 20 CFR 653.500 and 44 U.S.C. 3501. Persons are not required to respond to this collection of information unless it displays a currently valid OMB Control Number. Public reporting burden for this collection is estimated to average 8 minutes per response, including the time to review instructions, search existing 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 S4209, 200 Constitution Avenue, NW, Washington, DC 20210.

Item 3. Workers will be housed without charge in facilities of the Frederick County Fruit Growers' Association at 801 Fairmont Avenue, Winchester, Virginia or housing owned or leased by the Frederick County Fruit Growers' Association or housing owned by the employer. All housing complies with applicable Federal housing regulations.

Item 11. Workers may be offered more than 8 hours work per day and, in an emergency, a worker may be requested, but not required, to work on his/her Sabbath.

Item 13. Employer is responsible for making arrangements for feeding workers or for providing a kitchen for cooking. Worker will purchase and prepare meals in designated kitchen unless a dining hall is available. The charge for three meals per day must not exceed the cost to provide said meals. Meals will be available on a weekly basis in the central dining hall at a cost of \$10.64 per day, which amounts to \$74.48 per week. Varied nutritional menus each day consist of two hot meals and a packed lunch. Individual workers are fed in the central dining hall. Due to health and safety regulations, no cooking will be permitted in sleeping rooms. Workers who decide not to eat in the central dining hall must notify the Frederick County Fruit Grower's office a week in advance so the meal charges will not be deducted.

Item 14. Referrals of individuals shall be made through the Winchester Office of the Virginia Employment Commission in order to ascertain current employment, crop and housing information and to enable proper arrangements to be made. It will be the responsibility of the applicant holding office to inform applicants of the terms and conditions of the Clearance Order. When possible, a translator will be made available. The employer, Fruit Hill Orchard, Diane Kearns, will be available for interviews, walk-ins are welcome, between the hours of 9 A.M. and 4 P.M. Monday through Friday, 3035 766 Echo Lane, Winchester, VA 22603.

The Job Order does not constitute an agreement or contract between the employee and the employer until such time the employee has actually worked and has been placed on the payroll of the employer.

Employer agrees to provide each worker hired under this Clearance Order, no later than the first day of work, a copy of the complete work contract between the employer and the worker.

Item 15. When necessary, fruit may be picked from 16-24 foot ladders or 10-12 foot stepladders. All fruit must be picked and handled carefully to avoid bruising for fresh market. Workers may be required to selectively pick according to the size and state of maturity of fruit as directed by the employer or supervisor. When picking fruit the worker will be expected to pick bruise free to meet fresh market requirements. The definition of bruise free picking is the U.S.D.A. Standard for U.S. Extra Fancy Grade Packing Fruit. Some apple varieties, such as Ginger Gold, require special care when

picking due to their extremely light/thin skin. All fruit must be picked into picking bags or buckets, which are attached to the body with a shoulder harness and weigh approximately 30-50 pounds when full. When filled with fruit, the bags or buckets must be carefully emptied into field bins by releasing an opening at the bottom of the bag or bucket. When using ladders the worker will place the ladder firmly against or within the tree in a secure position so as not to break limbs or knock off fruit and to prevent slipping and falling. Each worker's trees will be picked according to instructions given each day by the employer or supervisor.

Additional orchard related duties may be offered including related tasks involving the operation of tractors or hand operated equipment. Individual workers are supervised by the employer or his agent, who provides daily transportation, training, job instruction and who keeps payroll records.

The employer or employer's agent will demonstrate to the worker proper picking or process in techniques and will periodically monitor the worker's performance. Additional instruction will be provided as necessary during the 24 hour training period. The employer maintains the right to dismiss a worker who, after the 24 hour training period, continues to exhibit, upon inspection, excess bruising.

The employer maintains the right to refuse to accept an obviously unqualified worker or to discharge a malingerer or recalcitrant worker who is physically able but does not demonstrate the willingness to perform the job.

All tools, supplies and equipment to perform the duties assigned to the worker will be provided by the employer without charge, including deposit charge.

All terms and conditions included in the Clearance Order will apply equally to all workers, domestic and foreign, employed under this Clearance Order.

Item 16. The employer agrees to guarantee all workers employed in the 2010 season a minimum of \$9.59 per hour, which is the Adverse Effect Wage Rate, or the prevailing hourly rate as established by the Department of Labor. Other orchard related duties, which may be offered, will be paid at the hourly rate of \$9.59 per hour. If a higher or lower minimum wage standard applicable to the employment covered by the Clearance Order is promulgated during the period of employment covered by the Clearance Order, the highest of the AEWR, the prevailing wage, the agreed-upon collective bargaining wage, or the Federal or State minimum wage will become the guarantee. All work is compensated at the above stated hourly rate except for the following work activity which may be compensated on a piece rate basis, \$.62 per 2419 cu. in box for apple harvesting. Workers who perform work on a piece rate basis will be guaranteed that they will receive no less than the above stated hourly rate. Holdings in West Virginia will be paid at \$.80

per 2419 cubic inch box for harvesting apples with a guarantee of not less than \$9.71 per hour.

The employer guarantees to offer the worker employment for at least three fourths of the work days of the total period of employment and all extensions thereof are in effect beginning with the first work day after the arrival of the worker at the place of employment and ending on the termination date specified in the Clearance Order or in its extension if any. The worker is covered by worker's compensation, which is provided by the employer.

Workers are paid weekly by individual check. The employer will furnish to each worker on payday an itemized accounting of earnings and of all legal and authorized deductions. The employer is subject to federal minimum wage laws.

If the employer fails to notify the order-holding office of a change in date of need at least 10 working days prior to the original date of need the employer shall pay eligible workers referred through the clearance system the specified hourly rate of pay, or in the absence of a specified hourly rate of pay, the higher of the Federal or State minimum wage for the first week starting with the originally anticipated date of need.

Item 17. The employer agrees to reimburse individual workers for reasonable transportation expenses and no less than \$10.64 per day for subsistence expenses from the worker's place of recruitment to Winchester, Virginia, who continues under employment for 50% of the employment period. Those workers paying the transportation and reasonable subsistence expenses from the place of recruitment to Winchester, Virginia who are unable to complete the minimum for legitimate medical reasons sustained or contracted after arrival, shall also be reimbursed for the same. If, before the expiration date specified in the work contract, services of the worker are no longer required for reasons beyond the control of the employer due to fire, hurricane or other act of God, which makes the fulfillment of the contract impossible, the employer may terminate the work contract. In the event of such termination of a contract, the employer shall fulfill the three-fourths guarantee for the time that has elapsed from the start of the work contract to its termination. In such cases the employer will make efforts to transfer the worker to other comparable employment acceptable to the worker. If such transfer is not affected, the employer shall:

- (i) Offer to return the worker, at the employer's expense, to the place from which the worker, disregarding intervening employment, came to work for this employer.
- (ii) Reimburse the worker for full amount of any deductions made from the

pay by the employer for transportation and subsistence expenses to the place of employment, and

- (iii) Notwithstanding whether the employment has been terminated prior to completion of 50% of the work contract period originally offered by the employer, pay the worker for costs incurred by the worker for transportation and daily subsistence from the place from which the worker, without intervening employment, has come to work for the employer to place of employment. The amount of transportation payment shall be no less (and shall not be required to be more) than the most economical and reasonable similar common carrier transportation charges for the distances involved.

In case of a legitimate medical termination or in case of termination as a result of an act of God, as certified by the Regional Administrator, the employer will also provide or pay the cost of return transportation and subsistence enroute from place of employment to the place of recruitment, except when the worker is not returning to the place of recruitment and has subsequent employment with an employer who will bear transportation expenses. The employer shall provide living accommodation and subsistence for the worker from the date of termination of work opportunity, other than for cause, until pursuant to arrangements made by the employer, the worker leaves the place of employment for his return journey to the place of his recruitment. If the worker completes his employment, the employer will provide or pay the cost of return transportation and subsistence enroute from the place of employment to the place of recruitment except when the worker is not returning to the place of recruitment and has subsequent employment with an employer who will bear transportation expenses, in any case, reimbursement will not exceed inbound cost. If the worker voluntarily abandons his employment, or is terminated for cause prior to completion of the period of employment, the employer will not be responsible for providing or paying the cost of return transportation and subsistence enroute from the place of employment to the place of recruitment. All transportation provided by the employer will be by common carrier or other transportation facilities that conform to applicable regulations of the Interstate Commission.

Transportation from the worker's on-the-job site living quarters to the place of where the work is to be performed will be provided by the employer without cost to the worker.

The employer shall provide a suitable burial for the worker if he or she dies during the continuance of the worker's employment hereunder, or in lieu thereof at the request of the next of kin, pay the cost involved in the preparation and transportation of the deceased to the place of origin.

I, FRUIT HILL ORCHARD, as the employer agree to abide by the regulations at 20CFR 655.103, Assurances and 20CFR 653.501.

I hereby request permission for conditional entry into the intra/interstate clearance system so that my job order can be transmitted to labor supply states in a timely manner to facilitate the recruitment of supply workers. My housing was in compliance in 2009, but because of disuse, cannot meet applicable standards at this time.

As a condition to placing my job order into clearance I, certify that 30 days prior to occupancy my housing will meet standards of the U.S. Department of Labor.

I also authorize representatives of the State Employment Service, the State Health Department and/or U.S. Employment and Training Administration to inspect the housing I am offering at a reasonable time to verify its condition.

I expect my housing to be occupied by 8/30/10

Carol Burke
Agent

6/23/2010
Date

[Signature]
E. S. Representative

6/23/10
Date

Recruitment Plan 2010

Regulations require recruitment to be done "to an extent no less than that of non-H-2A agricultural employers of comparable or smaller size, in the area of employment."

Based on information received from the Virginia Employment Commission staff and area non-H-2A agricultural employers, the general recruitment policies are:

Either contact last year's workers and/or crewleaders or are contacted by those workers and/crewleaders.

Those growers who use crewleaders work with the same people yr to year. Some growers place an ad in the local newspapers

Based on this information, we are submitting the following plan:

1. Last year's workers and/or crewleader are being/will be contacted.
2. Employment Service office in labor surplus areas, as designated by DOL, are being/will be contacted.
3. Large ads will be placed in two area newspapers.
4. Regular contact will be kept with local and state employment offices.
5. New sources of labor will be explored as information is received.

Total Workers on This Request . Total of Labor Force Required .

DB

Virginia Employment Commission
Winchester Local Office

Virginia Comisión de Empleo
La Oficina de Winchester

Summary of Employment Conditions
Specified on Job Order

Sumario de las Condiciones de Empleo Que Son
Especificadas en el Orden de Trabajo

1. Order Number: VA 169880
2. Name of Employer: Fruit Hill Orchard
3. Location of Employer and Directions:
From Winchester take 522 N to 766 Echo Lane
4. Period of Employment:
From 08/30/10 To 11/05/10
5. Work Schedule: 8 hours per day, 5 days per week
Plus 4 hours on Saturday
6. Crop and Pay:

Crop: Apples
Hourly Wage: \$9.59
Unit of Production 2419 Cu In Bx
Piece Rate = 1 1/8 US Bu
Piece Rate \$.62 per box
Estimated Hourly Wage \$9.59

Piece wage to generate at least the current adverse effect wage rate, if any. Those workers unable to earn the equivalent of the adverse effect wage rate by the end of the 24-hour training period may be terminated. Worker's earnings are based on a piece rate.
See item 16 of Job Order

7. Work Tasks To Be Performed:

Regular: Pick fruit from trees using ladders and picking bags. Spot or strip picking as instructed by employer or supervisor. Alternate tasks and pay during first week in case of crop delay. (See item 15)

None

8. Transportation Provided: From Labor Camp to Orchard and Return X Yes No

1. Numero de la Orden: VA 169880
2. Nombre Del Empleador: Fruit Hill Orchard
3. Lugar y Direccion del Empleador:
From Winchester take 522 N to 766 Echo Lane
4. Periodo de Empleo:
Del 08/30/10 Al 11/05/10
5. Horario de Trabajado: Horas por dia 8, numero de dias por semana 5 y 4 horas Sabado
6. Cosecha Y Pago:

Cosecha Manzanas
Sueldo Por Hora \$9.59
Unidad de Produccion: 2419 Cu In Bx
= 1 1/8 US Bu
Pago por Unidad \$.62 por caja

Calculo anticipado de las ganancias por hora \$9.59.

Tarifa por destajo garantiza un salario no menor que el en efecto, si hay uno. Los trabajadores ganando menos que el salario efectivo a fines de las 24 horas de entrenamiento podran ser despedidos. Las ganancias estan basadas en la tarifa por destajo.

Pago adicional: (Vea Numero 16 en el Orden de Trabajo)

7. Labores a Desempenar en el Trabajo:

Normales: Piscar fruta de arboles trabajando en escaleras y llevando cubo. Piscar toda o seleccionar siguiendo instrucciones del patron. Labores alternativas y pago por la primera semana en caso de demora en la cosecha. (Vea Numero 15 en el Orden):

Ninguno

8. Transportacion Provista: Del Encampamento al la huerta y Vuelta X Yes No

9. Housing can Accommodate 1044 People
 Individuals
 Families

10. Meals: (Central Mess)
Provided: Yes ___ No

If yes: Cost per day \$10.64
(See item 13 in Job Order)

Workers may do their own cooking:

___ Yes No

11. Deductions:

Type	Amount
------	--------

Social Security	___ <input checked="" type="checkbox"/>
-----------------	---

Income Tax	___ <input checked="" type="checkbox"/>
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Meals: See Paragraph 13 of Job Order

Transportation	___ <u>None</u>
----------------	-----------------

Tools/Equipment	___ <u>None</u>
-----------------	-----------------

Crew leader Charges	___ <u>None</u>
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12. Notes to Workers:

A copy of the full job order is available for inspection in this office.

The employer has guaranteed your first week's wages unless he/she notifies this Job Service of a later starting date by 08/16/2010.

In order for you to be eligible for this guarantee, you must contact the Job Service at:

Virginia Employment Commission
100 Premier Place
Winchester, VA 22602
540-722-3415

During the period 08/17/10 to 08/23/10,
Any Job Service office will assist you in doing this.

9. Vivienda Disponible Para 1044 Personas
 Individuos
 Familias

10. Comidas Provistas: (Cocina)
___ Sí ___ No

Si so provistas, el costo por dia es \$10.64
(Vea Numero. 13 en el Orden de Trabajo)

Los trabajadores tienen que cocinar sus comidas:

___ Yes No

11. Deduccions:

Clase	Cantidad
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Seguro Social	___ <input checked="" type="checkbox"/>
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Impuestos Sobre Ingresos	___ <input checked="" type="checkbox"/>
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Comidas: Vea Numero 13 en la Orden de Trabajo

Transportacion	___ <u>Nada</u>
----------------	-----------------

Herramientas/Maquinaria	___ <u>Nada</u>
-------------------------	-----------------

Suma Cobrada por el Contratista de Trabajadores Agricolas	___ <u>Nada</u>
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12. Notas Para los Trabajadores:

Una copia del orden completa esta disponible en la oficina par su inspeccion:

El empleador ha garantizado el pago por su primera semana de empleo, a menos que este notifique al Servicio de Empleos que la fecha de comenzar a trabajar sera atrasada, y que tal notification sea a mas a tardar el 08/16/2010.

Para que Ud. pueda tener derecho a esta garantia de pago, tendra que ponerse en contacto con:

Virginia Comision de Empleo
100 Premier Place
Winchester, VA 22602
540-722-3415

Durante el periodo del 08/17/10 al 08/23/10,
Cualquier Oficina del Servicio de Empleos le asistira

**Virginia Employment Commission
Community Services for Frederick and Clarke Counties**

Maintains Health Clinic at the Frederick County Fruit Growers Labor Camp, 801 Fairmont Ave. Winchester, Virginia.

Shenandoah Valley Medical Sys
P.O. Box 3236
Martinsburg, WV 25401
540 722-2369

Administers Programs in the Prevention of Tuberculosis & Venereal Disease. Medical Services & Advice for Expectant Mothers and Newborns.

Winchester/Frederick County Health Department
150 Commercial Street
Winchester, VA 22601
540 722-3470

Clarke County Department of Health
21 S. Church Street
Berryville, VA 22611
540 955-1033

Available For a Full Range of Medical Services

Winchester Medical Center
1840 Amherst Street
Winchester, VA 22601
540 722-8000

Provides Medical Assistance

Free Clinic
E. Cork Street
Winchester, VA 22601
540 662-4067

Provides Day Care Assistance

U. S. Department of Labor
Winchester Migrant Head Start
100 Pegasus Court, Suite 102
Winchester, VA 22602
540 662-4357

These Agencies May Provide Meals/Overnight Lodging & Other Emergency Assistance.

Salvation Army
300 Fort Collier Road
Winchester, VA 22602
540 667-4777

Winchester Rescue Mission
301 N. Cameron Street
Winchester, VA 22601
540 667-8460

C-CAP
415 N. Cameron Street
Winchester, VA 22601
540 662-4318

Provides Food Pantry Housing Assistance and Other Emergency Services

May Provide Legal Assistance to Worker

The VA Justice Center
for Farm & Immigrant Workers
Charlottesville, VA 22902
800 763-7323

Provides Services to Qualifying Persons & Refers to Support Svcs

Winchester Dept Social Services
33 E. Boscawen Street
Winchester, VA 22601
540 662-3807

Northern Shenandoah Valley Immigrant Resource Center
300 Fort Collier Road
Winchester, VA 22603
540 476-0635

Clarke County Social Services
32 E. Main Street
Berryville, VA 22611
540 955-3700

Area Education Departments

Migrant Education
100 Cedarmeade Avenue
Winchester, VA 22601
540 662-7656

Frederick County Schools
1415 Amherst Street
Winchester, VA 22601
540 662-3888

Clarke County Public Schools
309 W. Main Street
Berryville, VA 22611
540 955-6102

Winchester Public Schools
12 N. Washington Street
Winchester, VA 22601
540 667-4253

These Agencies Also Provide Assistance to Workers

United States Dept of Justice
Immigration & Naturalization
Arlington, VA 22203
202 307-1504 or 202 307-1626

VA Department of Labor
P.O. Box 77
Verona, VA 24482
540 248-9280

Social Services Administration
12 Ricketts Drive
Winchester, VA 22601
540 667-1512 or 800 722-1213

VA Department of Labor
Wage & Hour Division
201 Lee Highway
Verona, VA 24482
540-248-9280

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DBK

U. S. DEPARTMENT OF LABOR
OFFICE OF FOREIGN LABOR CERTIFICATION
NATIONAL PROCESSING CENTER
538 S. CLARK STREET
CHICAGO, IL 60605
PHONE: (312) 886-8000
FAX: (312) 353-3352



Facsimile transmittal **ETA OFLC**

To:	Carolyn Abraham	From:	Pamela Bullock
Fax:	804-786-6091	Pages:	3
Phone:		Date:	July 26, 2010
Re:	Modifications	Cc:	

Urgent For Review Please Comment Please Reply

Message:

Employer modification to H2A application for Fruit Hill Orchard (C-10193-24676).

Thank you