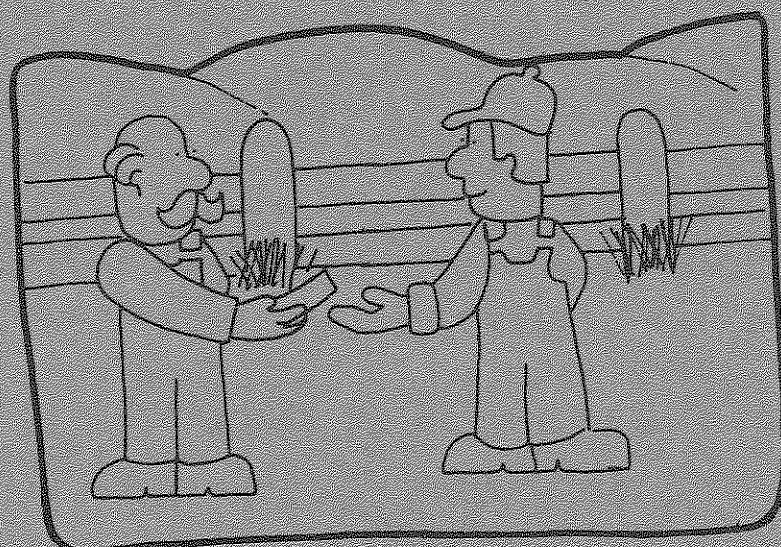


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# Changes in the New York State Farm Minimum Wage Law

Effective January 1, 1991



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# **CHANGES IN THE NEW YORK STATE FARM MINIMUM WAGE LAW**

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# **Changes in the New York State Farm Minimum Wage Law**

**Effective January 1, 1991**

## **Summary**

Two specific areas of the New York State Farm Minimum Wage Order are affected by recent mandated changes. They are wage rates (including both regular employees and youth employees) and allowances (including both meals and housing). In addition to changes in the value of housing allowances, there are now two distinct rates which can apply when a house or apartment with utilities is provided. One rate is for an individual employee and one is for an employee with a family.

The specific Farm Minimum Wage Order changes are summarized in the following three tables. Table 1 lists the wage rate changes for both regular and youth employees. Table 2 lists the meal and housing allowance changes and Table 3 illustrates how housing allowances are calculated. Wage rates and allowance rates are scheduled to increase on January 1, 1991 and then again on January 1, 1992.

The Farm Minimum Wage Order remains unchanged in areas other than wages and allowances and is summarized in this publication for your convenience.

This publication is not considered a legal document; it is for general educational use. Requests for information on specific rulings or legal interpretations should be directed to the New York State Department of Labor, Division of Labor Standards.

**Table 1. Wage Rates**

	<u>Until 12/31/90</u>	<u>1/1/91 to 12/31/91</u>	<u>After 1/1/92</u>
<sup>1</sup> Farm minimum wage	\$3.35	\$3.80	\$4.25
<sup>2</sup> Youth aged 16 and 17 (certificate required)			
Harvesting			
First harvest season	\$2.85	\$3.25	\$3.60
Second harvest season	\$3.00	\$3.40	\$3.80
Third harvest season	\$3.35	\$3.80	\$4.25
Nonharvesting			
First 300 hours	\$2.85	\$3.25	\$3.60
Second 300 hours	\$3.00	\$3.40	\$3.80
More than 600 hours	\$3.35	\$3.80	\$4.25
Youths under 16 (farm work permit and certificate required)	\$2.50	\$2.85	\$3.20

---

1

The general minimum wage for non-agricultural workers is \$3.80 per hour until 4/1/91 and \$4.25 thereafter.

2

To pay youths the wage rates shown above, the employer must obtain a youth rate certificate from the Department of Labor.

Table 2.

## Allowances

	Until <u>12/31/90</u>	1/1/91 to <u>12/31/91</u>	After <u>1/1/92</u>
<sup>1</sup> <b>Meals</b>	\$1.35	\$1.50	\$1.70
<sup>2</sup> <b>Lodging and utilities</b> (dormitory style)			
Single occupancy per week	\$15.00	\$16.95	\$18.95
Multiple occupancy per employee per week	\$10.00	\$11.30	\$12.65
<sup>3</sup> <b>House and utilities</b> (or apartment)			
Individual employee per day	\$2.70	\$3.00	\$5.00
Employee whose family resides with employee per day	\$2.70	\$6.00	\$8.00
<b>Payment in kind</b> (milk, meat, etc.) acceptable to employee	Cost or farm market value		

1

No allowance for meals may be considered part of minimum wage if a seasonal migrant worker earns less than \$201 in a two-week period until 1/1/91, \$227 in a two-week period after 1/1/91 and \$254 in a two-week period after 1/1/92 other than by reason of voluntary absence.

2

This allowance cannot be used for migrant workers.

3

This allowance cannot be used for migrant workers. For all other employees, when a house or apartment and utilities are provided by the employer (no lodging allowance is permitted if utilities are not provided) a fair and reasonable amount may be charged for such facilities not to exceed the lesser of either the reasonable value of comparable facilities in the area or the rates listed.

### Table 3. Examples of Housing Allowance Calculations

Based on the 1991 figures for an individual employee:

Individual Employee = daily housing allowance rate of \$3.00

Hourly minimum wage = \$3.80

1. Housing calculation:

\$3.00	per day allowance
<u>x 7</u>	days per week
\$21.00	per week

2. Wage calculation:

\$3.80	hourly minimum wage
<u>x 55</u>	hours per week
\$209.00	weekly earnings

3. Paycheck calculation:

\$209.00	wages earned
<u>- 21.00</u>	housing allowance
\$188.00	wages to be paid the employee

Based on the 1992 figures:

Individual Employee = daily housing allowance rate of \$5.00

Hourly minimum wage = \$4.25

1. Housing calculation:

\$5.00	per day allowance
<u>x 7</u>	days per week
\$35.00	per week

2. Wage calculation:

\$4.25	hourly minimum wage
<u>x 55</u>	hours per week
\$233.75	weekly earnings

3. Paycheck calculation:

\$233.75	wages earned
<u>- 35.00</u>	housing allowance
\$198.75	wages to be paid the employee

Based on the **1991** figures for employees and their families:

Employees and their families = daily housing allowance rate of \$6.00

Hourly minimum wage = \$3.80

1. Housing calculation:

\$6.00	per day allowance
<u>x 7</u>	days per week
\$42.00	per week

2. Wage calculation:

\$3.80	hourly minimum wage
<u>x 55</u>	hours per week
\$209.00	weekly earnings

3. Paycheck calculation:

\$209.00	wages earned
<u>- 42.00</u>	housing allowance
\$167.00	wages to be paid the employee

Based on the **1992** figures for employees and their families:

Employees and their families = daily housing allowance rate of \$8.00

Hourly minimum wage = \$4.25

1. Housing calculation:

\$8.00	per day allowance
<u>x 7</u>	days per week
\$56.00	per week

2. Wage calculation:

\$4.25	hourly minimum wage
<u>x 55</u>	hours per week
\$233.75	weekly earnings

3. Paycheck calculation:

\$233.75	wages earned
<u>- 56.00</u>	housing allowance
\$177.75	wages to be paid the employee

## INTRODUCTION

The New York State Farm Minimum Wage Order was established in 1969 for the protection of farm workers. It covers issues such as wages, work conditions, and employer record-keeping. As a part of the policy-making process, an advisory council on minimum wage standards for farm workers was created in 1969 to advise the Commissioner of Labor and provide recommendations before regulations are determined. This council is appointed by the Commissioner and is composed of eleven members. Five members represent the interests of farmers, five members represent the interest of employees and the public, and one member acts as an impartial chair. Agricultural producers in New York State with farm minimum wage concerns and comments should write to this council.

## MINIMUM WAGE RATE

The New York State Farm Minimum Wage Order is applicable to all farm employees if their employer paid cash wages of \$3,000 or more in the preceding year. *Basic minimum hourly wage means \$3.35 per hour until January 1, 1991; \$3.80 per hour on and after January 1, 1991; and \$4.25 per hour on and after January 1, 1992, for employees 18 years of age or older.* Employers are not required to pay farm employees overtime under State law. Agricultural workers must be paid "not later than seven calendar days after the end of the week in which the wages are earned." They may be paid every two weeks as long as this requirement is observed.

## YOUTH RATE

Employers who have been issued a youth rate certificate from the New York State Department of Labor can hire employees who are under the age of 18 and pay them less than the regular minimum wage. The application for the certificate can be obtained from the local Division of Labor Standards Office and, once completed, returned to that office for processing. The Department will then issue a youth rate certificate to the farm employer.

Employees covered under the youth rate certificate include: 1) Harvest workers 16 and 17 years old; 2) Non-harvest workers 16 and 17 years old; 3) Youths under 16 years of age. Following are the minimum rates that can be paid to each group.

1) **Harvest workers** - This category includes employees who are 16 and 17 years of age, hired to harvest fruits and vegetables. These

employees may be paid \$2.85 per hour until January 1, 1991; \$3.25 per hour on and after January 1, 1991; and \$3.60 per hour on and after January 1, 1992. During their second harvest season with the same employer, they may be paid \$3.00 per hour until January 1, 1991; \$3.40 per hour on and after January 1, 1991; and \$3.80 per hour on and after January 1, 1992. During their third harvest season with the same employer, the employees must be paid no less than the basic minimum wage rate.

2) **Non-harvest workers** - This category includes employees who are 16 and 17 years of age, hired for non-harvest work. These employees may be paid \$2.85 per hour during their first 300 hours of employment until January 1, 1991; \$3.25 per hour on and after January 1, 1991; and \$3.60 per hour on and after January 1, 1992. During their second 300 hours of employment with the same employer, they may be paid \$3.00 per hour until January 1, 1991; \$3.40 per hour on and after January 1, 1991; and \$3.80 per hour on and after January 1, 1992. They may receive no less than the basic minimum wage rate thereafter when working for the same employer.

3) **Youths under 16 years of age** - Youths under 16 years of age may be hired only if they have been issued a farm work permit. This permit may be obtained through the local high school guidance counselors. These employees may be paid \$2.50 per hour until January 1, 1991; \$2.85 per hour on and after January 1, 1991; and \$3.20 per hour on and after January 1, 1992. Employers should be aware that both State and Federal law may put additional restrictions on the hours and types of work that may be done by youths under 16 years of age.

## **TERMINATION OF EMPLOYMENT AND WAGE SUMMARY**

Individuals whose employment has been terminated are required to receive full wages on the regularly scheduled pay day in that pay period, or they can request that their wages be forwarded by mail. Employees' pay may not be reduced because they have quit on short notice. A written summary of total gross and net earnings for their employment period and a listing of all deductions must be included with the last wage payment.

## **PIECE RATE**

If an employee is working on a piece rate basis, the wage received each pay period must be at least equal to the basic minimum wage rate. If an employer has been issued a youth rate certificate from the

Commissioner of Labor, the wage rate must be at least equivalent to the appropriate youth rate.

## **ALLOWANCES**

Housing - Many farm employers provide housing to their workers as an employment benefit, and calculate the value of that housing as part of the employees' wages. When a house or apartment and utilities are furnished to an agricultural employee, the law permits the employer to consider a housing allowance as part of the employee's minimum wage. A fair and reasonable amount may be allowed for such benefits, not to exceed either the value of comparable housing in the locality, or \$2.70 a day until January 1, 1991; \$3.00 a day on and after January 1, 1991; \$5.00 a day on and after January 1, 1992 for an individual employee and \$6.00 a day on and after January 1, 1991; \$8.00 a day on and after January 1, 1992 when the employee's family resides with the employee.

When a room is furnished to an employee, allowances of \$15.00 per week until January 1, 1991; \$16.95 per week on and after January 1, 1991; \$18.95 per week on and after January 1, 1992 for single occupancy rooms, or \$10.00 per week until January 1, 1991; \$11.30 per week on and after January 1, 1991; and \$12.65 per week on and after January 1, 1992 per employee for multiple occupancy. Agricultural employers who are paying over minimum wage and providing housing as an additional benefit do not need to be concerned with these allowances. *No allowance can be considered part of the minimum wage for a migrant seasonal employee.*

Meals - An allowance of \$1.35 per meal until January 1, 1991; \$1.50 per meal on and after January 1, 1991; and \$1.70 per meal on and after January 1, 1992 can be considered part of the minimum wage. However, no meal allowance is permitted if a migrant seasonal employee earns less than \$201 in a two-week period until January 1, 1991; \$227 in a two-week period on and after January 1, 1991; and \$254 in a two-week period on and after January 1, 1992 other than by reason of voluntary absence.

Payment in Kind - Agricultural employers often provide employees with farm produce such as meat and milk. These payments in kind must be acceptable to the employee in order to be considered a part of salary when that employee is earning minimum wage. They must be assessed at farm market value (not retail value) at the time such payments are provided.

All of the above allowances must be listed on the employee's pay stub and employers should keep records of such things as utility bills so that they can document their expenses.

## **PAYROLL DEDUCTIONS**

There are only two types of payroll deductions permitted by law. They are: 1) deductions authorized by law, such as income tax withholding and social security, and; 2) deductions for the benefit of the employee which must be authorized in writing by the employee, such as health insurance, life insurance, and loan payments for cash advances.

It is good practice to have an employee sign a receipt for any advances or loans received. The employer may deduct the full amount of a payroll advance in the wage payment following that advance. If the full amount is not deducted from the employee's next wage payment, no more than ten percent of the employee's gross earnings can be deducted from subsequent paychecks and must be interest free.

Examples of the kinds of deductions that are prohibited include:

- Deductions for spoilage or breakage.
- Deductions for cash shortages or losses in the business.
- Fines or penalties for tardiness, misconduct, or quitting without notice.

## **POSTING REQUIREMENTS**

Farm employers are required to post a notice (Form LS -110) provided by the Department of Labor summarizing the minimum wage order for farm workers (Article 19A). This notice must be displayed in a conspicuous place on the farm.

Farm employers are also required to post a copy of a generally applicable work agreement. For farmers employing seasonal or migrant workers, one of several existing documents may satisfy this requirement. These include a Job Service recruitment or placement order, a farm labor contract or migrant labor registration, or an agricultural employment contract executed by the employer with a foreign government.

Employers who do not hire seasonal or migrant workers should develop and post a generally applicable work agreement specific to their

business. This can be done by summarizing the information provided in the individual work agreement (see next section). The generally applicable work agreement should contain the same types of information as the individual work agreement, such as hours worked, wages paid, and other conditions of employment. However, the generally applicable work agreement should provide additional information, listing the range of wages and benefits provided the workers as a group. For example, wages paid could read \$4.00 to \$5.50 per hour, or \$200 to \$300 per week. The purpose of this notice is to inform employees of the employment conditions for the business as a whole.

## **INDIVIDUAL WORK AGREEMENT**

Under the law, farm employers are required to provide each employee with a written work agreement. This agreement should include the following:

1. The full name, address and telephone number of the employer.
2. The location and type of work.
3. Housing arrangements if provided, including cost, number of rooms and cooking facilities.
4. Allowances, if any, for meals and lodging to be deducted from wages.
5. Benefits to be provided by the employer (for example, vacation time or health insurance).
6. Wages to be paid and time of payment.
7. Period of employment.
8. All other planned payroll deductions.
9. Non-economic terms and conditions of employment (for example, employee must be literate, or must be able to do heavy lifting).
10. Overtime provisions.

Farm employers can develop their own work agreements or use the sample farm work agreement provided by the Labor Department. (Form LS-309, 1-86).

## **WAGE STATEMENT**

The New York State Minimum Wage Order for Farm Workers requires that all employees receive a wage statement with their wage payment for each payroll period. This statement must contain the following information:

1. Employer name, address, and federal identification number.
2. Employee name.
3. Total number of hours the employee worked.
4. Wage rates paid.
5. Gross wages.
6. Deductions and allowances.
7. Net wages.
8. If paid by the piece:
  - a) piece rate.
  - b) size or weight of the piece rate unit.
  - c) number of pieces produced.

Each change in the piece rate or size must be documented in the employer's records.

## **EMPLOYER RECORDS**

Employers are required to file and keep wage records on each employee for a minimum of three years. The necessary information includes:

1. Employee's name and address.
2. Employee's social security number.
3. Total daily and weekly hours worked.
4. When a piece rate method of payment is used, the number of units produced daily and weekly.
5. Gross wages.
6. Deductions from gross wages.
7. Allowances claimed as part of the minimum wage.
8. Any cash advance.
9. Date of birth of individuals employed at the youth rate; and, for minors under 17 years of age, the name and address of the minor's parent or guardian; and, for minors under 16 years of age, the number of the farm work permit issued to such employees.
10. Wage rate.
11. Copy of applicable employee work agreement.

Farmers are required to provide this information to Department of Labor officials if they are requested to do so. To aid them in record-keeping, many farmers use the Cornell Farm Employee Wage Record Book. This is a booklet of wage and benefit statements which allows the employer to keep an accurate record of employee wages and benefits. It also allows the employer to make additional copies of the statements to give to the employees. Much of the information summarized in the wage record book satisfies the farm employer's record-keeping requirements outlined in the Farm Minimum Wage Order. The Cornell Farm Employee Wage Record Book can be purchased at a price of \$5.95 from:

Cornell Cooperative Extension Distribution Center  
Research Park  
Ithaca, New York 14850  
Phone (607) 255-2080

This publication may also be purchased at local Cooperative Extension offices.

### **PENALTIES FOR NON-COMPLIANCE**

The New York State Department of Labor issues penalties for non-compliance with the Farm Minimum Wage Order. Penalties can be given for record-keeping violations or non-compliance with the Minimum Wage Order for Farm Workers.

1. Record-keeping problems include, but are not limited to, having no records, falsifying records, failure to keep records of daily and weekly hours worked, failure to make records available for inspection, or hindering the interviewing of employees. Discrimination against an employee is also a violation. Fines for these violations can range from a warning or fine to \$1,000 for the first violation, from \$500 to \$2,000 for the second violation, and from \$2,000 to \$3,000 for the third and subsequent violations.

2. Another type of violation involves non-compliance with the Minimum Wage Order for Farm Workers. Possible violations include, but are not limited to, improper wage payment, improper deductions and/or expenses, lack of or improper posting and notification, lack of or incomplete employee wage statements, and lack of or incomplete employer records. Fines for these violations can range from a warning or fine to \$1,000 for the first violation, from \$500 to \$2,000 for the second violation, and from \$2000 to \$3,000 for the third and subsequent violations.

## Appendix I.

### Minimum Wage: Common Questions and Answers

*Q. Is my farm covered by the State Minimum Wage or the Federal Minimum Wage?*

A. If your payroll in the previous calendar year was \$3,000 or more you are covered by the New York State Minimum Wage Order. If your farm is large, you may also be covered by Federal Minimum Wage laws. Farms with over 500 "man-days" in any calendar quarter of the previous year are covered by Federal standards. A "man-day" is defined as one person working at least one hour per day. Many large farms are covered by both Federal and State standards. Where the regulations overlap you must comply with the more stringent regulations.

*Q. How can I pay youth rates to the teenagers working for me?*

A. You must have a youth rate certificate from the Department of Labor to pay less than the minimum wage. The certificate from the New York State Department of Labor covers all youths under 18 years of age regardless of student status. Once obtained, it does not need to be renewed. You must also obtain a youth rate certificate each year from the Federal Department of Labor if your farm is covered by federal standards.

*Q. A person worked just one day. Do I need to give that person a wage summary statement?*

A. No. The day's earnings statement can also serve as a summary.

*Q. There are tools needed to perform certain tasks on my farm. Can I charge the employee for these tools?*

A. No. You cannot charge employees for tools required to perform their jobs.

*Q. My employees want me to lend them money and take payments out of their paychecks. Can I do this?*

A. First, to protect yourself, you should have your employee sign a document that he/she has received the money. Then, as required by law, you complete a written authorization signed by the employee allowing you to deduct money from the employee's wages to pay back the advance.

Finally, the deduction cannot exceed 10% of the employee's gross wages for each pay period and it must be interest free, unless you deduct the full amount of a payroll advance in the wage payment following that advance.

*Q. My employee broke some expensive equipment. Can I take money from that person's paycheck to cover the damages?*

A. Deductions from employee paychecks are allowed only if they are for the benefit of the employee or if they are required by law such as social security deductions. Deductions for breakage, spoilage, cash shortages, or fines for tardiness are not allowed.

*Q. I provide housing for my employees and I want to count the value of the housing as part of my employees' wages. How do I calculate this?*

A. No allowance for lodging is to be considered as part of the minimum wage for a migrant seasonal employee. For all other employees, the following calculation provides an example. This is based on the 1991 daily housing allowance rate of \$6.00 per day for employees and their families and the 1991 hourly minimum wage of \$3.80.

**Housing Calculation:**

$$\begin{array}{r} \$6.00 \text{ per day allowance} \\ \times 7 \\ \hline \$42.00 \text{ per week} \end{array}$$

**Wage Calculation:**

$$\begin{array}{r} \$3.80 \text{ hourly minimum wage} \\ \times 55 \\ \hline \$209.00 \text{ weekly earnings} \end{array}$$

**Then subtract:** \$209.00

-42.00

\$167.00 cash wages to be paid to employee.

**Note:** On 1/1/92, the 1992 rates must be substituted for those used above.

*Q. An inspector from the Department of Labor has recently charged me with violating the minimum wage order. I don't agree with the charges. What can I do?*

A. You are entitled to receive a written notice of violation and are entitled to a compliance conference before a Department of Labor Assistant Commissioner. You should bring your payroll records or any documents pertaining to the alleged violation. You can bring an attorney to this

informal conference or you can represent yourself. If you do not agree with this decision, you can then appeal to the Industrial Board of Appeals. This is a formal hearing before an Administrative Law Judge and you will want to have legal representation.

*Q. What happens if I am found guilty of violating the law?*

A. You may be fined a monetary penalty of up to 50% for wage violations plus interest on the wages. Non-wage violations carry penalties of up to \$1000 for the first violation, up to \$2,000 for the second violation and up to \$3,000 for the third violation. Child labor violations can result in civil penalties.

## **Appendix 2.**

### **Minimum Wage Order Checklist**

The New York State Department of Labor's Minimum Wage Order for Farmworkers encompasses a wide range of employer requirements from work agreements to payroll records. The following checklist will help you determine if your farm is in compliance.

#### **Post**

\_\_\_\_\_ a work agreement which is generally applicable to all employees.

\_\_\_\_\_ the summary of the order (LS-110) conspicuously.

#### **Complete**

\_\_\_\_\_ work agreements for each employee which include all required information. Employees must sign the agreement. Keep a copy of each for your records.

\_\_\_\_\_ authorizations signed by employees allowing deductions from their wages other than those required by law.

\_\_\_\_\_ written wage summaries when an employee is terminated. Give a copy to the employee.

**Employee Wage Statements** (given to employees with their paychecks) must contain

\_\_\_\_\_ name and address of employer.

\_\_\_\_\_ name of employee.

\_\_\_\_\_ wage rate.

\_\_\_\_\_ gross wages, deductions, allowances, net wages.

\_\_\_\_\_ number of hours worked.

## **If Piece Rate**

\_\_\_\_\_ number of piece units produced.

\_\_\_\_\_ piece rate paid.

\_\_\_\_\_ size or weight of piece rate units.

*Note: when paying by piece rate, the hours worked must still be listed.*

## **Employer Payroll Records**

\_\_\_\_\_ name and address of employee.

\_\_\_\_\_ employee's social security number.

\_\_\_\_\_ total hours worked daily and weekly.

\_\_\_\_\_ gross wages, deductions, and net wages.

\_\_\_\_\_ allowances claimed as part of the minimum wage.

\_\_\_\_\_ cash advanced.

\_\_\_\_\_ wage rates.

\_\_\_\_\_ when piece rate, the number of units produced daily and weekly.

## **For Youth Employees**

\_\_\_\_\_ date of birth for youths under 17 years of age.

\_\_\_\_\_ name and address of a minor's parent or guardian.

\_\_\_\_\_ number on farm work permit issued to minors under age of 16.

\_\_\_\_\_ when paying youth rates, first obtain a farm youth rate certificate.

Other Agricultural Economics Extension Publications

No. 90-19	Dairy Farm Business Summary, Eastern New York Renter Summary, 1989 1989	Linda D. Putnam Stuart F. Smith
No. 90-20	Improving Communication About Risks Associated With Residues of Agricultural Chemicals on Produce	Nancy Ostiguy Enrique E. Figueroa Carole Bisogni
No. 90-21	Cornell Cooperative Extension Farm Business Management Program Guidelines Suggestions, and Resources	Stuart F. Smith Wayne A. Knoblauch Gerald B. White
No. 90-22	Fruit Farm Business Summary, Lake Ontario Region, New York, 1989	Darwin P. Snyder Alison M. DeMarree
No. 90-23	Poultry Farm Business Summary, New York 1989	Darwin P. Snyder Stewart Ackerman Kristen Park
No. 90-24	1989 New York Beef Cow-Calf Farm Business Summary	C. N. Rasmussen Stuart F. Smith Danny G. Fox
No. 90-25	Employee Recruitment and Selection Teaching Manual	Thomas Maloney Joann Gruttadaurio Walter Nelson Kristen Park Joan Petzen Alan White
No. 90-26	Employee Recruitment and Selection Participant Manual	Thomas Maloney Joann Gruttadaurio Walter Nelson Kristen Park Joan Petzen Alan White
No. 90-27	Farm Income Tax Management and Reporting	George L. Casler Stuart F. Smith
No. 90-28	Pro-Dairy Financial Data Collection Workbook	Jonas B. Kauffman Stuart F. Smith