



- Mandatory
- Informational
- Best Practice
- Other

## TECHNICAL ASSISTANCE

**Date:** 06/26/2024

**Contact:** [policy@dwd.in.gov](mailto:policy@dwd.in.gov)

**Program:** Wagner-Peyser Act Employment Service System, Employment Service and Employment Related-Law Complaint System

**Subject:** DWD Technical Assistance 2022-21, Change 1  
Step-by-Step Process for Intrastate Clearance Orders

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### Purpose

To provide local areas with guidance on the process for Intrastate Clearance Orders. This guidance is intended to supplement DWD Policy 2022-19.

### Change 1 Summary

This guidance was updated to comply with TEN 27-23. Changes to this guidance include:

- When assisting an employer with an intrastate clearance order, the WorkOne representative (Employment Services (ES) staff) must review the order to verify all required wage information is included.
- When assisting an employer with an intrastate clearance order, ES staff must consult the Department of Labor's (DOL) debarments list and the discontinuation of services list.
- If an employer fails to notify all workers that were placed through the order-holding office of a delayed start date at least 10 business days before the original start date, ES staff must process it as an apparent violation.

### Rescission

DWD Technical Assistance 2022-21 *Step-by-Step Process for Intrastate Clearance Orders*

### References

- 20 CFR 653.500-503
- TEN 27-23 Announcing the Publication of the Final Rule, Improving Protections for Workers in Temporary Agricultural Employment in the United States

## Content

Intrastate Clearance Orders are agriculture employer job orders placed within the Department of Workforce Development's (DWD) labor exchange system that have been expanded beyond the local area. The local job order may be changed into an Intrastate Clearance Order when these conditions are met:

- ES staff and employer have attempted local recruitment but have not been able to obtain sufficient workers within the local labor market area to meet the employer's needs; or
- The American Job Center (WorkOne/AJC) anticipates a shortage of local workers (with guidance from the State Monitor Advocate (SMA)).

## Process

1. When the employer and ES staff are unable to obtain sufficient workers or anticipate a shortage of workers within the local area, the WorkOne/AJC, with assistance from the SMA and the agreement of the employer, may decide to prepare the Intrastate Clearance Order.
2. ES staff will work with the SMA to complete the ETA Form 790<sup>1</sup> and its attachments to place an Intrastate Clearance Order. The employer must assist by providing all required information.
3. Employers will enter the required information on ETA Form 790 and its attachments as well as provide supplementary information if necessary. The WorkOne representative will then review the ETA Form 790 and its attachments and advise the SMA.
  - a. ES staff must review intrastate clearance orders to verify that they contain the hourly wage rate, if applicable, and any non-hourly wage rate offered, including a piece rate or base rate and bonuses and, for any non-hourly wage rate, an estimate of its hourly wage rate equivalent for each activity and unit size.
  - b. ES staff must consult DOL's Office of Foreign Labor Certification and the Wage and Hour Division's H-2A and H-2B debarments list<sup>2</sup> and the Office of Workforce Investment (OWI)<sup>3</sup> discontinuation of services list before placing a job order into intrastate clearance.
    - i. If an employer is on the debarments list or on the discontinuation of services list, ES staff must immediately notify the Director of WIOA Title III Services to initiate the discontinuation of ES services to the employer in Indiana.
  - c. Employers must notify all workers that were placed through the order-holding office of a delayed start date at least 10 business days before the original start date.
    - i. If the order-holding office becomes aware that an employer fails to comply with this requirement, staff must process the information as an apparent violation and notify the state-level Complaint System Representative.
4. All clearance orders must be posted in accordance with applicable DOL guidance. The local WorkOne/AJC office must suppress the employer information in the job order.
5. Pre-occupancy housing inspections are initiated by DWD but conducted by Indiana Department of Health (IDOH) on housing that is employer owned or rented to determine if the housing is available and meets the applicable housing standards or has been approved for conditional

<sup>1</sup> This form can be accessed at <https://foreignlaborcert.doleta.gov/pdfs/ETA-790-instructions-addendums.pdf>.

<sup>2</sup> To access the debarments list, click here, [Foreign Labor Certification | U.S. Department of Labor \(dol.gov\)](https://www.dol.gov/eis/whd/foreign-labor-certification), and select "Debarments List" from the left side menu.

<sup>3</sup> While employers can access the discontinuation of services list by contacting OWI, DWD will assist staff with accessing this list.

access to the clearance system as set forth in 20 CFR 653.502. (**Note: IDOH has responsibility for licensing and permitting agricultural labor camps or farmworker housing in general**).

- a. The DWD appointee must schedule the pre-occupancy housing inspections.
  - b. If housing approval has been obtained prior to placing the clearance order, the approval should accompany it. In the absence of housing approval, the employer submits a written request for conditional access into the Agricultural Recruitment System to WorkOne.
  - c. If a request for conditional access has been submitted by the employer and accompanies the Intrastate Clearance Order, then the inspection of housing must be scheduled accordingly.
  - d. If the proposed housing does not meet the applicable housing standards at least 20 calendar days prior to the date of occupancy, the DWD and the WorkOne/AJC informs the employer it has five (5) more days to bring their housing into full compliance. If the housing still does not comply, DWD then cancels the Intrastate Clearance Order after notifying ETA.<sup>4</sup>
6. The SMA reviews the Intrastate Clearance Order for adherence to federal and state regulations and standards.<sup>5</sup>
  7. Recruitment may be directed primarily to areas within the state where there is a labor surplus.
  8. The SMA, MSFW Outreach Staff, and ES staff coordinate recruitment of workers from within the state.
  9. If the intrastate clearance order does not fulfill the demand for workers, the SMA begins the Interstate Clearance Order process in partnership with the Employment and Training Administration's regional office.

## Additional Information

Questions regarding the content of this publication should be directed to [policy@dwd.in.gov](mailto:policy@dwd.in.gov).

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<sup>4</sup> See 20 CFR 653.502(e).

<sup>5</sup> Labor shortfalls or surplus within the state are determined by the DWD based on these regulations and standards.