

## TECHNICAL ASSISTANCE

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### DWD Technical Assistance 2022-21, Change 2: Step-by-Step Process for Intrastate Clearance Orders

**Date:** 03/06/2025

**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

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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.

### CHANGE 2 SUMMARY

Per TEN 27-23, Change 1 and 2, this policy has been updated to align with the Employment Service (ES) regulations at 20 CFR part 653.500-502 that were in effect on June 27, 2024.

### RESCISSION

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

### REFERENCES

- 20 CFR 653.500-502 (June 27, 2024)
- TEN 27-23, Change 1 and 2 *Implementation of the Final Rule, Improving Protections for Workers in Temporary Agricultural Employment in the United States, in Compliance with District Court Order*
- US Department of Labor/Employment and Training Administration, Forms ETA-790 and 790A<sup>1</sup>
- DWD Policy 2022-19, Change 1 *Migrant and Seasonal Farmworkers Requirements and Service Provisions under the Monitor Advocate System, Wagner-Peyser Act, and Title III of the Workforce Innovation and Opportunity Act*

### DEFINITIONS<sup>2</sup>

**Employment Service Office (ES office)** means a site that provides ES services as a one-stop partner program. A site must be collocated in a one-stop center (WorkOne/AJC).

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<sup>1</sup> Forms can be accessed from [https://www.dol.gov/agencies/eta/agriculture/monitor-advocate-system/resources?utm\\_medium=email&utm\\_source=govdelivery](https://www.dol.gov/agencies/eta/agriculture/monitor-advocate-system/resources?utm_medium=email&utm_source=govdelivery).

<sup>2</sup> 20 CFR 651.10.

**Employment Service Staff (ES office staff)** means individuals who are funded, in whole or in part, by Wagner-Peyser Act funds to carry out activities authorized under the Wagner-Peyser Act.

## CONTENT

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

- ES office staff and the 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
- ES office staff anticipate a shortage of local workers (with guidance from the State Monitor Advocate (SMA)).

## Process

1. When the employer and ES office staff are unable to obtain sufficient workers or anticipate a shortage of workers within the local area, ES office staff, with assistance from the SMA and the agreement of the employer, may decide to prepare the Intrastate Clearance Order.
2. ES office staff will work with the SMA to complete the ETA Form 790 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. ES office staff will then review the ETA Form 790 and its attachments and advise the SMA.
  - a. ES office staff must review intrastate clearance orders to verify the following are listed:<sup>3</sup>
    - i. The crop;
    - ii. The nature of the work;
    - iii. The anticipated period and hours of employment;
    - iv. The anticipated starting and ending date of employment and the anticipated number of days and hours per week for which work will be available;
    - v. The hourly wage rate or the piece rate estimated in hourly wage rate equivalents for each activity and unit size.
    - vi. Any deductions to be made from wages;
    - vii. A specification of any non-monetary benefits to be provided by the employer;
    - viii. Any hours, days, or weeks for which work is guaranteed, and, for each guaranteed week of work<sup>4</sup> of this section, the exclusive manner in which the guarantee may be abated due to weather conditions or other acts of God beyond the employer's control; and

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<sup>3</sup> 20 CFR 653.501(c)(1)(iv), in effect on June 27, 2024.

<sup>4</sup> Except as provided in 20 CFR 653.501 (c)(3)(i), in effect on June 27, 2024.

- ix. Any bonus or work incentive payments or other expenses which will be paid by the employer in addition to the basic wage rate, including the anticipated time period(s) within which such payments will be made.
- b. Employers must notify the order-holding office in writing<sup>5</sup> of a delayed start date at least 10 business days before the original start date.<sup>6</sup>
  - i. ES office staff must immediately inform DWD of this notification.
    - 1. DWD will make a record of this notification and will attempt to inform referred workers of the change expeditiously.
- 4. All clearance orders must be posted in accordance with applicable ETA guidance. If the job order for the ES office incorporates offices beyond the local office commuting area, the ES office must suppress the employer information in order to facilitate the orderly movement of workers within the ES.<sup>7</sup>
- 5. Pre-occupancy housing inspections are initiated by DWD but conducted by the 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 access to the clearance system.<sup>8</sup>
  - 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 the ES office staff at their nearest WorkOne/AJC.
    - i. If a written request for conditional access is submitted to an ES office, the ES office must send<sup>9</sup> the request to the DWD Foreign Labor Certification (DWDFLC) team.<sup>10</sup> The inspection of housing must be scheduled accordingly.
    - ii. Upon receipt of an authorization for conditional access, the ES office must attach copies of the authorization to each of the employer's clearance orders.<sup>11</sup>
  - c. 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 ES office staff inform the employer it has five (5) more days to bring their housing into full compliance. After the 5-calendar-day period, if the housing is not in full compliance with the applicable housing standards as assured in the request for conditional access, the ES office must immediately:
    - i. Notify the DWDFLC team;<sup>12</sup>

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<sup>5</sup> Email is acceptable.

<sup>6</sup> 653.501(c)(3)(i), in effect on June 27, 2024.

<sup>7</sup> 20 CFR 653.501(b)(2), in effect on June 27, 2024.

<sup>8</sup> NOTE: IDOH has responsibility for licensing and permitting agricultural labor camps or farmworker housing in general.

<sup>9</sup> [IndianaFLC@dwd.IN.gov](mailto:IndianaFLC@dwd.IN.gov).

<sup>10</sup> 20 CFR 653.502(b)(1), in effect on June 27, 2024.

<sup>11</sup> 20 CFR 653.502(c), in effect on June 27, 2024.

<sup>12</sup> [IndianaFLC@dwd.IN.gov](mailto:IndianaFLC@dwd.IN.gov).

- ii. With the approval of an appropriate DWD official, remove the employer's clearance orders from intrastate and interstate clearance; and
  - iii. If workers have been recruited against these orders, in cooperation with the ES agencies in other States, make every reasonable attempt to locate and notify the appropriate crew leaders or workers, and to find alternative and comparable employment for the workers.<sup>13</sup>
- 6. The ES office electronically submits<sup>14</sup> the ETA Form 790 and its attachments, assurances, and any supplementary information that was provided to the DWDFLC team.<sup>15</sup>
- 7. The SMA reviews the Intrastate Clearance Order for adherence to federal and state regulations and standards.<sup>16</sup>
- 8. Recruitment may be directed primarily to areas within the state where there is a labor surplus.
- 9. The SMA, MSFW Outreach Staff, and ES office staff coordinate recruitment of workers from within the state.
- 10. The applicant holding office must notify all referred farmworkers, farm labor contractors on behalf of farmworkers, or family heads on behalf of farmworker family members, to contact an ES office, preferably the order-holding office, to verify the date of need cited in the clearance order between 9 and 5 business days prior to the original date of need cited in the clearance order; and that failure to do so will disqualify the referred farmworker from the first weeks' pay.<sup>17</sup>
- 11. If the worker referred through the clearance system contacts an ES office (in any State) other than the order holding office, that ES office must assist the referred worker in contacting the order holding office on a timely basis. Such assistance must include, if necessary, contacting the order holding office by telephone or other timely means on behalf of the worker referred through the clearance system.<sup>18</sup>
- 12. If the intrastate clearance order does not fulfill the demand for workers, the SMA begins the Interstate Clearance Order process in partnership with the United States Department of Labor Employment and Training Administration's regional office.
- 13. ES staff must assist all farm workers to understand the terms and conditions of employment set forth in intrastate and interstate clearance orders and must provide such workers with checklists showing wage payment schedules, working conditions, and other material specifications of the clearance order.<sup>19</sup>
  - a. Applicant-holding offices must provide workers referred on clearance orders with a checklist summarizing wages, working conditions and other material specifications in the clearance order. The checklist must include language

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<sup>13</sup> See 20 CFR 653.502(e), in effect on June 27, 2024.

<sup>14</sup> [IndianaFLC@dwd.IN.gov](mailto:IndianaFLC@dwd.IN.gov).

<sup>15</sup> 20 CFR 653.501(d)(1), in effect on June 27, 2024.

<sup>16</sup> Labor shortfalls or surplus within the state are determined by DWD based on these regulations and standards.

<sup>17</sup> 20 CFR 653.501(d)(4), in effect on June 27, 2024.

<sup>18</sup> 20 CFR 653.501(d)(5), in effect on June 27, 2024.

<sup>19</sup> 20 CFR 653.501(d)(6), in effect on June 27, 2024.

notifying the worker that a copy of the original clearance order is available upon request.<sup>20</sup>

- b. The applicant-holding office must give each referred worker a copy of the list of workers' rights described in Departmental guidance.<sup>21</sup>
- 14. If an order-holding office learns that a crop is maturing earlier than expected or that other material factors, including weather conditions and recruitment levels have changed since the date the clearance order was accepted, DWD will immediately contact the applicant holding office which must inform immediately crews and families scheduled to report to the job site of the changed circumstances and must adjust arrangements on behalf of such crews and families.<sup>22</sup>
- 15. If weather conditions, over-recruitment, or other conditions have eliminated the scheduled job opportunities, DWD will make every effort to place the workers in alternate job opportunities as soon as possible, especially if the worker(s) is/are already in route or at the job site. DWD will work with the order-holding office staff to document actions under this section.<sup>23</sup>

**NOTE: Indiana is one of several states in which ES office staff may not deny employers access to services on the basis of a discontinuation of services outside of Indiana.<sup>24</sup>**

## ACTION

Local areas are to ensure that all staff are familiar with the requirements of this policy and update any local guidance accordingly. This guidance is subject to routine DWD monitoring.

## 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>20</sup> 20 CFR 653.501(d)(10), in effect on June 27, 2024.

<sup>21</sup> 20 CFR 653.501(d)(11), in effect on June 27, 2024.

<sup>22</sup> 20 CFR 653.501(d)(7), in effect on June 27, 2024.

<sup>23</sup> 20 CFR 653.501(d)(9), in effect on June 27, 2024.

<sup>24</sup> TEN 27-23, Change 2.