

Agriculture Recruitment System Handbook



Iowa Workforce
Development

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Agriculture Recruitment System Handbook

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The Agricultural Recruitment System (ARS) handbook, provides guidance to the state of Iowa workforce offices for processing agricultural and food processing clearance orders.

The ARS assists agricultural employers with recruiting qualified domestic workers on a temporary or seasonal basis.



It also provides job seekers seeking temporary agricultural employment with employment. The Wagner-Peyser Act provides authority for the ARS under 20 CFR 653.500-653.503.

Through the ARS, IowaWORKS systematically recruits and refers qualified workers from within Iowa and from other states when there is an anticipated shortage of workers.

The ARS helps agricultural employers meet their temporary and seasonal labor needs by matching farmworkers with agricultural jobs. The system also may be used for filling permanent positions. However, a worker placed in a permanent position will not be eligible for the various protections provided to workers placed in temporary positions through the ARS.

This handbook consolidates the regulatory interpretations of the U.S. Department of Labor (U.S. DOL) relating to the ARS. It also explains the steps for recruiting workers within the United States. Job order requirements are from the federal regulations at 20 CFR 653 and housing standards are at 20 CFR 654 and 29 CFR 1910.142. Additional requirements contained at 20 CFR 655 pertain to requests for employing foreign temporary agricultural workers under the H-2A Program.



To provide users with easy access to information about the system, several pieces of informational material are available:

- Brochure – The Agriculture Recruitment System - An Agricultural Employer's Guide. An overview of the ARS answering common questions and explaining benefits to employers.
- Brochure – An Agricultural Workers Guide. An overview of the ARS telling workers how the system operates, and what protections and benefits it can afford them.
- Fact sheet – Side-by-side comparison of ARS vs. H-2A job order process.
- “Non-Criteria” Agricultural Clearance Order Checklist

IowaWORKS center staff should acquaint themselves with these publications and obtain appropriate supplies for informational and promotional purposes.

This handbook presents IowaWORKS's responsibilities and procedures as stated in federal regulations. IowaWORKS must fulfill all the responsibilities discussed in this handbook.

CHAPTER I

Program Operating Procedures

ORIGIN AND DESCRIPTION OF THE AGRICULTURAL RECRUITMENT SYSTEM

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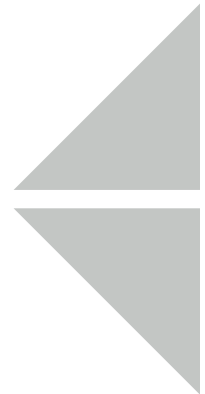
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Origin and Description of the Agricultural Recruitment System

Background

The Wagner-Peyser Act mandates the U.S. Employment Service maintain a system for the orderly movement of workers within and between states. Operational procedures for the ARS are found in federal regulations at 20 CFR Part 653, Subpart F. These regulations define the process for agricultural clearance orders, which request workers for less than one year of employment. They are based on the DOL's policy of requiring specific assurances and information in agricultural clearance orders. Protections are provided to workers who are not seeking permanent relocation, but rather temporary agricultural employment.

How the Process Works

In Iowa operational responsibility for the program rests primarily with IowaWORKS in cooperation with the U.S. DOL. For any questions regarding the ARS at IowaWORKS, please contact the SMA (SMA) first, with the Foreign Labor Certification (FLC) program coordinator serving as a backup.

The following is a summary of how the system operates.

1. Employer determines need for workers.
2. Employer places an agricultural job order at a local IowaWORKS center.
3. The IowaWORKS center prepares job order and recruits locally.
4. If labor needs are not met through the local job order, the employer should be advised of the option to clear, or open the order to other local offices within the state (intrastate clearance order). Local staff will coordinate with the SMA to move the job order into an intrastate clearance order by completing the ETA 790 form and attachments. The intrastate clearance order must follow the regulations at 20 CFR 653.501 (d)(1) through (d)(12). Clearance job orders will be designated in IWORKS with the ARS job order register.
5. If labor needs are not met statewide, the SMA, with employer authorization, will submit the intrastate job order (ETA Form 790) to the U.S. DOL ETA Regional Monitor Advocate (RMA) for review as an interstate clearance order.
6. The RMA reviews and either approves or disapproves the ETA 790 interstate clearance order. If approved, the RMA determines the states of supply to which the order is extended.
7. The SMA will send the approved ETA 790 clearance order to the designated supply state(s) where qualified workers may be available.
8. If the potential labor supply state(s) workforce office accepts an ETA 790 interstate clearance order, it actively recruits workers for referral. The labor supply state is responsible for:
 - a. Informing workers about the availability of jobs;
 - b. Explaining the conditions of employment to them; and
 - c. Arranging through IowaWORKS for interested workers and the employer to take the steps necessary to finalize the hiring agreement.

9. The order-holding state, IowaWORKS center, with assistance from the SMA, will continue to have responsibility for the placement process until the workers recruited out of the area arrive at the jobsite and begin employment. This includes such tasks as helping the employer advise labor supply states of changes in crop and recruitment conditions as well as informing the employer of any changes in the status of recruited workers which may impact filling the employer's labor needs.
10. After workers arrive and start employment, the SMA and Migrant and Seasonal Farmwork (MSFW) Outreach Specialist are responsible for oversight and conduct on-site field checks of job sites where workers have been placed. IowaWORKS is also responsible for responding to any work related complaints from the worker(s). The SMA, MSFW Outreach Specialist and/or local staff contact workers on-site to offer and inform them of available services.

Placing Clearance Orders

Who May Place a Clearance Order?

1. A clearance order may be placed by an agricultural employer.
2. The agricultural employer must meet the requirements of 20 CFR 651.10.
 - a. Agricultural employer means any employer, as defined in this part, who owns or operates a farm, ranch, processing establishment, cannery, gin, packing shed or nursery, or who produces or conditions seed, and who either recruits, solicits, hires, employs, furnishes, or transports any migrant or seasonal farmworker or any agricultural employer as described in 29 U.S.C. 1802(2).
 - b. Employer means a person, firm, corporation, or other association or organization which currently has a location within the U.S. to which U.S. workers may be referred for employment, and which proposes to employ a worker at a place within the U.S. and which has an employer relationship with respect to employees under this subpart as indicated by the fact that it hires, pays, fires, supervises, and otherwise controls the work of such employees. An association of employers is considered an employer if it has all of the indicia of an employer set forth in this definition. Such an association, however, is considered as a joint employer with the employer member if either shares in exercising one or more of the definitional indicia. A clearance order may be placed by any agricultural employer needing workers from out of the local area to perform agricultural or food processing work of a temporary or seasonal nature (work performed within a period of less than a year).
3. ETA Form 790 Agricultural and Food Processing Clearance Order (see Appendix A) must be prepared to place an intrastate and interstate clearance order.
4. When a registered Farm Labor Contractor functions as the employer, the following conditions apply:
 - a. The clearance order must specify that the registered Farm Labor Contractor is the employer.
 - i. A valid federal registration is required. The local office must verify that the registration is valid for the current year.
 - ii. A telephone call to validate the registration can be made with the state enforcement agency and the regional office of the U.S. DOL Wage and Hour Division.
 - iii. Once these conditions are met the local IowaWORKS center may refer farmworkers to registered Farm Labor Contractors.

Where, When & How to Place a Clearance Order

LOCAL JOB ORDERS

1. The agricultural employer must initiate action by contacting the local IowaWORKS center servicing that region.
2. The process begins when an employer places a local job order with the local IowaWORKS center, it may be changed into an intrastate clearance order when these conditions are met:
 - a. It is determined through local recruitment that sufficient numbers of local workers are not available to meet the employer's need; or
 - b. The local IowaWORKS center anticipates a shortage of local workers. (This will be determined by the SMA.)

WHEN TO PLACE A CLEARANCE ORDER

It is advised that the clearance order be placed no later than eight weeks before the date of need for workers. The regulations at 20 CFR 653.501 do not specify a minimum period for the filing and processing of a clearance order.

The employer should be encouraged to place a clearance order as soon as (a) it is determined that sufficient workers are not or will not be available within the local labor market area; and (b) necessary information (such as the period of employment, the crops and activities involved, and the appropriate wages) is available.

Early filing allows the local IowaWORKS center sufficient time to obtain the employer's agreement to any necessary modifications to the clearance order.

INTRASTATE CLEARANCE ORDERS

1. After the employer and local office staff are unable to obtain sufficient farmworkers or anticipate a shortage of workers within the local area, the local IowaWORKS center, with assistance from the SMA, and the agreement of the employer, may decide to prepare the intrastate clearance order.
2. Local IowaWORKS staff will work with the SMA to complete ETA Form 790 and its attachments to place an intrastate clearance order. The employer must assist by providing all required information.
3. If they so elect, employers may enter the required information on the various forms and prepare supplementary information.
4. All clearance orders must be posted in accordance with applicable ETA guidance. The local office must suppress the employer information in order to facilitate the orderly movement of workers within the state.
5. Pre-occupancy housing inspections are conducted by IowaWORKS 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 as set forth in §653.502; (Note: Iowa Department of Inspections and Appeals has responsibility for licensing and permitting hotels/motels.)
 - a. The SMA or MSFW Outreach Specialist must schedule 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 request for conditional access into the ARS (see Appendix F).
 - 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 SWA informs the employer it has five more days to bring his housing into full compliance. If the housing still does not comply, the SWA cancels the intrastate clearance order after notifying ETA (see 20 CFR 653.502(e)).
6. The SMA reviews the intrastate clearance order for adherence to federal and state regulations and standards. The optional checklist, ETA Form 790, agricultural clearance order checklist (see Appendix B), may be used to ensure compliance with applicable regulations. Labor shortfalls or surpluses within the state are determined by the SWA.
7. Recruitment may be directed primarily to areas within the state where there is a labor surplus.
8. The SMA along with the MSFW Outreach Specialist coordinates recruitment of workers from within the state.

INTERSTATE CLEARANCE ORDERS

- The employer is required to provide the same information as for an intrastate clearance order.
- The SMA utilizes the same clearance order package as for intrastate clearance orders.
- The IowaWORKS order-holding office may request approval as an interstate clearance order if the following conditions are met:
 - The employer and the SWA are unable to locate sufficient workers or anticipate a shortage of workers within the state; and
 - The interstate clearance order meets the regulations at 20 CFR 653.501 (d)(I) through (d)(6).

If the interstate clearance order meets these requirements, it is submitted for approval to the ETA Regional Office, which has jurisdiction over the order holding SWA.

THE ETA REGIONAL OFFICE CARRIES OUT THE FOLLOWING RESPONSIBILITIES:

- Reviews and approves or denies the interstate clearance order within 10 working days from the date received from the SWA. The agricultural clearance order checklist (Appendix B) should be used in reviewing the clearance order to ensure compliance with applicable regulations.
- If the order is approved, the regional office specifies the states to which the clearance order will be extended. The order holding SWA is notified of the approval and instructed where to extend the clearance order.
- If the order is disapproved, the regional office provides (in writing) the reasons for denial to the SWA.
- The order holding SWA (Iowa Workforce Development):
 - Distributes copies of the approved interstate clearance order and the necessary attachments including a summary checklist to the following
 - At least one copy of the clearance order must be sent to each of the SWA(s) selected for recruitment (areas of supply);
 - At least one copy of the clearance order must be sent to each applicant-holding ETA regional office;
 - At least one copy of the clearance order must be sent to the order-holding ETA regional office; and
 - At least one copy of the clearance order must be sent to the Regional Farm Labor Coordinated Enforcement Committee and/or other Occupational Safety and Health Administration and Wage and Hour Division regional agricultural coordinators, and/or other committees as appropriate in the area of employment.

THE APPLICANT HOLDING SWA(S) IN SUPPLY STATE(S) CARRIES OUT THE FOLLOWING RESPONSIBILITIES:

Acceptance of an interstate clearance order:

- If the applicant holding SWA accepts an order, its local office should begin recruiting workers.
- The applicant holding office (AHO) provides a checklist of the wages, working conditions, and other material specifications to the referred workers. The checklist is made available in English, Spanish or other language, as necessary.
- A statement of worker's rights must be given to each referred farm worker. This statement developed by the National Farm Labor Coordinating Enforcement Committee, may be adapted to meet the requirements of individual states.
- The applicant holding SWA must make a copy of the complete clearance order available for inspection.

NON-ACCEPTANCE OF AN INTERSTATE CLEARANCE ORDER:

- If an applicant holding SWA rejects an interstate clearance order, the reasons for denial should be submitted to its U.S. DOL, ETA regional office with jurisdiction over the applicant holding SWA.
- The regional office should review the reasons for denial. If the regional office agrees with the SWA, the order holding SWA is informed by the applicant holding regional office.
- If the regional office (of the order holding SWA) disagrees with the applicant holding SWA decision, the U.S. Employment Service (USES) administrator should be contacted by the order holding regional office. The USES administrator is authorized to make the final decision on the acceptance or rejection of the interstate clearance order.

What to Include in the Clearance Order Package

The following forms, attachments, and statements are part of the clearance order:

- Agricultural form, ETA Form 790, (see Appendix A). This form describes the terms of employment for which the employer will be held accountable. The employer must sign this form. By signing the order, the employer is committing to all of the terms and conditions.
 - Attachments can be submitted to furnish additional information. The corresponding item number must be indicated on each attachment.
- Assurances regarding the Intrastate and Interstate Clearance Order (see Appendix C)
 - The employer must agree to provide assurances relating to certain terms and conditions of employment. The assurances statement signed by the employer must accompany the ETA Form 790. In lieu of the signed statement, the employer may state on the ETA Form 790 an agreement to abide by the assurances set forth at 20 CFR 653.501.
- Housing Approval
 - Submit documentation of approval if housing meets appropriate requirements at the time the clearance order package is submitted.
- Request for Conditional Access
 - If the housing does not comply with the applicable standard(s) at the time the clearance order is placed, the employer may file a request for conditional access to the intrastate and interstate ARS.
- A request for conditional access assures the housing will be in full compliance with the appropriate standard(s) at least 20 calendar days prior to the date of occupancy.
 - ES staff should be aware of state and/or other applicable standards which may require additional conditions beyond U.S. DOL standards. For example, staff should remind employers that non-municipal water supplies must be tested and approved before housing can be approved.

Amendments to a Clearance Order

Modifications Due to Change in Date of Need

- a. An employer may change the original date of need (start date for workers) on a clearance order. These changes apply when:
 1. a crop is maturing earlier or later;
 2. there are changes in the market conditions; and
 3. weather conditions delay the work to be performed.

Changes in the date of need should be filed at least 10 working days prior to the original date of need. An employer may file a change through a telephone call to the order holding IowaWORKS center.

“Working days” are those days that the order holding local office is open for public business.

If the local IowaWORKS order-holding office is not informed on a timely basis of the changes in the original date of need, the employer is obligated to pay eligible recruited farmworkers a wage guarantee.

The wage guarantee covers the first week starting at the original anticipated date of need as stated in the clearance order.

The employer may require workers to engage in alternative work if the wage guarantee is invoked and the alternative work is stated in the clearance order.

The hourly wage rate multiplied by the total number of hours per week specified in item 10 of the ETA Form 790 serves as the amount due for the wage guarantee. If there is no specified hourly wage rate, the federal or state minimum wage or the prevailing wage rate (whichever is highest) determines the wage.

ETA Form 795, Agricultural and Food Processing Clearance Memorandum (see Appendix D) may be utilized by the order-holding office to modify or provide additional information regarding the employment terms and conditions incorporated in the clearance order.

b. Worker Checking Requirement

1. To be eligible for any wage guarantee, workers must contact the order-holding office (OHO) MSFW outreach specialist through any Employment Service office in any state within five to nine working days prior to the original date of need to bind the wage guarantee.
2. If the worker contacts an Employment Service office in any state, that office must assist the farm worker in contacting the appropriate order-holding office on a timely basis. Failure to contact the Employment Service on a timely basis disqualifies otherwise eligible workers from the wage guarantee.
3. The SWA, in contact with workers whose start date has been delayed or canceled, must make every effort to refer the farmworkers to alternate job opportunities until the start date occurs, especially if the workers are en route or at the work site.
4. The MSFW Outreach Specialist, in coordination with the SMA, must document notifications made by the employer and worker(s) to verify the date of need for the workers.

Other Modifications

When conditions change, employers can also request modifications to an approved or pending clearance order with regard to such matters as the number of workers needed, crops or crop activities or other aspects of the order.

Extension of Employment Period

A job extension beyond the period of employment in the clearance order does not obligate a worker to extend his or her employment commitment or relieve the employer from:

- Paying the wages already earned;
- Any bonus or work incentive stated in the clearance order; or
- Providing or paying transportation expenses to the worker's home, if specified in the clearance order.

Processing and Referral Procedures

The procedures below apply to the processing of both intrastate and interstate clearance orders.

Types of Referral Actions for Clearance Order

- a. **Positive Recruitment:** This involves direct action on the part of the employer to recruit workers. For example, the referral of a qualified applicant to an employment interview with an employer or employer's representative in the applicant holding office.
- b. **Direct Referral:** Applicant holding office directs a qualified applicant to an employer in another state for an employment interview.
- c. **Delegation of Hiring Authority:** The SWA is designated as the hiring agent by the employer and makes hiring commitments, which are binding upon the employer.

IowaWORKS center Responsibilities

Referral responsibilities of IowaWORKS center when processing a clearance order are as follows:

- a. Coordinate referral instructions with the applicant holding office. The applicant holding office cannot refer applicants until authorized by the order-holding office, unless otherwise noted on the clearance order.
- b. Make all changes to material terms and conditions in the clearance order requested by the employer after approval by U.S. DOL Regional Office. Inform applicant holding office of the changes and forward changes to state central office via ETA Form 795 Agricultural and Food Processing Clearance Memorandum.
- c. Designate a staff contact person responsible for coordination of referrals from applicant holding office to the employer and for related matters.
- d. Contact employer to assist applicant holding office in placing applicants.
- e. Confirm for applicant holding office all actions concerning workers (hires, refusals, no-shows, etc.) and inform applicant holding office of any placement complications. Monitor and follow-up on all referrals.
- f. Advise workers and assist in orienting them to services in the area. Monitor and follow-up on all referrals.
- g. Interview referred workers who have been terminated or refused employment by the employer. Give workers an opportunity to file a complaint.

IowaWORKS center Responsibilities

Referral responsibilities of applicant holding office when processing a clearance order are as follows:

- a. Carry out a search of applicant files, call in appropriate applicants and interview for clearance order jobs.
- b. When all sources within the applicant holding office have been exhausted without securing a sufficient number of workers (and it is believed that additional workers are available) initiate intensive recruitment. Intensive recruitment may involve use of radio, newspaper, mail, key contacts and other means of informing the worker population.
- c. Complete a full or partial application on each applicant prior to referral.
- d. Advise worker being referred of all the terms and conditions of, and qualifications for the job. Keep a complete clearance order available for inspection. An agricultural clearance order checklist may be provided to the worker in lieu of a complete job order.
- e. Verify that each crew leader (functioning as an employer, agent or being referred to the employer) has a current federal and, if necessary, state Farm Labor Contractors Certificate and determine what services the crew leader is authorized to provide.
- f. When appropriate, arrange (or assist SWA in arranging) itineraries for recruitment meetings between workers and employers or employer representatives. Publicize recruitment meetings and notify crew leaders, family heads, and others of the recruitment dates and locations.
- g. Contact the order-holding office, or as instructed in Item 15, ETA Form 790, Agency Representative, (during the season the employer is often not available except very early in the morning or late at night). The order-holding office can help the applicant holding office arrange a mutually satisfactory time for the employer and worker(s) to communicate. If the applicants are in transit and need an immediate confirmation of a job commitment, the order-holding office should make the notification, not the applicant holding office.
- h. Confirm the final referral arrangements with order-holding office before workers are referred. Workers should be advised of reporting dates to bind the wage guarantee (five to nine days prior to first day of work).
- i. Report any referral problems to the order-holding office immediately and follow-up with ETA Form 795.
- j. Provide translation services to employer if requested and are locally available.
- k. When transportation is provided by employer, assist in transportation arrangements. (In most cases, the employer or representative will handle all transportation arrangements.)
- l. Confirm with the order-holding office any arrangements made between applicants and employers.
- m. Immediately inform order-holding office of any problems in regard to the referral so that alternative employment can be located or timely action can be taken against the employer.



Advise the worker being referred of all the terms and conditions of, and qualifications for, the job.

Keep a complete clearance order available for inspection.

An agricultural clearance order checklist may be provided to the worker in lieu of a complete job order.



CHAPTER II

CONTENTS OF THE CLEARANCE ORDER AND ASSURANCES

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Assurances

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Nature of Employment
Employment Period
Wage Information and Requirements
Bonuses
Deductions from Wages
Non-Monetary Benefits

HOUSING

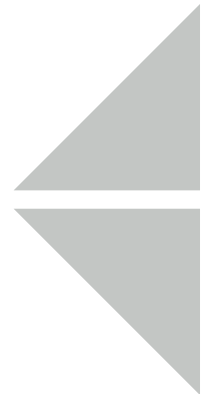
Housing Provision
Pre-Occupancy Housing Inspection

TRANSPORTATION

Field Visits
Field Checks
Complaints

CONDITIONAL ACCESS

Filing of Request
Processing of Request
Pre-Occupancy Housing Inspection





Regulations

A clearance order must comply with the regulations at 20 CFR 653.501.

Disclaimer Statements

Neither the ETA nor the SWA are considered to be parties to an employer-employee contract. The following disclaimer statements are part of Agricultural and Food Processing Clearance Orders, ETA Form 790 (see Appendix A):

- ETA 790 must include the following language: “In view of the statutorily established basic function of the ES as a no-fee labor exchange, that is, as a forum for bringing together employers and job seekers, neither the ETA nor the SWA 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 ES constitute a contractual job offer to which the ETA or a SWA is in any way a party.”

Terms and Conditions of Employment

The terms and conditions of employment must meet the following provisions:

1. Do not contain an unlawful discriminatory specification including, for beneficiaries (as defined in 29 CFR 38.4) only, on the basis of citizenship status or participant status;
 - Specifications that are considered discriminatory include: age, sex, race, color, national origin, religion, mental or physical status, gender identity or sexual orientation.
2. The terms and conditions of a clearance order must comply with applicable employment-related federal and state laws.

The prevailing conditions among similarly employed farmworkers in the area of intended employment shall be the minimum benefits and working conditions.

Assurances

The regulatory assurances must be included as a part of all clearance orders either by the attachment of a signed copy of the assurances statement (see Appendix C) or by a statement on the ETA Form 790 agreeing to abide by the assurances.

Components of a Clearance Order

1. Must be signed by the employer
2. State all the material terms and conditions of the employment, including:

The Crop

The crop(s) that will be the focus of the employment

Nature of Employment

The scope of the job must be specified in terms of the crop and crop activities involved, the tasks to be performed, and the tools or equipment used.

Employment Period

The anticipated period and hours of employment.

The anticipated starting and ending date of employment and the anticipated number of days and hours per week for which work will be available.

Wage Information and Requirements

- a. The wage rate for each activity may be no less than the highest of the following:
 - The wages and working conditions offered are not less than the prevailing wages and working conditions among similarly employed farmworkers in the area of intended employment.
 - The applicable federal or state minimum wage, whichever is higher
 - If the wages offered are expressed as piece rates or as base rates and bonuses, the employer must make the method of calculating the wage and supporting materials available to ES staff who must check if the employer's calculation of the estimated hourly wage rate is reasonably accurate and is not less than the prevailing wage rate or applicable federal or state minimum wage, whichever is higher.
 - The local SWA office staff, with the SMA, reviews the estimate to ensure compliance with the prevailing wage rate or the applicable federal or state minimum wage rate, whichever is highest.

Bonuses

- Any hours, days, or weeks for which work is guaranteed, and, for each guaranteed week of work except as provided in paragraph (c)(3)(i) 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
- 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.

Deductions from Wages

- The employer must indicate all deductions to be made from wages on the clearance order.
- Deductions can be made as long as the federal minimum wage level is still met in each workweek or if authorized by the Fair Labor Standards Act (FLSA), i.e., federal income tax, social security, and if applicable, state income tax. (State law or ERISA may further limit allowable deductions.)

Non-Monetary Benefits

- The employer must list all major non-monetary benefits to be offered to the workers. For example, food, space for gardens, gasoline, recreational facilities and transportation for shopping.

Housing

1. Housing Provision

- a. No-cost or public housing, which meets federal, state, and/or other applicable standards must be available to the specified number of workers being requested on the clearance order.
- b. Housing facilities cover workers and family members (if applicable) who are unable to return to their residence in the same day.
- c. See Farmworker Housing Guide for Migrant and H-2A Workers.

2. Pre-Occupancy Housing Inspection

- a. A pre-occupancy housing inspection is conducted by the local IowaWORKS. The housing must meet the minimum standards set forth in the applicable regulations at 20 CFR 654 or 29 CFR 1910.142, as well as any applicable state and local standards.
- b. Facilities are assessed in terms of housing sanitation, adequacy of the housing site, shelter availability, water supply, toilet facilities, laundry and bathing provisions, and first-aid set-up. For more information regarding housing requirements, please see Farmworker Housing Guide for Migrant and H-2A Workers.

Transportation

The employer must agree to provide or pay for the transportation of the workers and their families at or before the end of the period of employment specified in the job order on at least the same terms as transportation is commonly provided by employers in the area of intended employment to farmworkers and their families recruited from the same area of supply. Under no circumstances may the payment or provision of transportation occur later than the departure time needed to return home to begin the school year, in the case of any worker with children 18 years old or younger, or be conditioned on the farmworker performing work after the period of employment specified in the job order.



Field Visits

The employer must assure the IowaWORKS staff, including MSFW outreach staff, will be afforded reasonable access to the employer's premises to:

- a. Talk with the farm workers and the employer.
- b. Verify compliance with the terms and conditions of employment specified in the clearance order.

Field Checks

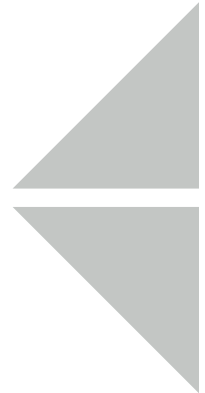
1. IowaWORKS responsibilities:
 - a. If a worker is placed on a clearance order, the SWA must notify the employer in writing that the SWA, through its ES offices, and/or federal staff, must conduct random, unannounced field checks to determine and document whether wages, hours, and working and housing conditions are being provided as specified in the clearance order.
 - b. Field checks must include visit(s) to the worksite at a time when workers are present. When conducting field checks, ES staff must consult both the employees and the employer to ensure compliance with the full terms and conditions of employment.
 - c. If SWA or federal personnel observe or receive information, or otherwise have reason to believe that conditions are not as stated in the clearance order or that an employer is violating an employment-related law, the SWA must document the finding and attempt informal resolution where appropriate (for example, informal resolution must not be attempted in certain cases, such as EO related issues and others identified by the Department through guidance.) If the matter has not been resolved within five business days, the SWA must initiate the discontinuation of services as set forth at part 658, subpart F of this chapter and must refer apparent violations of employment-related laws to appropriate enforcement agencies in writing.

Complaints

1. Applicants referred on a clearance order must be given a copy of the farm worker rights information.
2. The workers have the right to file a complaint with an IowaWORKS center or SMA if the employer violates the terms and conditions of the clearance order or violate any other Wage and Hour or OSHA regulations.
3. Specific regulatory provisions are found at 20 CFR Part 658, Subpart E.

Appendices

Conditional Access to the Intrastate and Interstate ARS
Migrant and Seasonal Agricultural Worker Protections
ETA Form 790
Assurances Form
ETA Form 790 Instructions
Agriculture Clearance Order Checklist
Agricultural Recruitment System Farmworkers' Brochure
Agricultural Recruitment System Employers' Brochure
Fact Sheet – Side-by-Side Comparison





Appendix A

Conditional Access into the Intrastate and Interstate ARS

1. Filing of Requests

An employer whose housing does not meet applicable standard(s) at the time the clearance order is placed may file a Request for Conditional Access (see Appendix F) with the local IowaWORKS center. The employer signs a statement assuring the housing facility will meet applicable standard(s) no later than 20 calendar days prior to the date of occupancy.

2. Processing of Requests

The local IowaWORKS center sends the request to the SMA, who transmits it to the ETA regional administrator (RA).

a. Acceptance of a Request for Conditional Access

The regional administrator's authorization for conditional access allows an employer's clearance order to be processed in the intrastate and/or interstate system until the specific date when the housing complies with standards.

1. Regional administrator approves the employer's request and the SWA and SMA is notified.
2. The local IowaWORKS center attaches a copy to the clearance order.

b. Denial of a Request for Conditional Access

When a request is denied, the RA states the reason(s) for denial and sends a notice to the employer, the SWA, and local IowaWORKS center.

3. Pre-Occupancy Housing Inspection

- a. If a request for conditional access is approved, the local IowaWORKS center or the designated agency inspects the housing facility by the date specified.
- b. If the housing doesn't meet the standards by the specified date, the employer is given an additional five calendar days to bring the housing facility into full compliance. An employer may request an earlier preliminary inspection. Deficiencies detected at a preliminary inspection will not trigger the five-day deadline.
- c. If the housing is still below the standards after the five-day allowance, the SWA notifies the regional administrator and removes the clearance order from the ARS.
- d. If workers and crew leaders have been recruited, the SWA, in cooperation with the SWA in the supply states, notifies the recruited crew leaders and workers.
- e. IowaWORKS will make all efforts to find alternative and comparable employment for recruited workers and crew leaders.

Appendix B

Migrant and Seasonal Agricultural Worker Protections

Farmworkers, you should be aware that there are federal and state employment–related laws that provide you with important protections.

These cover:

Housing:

To migrant farm workers who are provided housing:

- To be housed in property that meets federal and state safety and health standards
- To have the housing information presented to them in writing at the time of recruitment
- To have posted in a conspicuous place at the housing site or presented to them a statement of the terms and conditions of occupancy, if any

Wages:

- To be paid wages when due
- To receive itemized, written statements of earnings for each pay period
- To receive accurate information about wages and working conditions for the prospective employer

Transportation:

- To be transported in vehicles which are properly insured and operated by licensed drivers, and which meet federal and state safety standards

Terms:

- To receive this information in writing and in English, Spanish or other languages, as appropriate
- To have the terms of the working arrangements upheld
- To have farm labor contractors show proof of registration at the time of recruitment
- To purchase goods from the source of their choice

Complaints:

You have a right to file complaints with an IowaWORKS center when:

1. The complaint pertains to an employer about a specific job to which you were referred by IowaWORKS center; or
2. Your complaint concerns the labor exchange's actions or omissions under the labor exchange regulations. IowaWORKS center will also help you file a complaint and refer the complaint to the appropriate enforcement agency with regard to other complaints such as, housing, wages, transportation, and working conditions.

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U.S. Department of Labor



IMPORTANT: In accordance with 20 CFR 653.500, all employers seeking U.S. workers to perform agricultural services or labor on a temporary, less than year-round basis through the Agricultural Recruitment System for U.S. Workers, must submit a completed job clearance order (Form ETA-790) to the State Workforce Agency (SWA) for placement on its intrastate and interstate job clearance systems. Employers submitting a job order in connection with an H-2A Application for Temporary Employment Certification (Form ETA-9142A) must complete the Form ETA-790 and attach a completed ETA-790A. All other employers submitting agricultural clearance orders must complete the Form ETA-790 and attach a completed ETA-790B. Employers and authorized preparers must read the general instructions carefully, complete ALL required fields/items containing an asterisk (*), and any fields/items where a response is conditional as indicated by the section (§) symbol.

I. Clearance Order Information

FOR STATE WORKFORCE AGENCY (SWA) USE ONLY			
Questions 1 through 17			
1. Clearance Order Number *	2. Clearance Order Issue Date *	3. Clearance Order Expiration Date *	
4. SOC Occupation Code *	5. SOC Occupation Title *		
SWA Order Holding Office Contact Information			
6. Contact's last (family) name *	7. First (given) name *	8. Middle name(s) §	
9. Contact's job title *			
10. Address 1 *			
11. Address 2 (suite/floor and number) §			
12. City *	13. State *	14. Postal code *	
15. Telephone number *	16. Extension §	17. Email address *	

II. Employer Contact Information

1. Legal Business Name *		
2. Trade Name/Doing Business As (DBA), if applicable §		
3. Contact's last (family) name *	4. First (given) name *	5. Middle name(s) §
6. Contact's job title *		
7. Address 1 *		
8. Address 2 (suite/floor and number) §		
9. City *	10. State *	11. Postal code *
12. Telephone number *	13. Extension §	14. Business email address *
15. Federal Employer Identification Number (FEIN from IRS) *		16. NAICS Code *

III. Type of Clearance Order

1. Indicate the type of agricultural clearance order being placed with the SWA for recruitment of U.S. workers. (choose only one) *	<input type="checkbox"/> 790A (placed in connection with an H-2A application) <input type="checkbox"/> 790B (not placed in connection with an H-2A application)
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For Public Burden Statement, see the Instructions for Form ETA-790/790A.

Agricultural Clearance Order
Form ETA-790B
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A. Job Offer Information

1. Job Title							
2. U.S. Workers Needed		a. Total	Period of Intended Employment				
			3. Begin Date:		4. End Date:		
5. Anticipated days and hours of work per week							
	a. Total Hours		c. Monday		e. Wednesday		g. Friday
	b. Sunday		d. Tuesday		f. Thursday		h. Saturday
Temporary Agricultural Services and Wage Offer Information							
6a. Name of Crop or Agricultural Activity							
6b. Description of the job duties or services to be performed. <small>(All job duties must be disclosed on this form or using Addendum A. Separate attachments will not be accepted.)</small>							
6c. Wage Offer		6d. Per		6e. Piece Rate Offer		6f. Piece Rate Units/Special Pay Information	
\$ _____.				\$ _____.			
7. Is a completed Addendum A identifying additional job duties or services to be performed and/or wage offers covering all crops or agricultural activities attached to this job offer?							<input type="checkbox"/> Yes <input type="checkbox"/> No
8. Frequency of Pay. <input type="checkbox"/> Weekly <input type="checkbox"/> Biweekly <input type="checkbox"/> Monthly <input type="checkbox"/> Other (specify): _____							
9. Additional conditions about the wage offer(s). <small>(If no additional conditions on the wage offer(s) are required, enter "NONE" below)</small>							
10. State all deduction(s) from pay not required by law and, if known, the amount(s). <small>(If no deductions other than those required by law, enter "NONE" below)</small>							

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B. Minimum Job Qualifications/Requirements

1. Education: minimum U.S. diploma/degree required. <input type="checkbox"/> None <input type="checkbox"/> High School/GED <input type="checkbox"/> Associate's <input type="checkbox"/> Bachelor's <input type="checkbox"/> Master's or Higher <input type="checkbox"/> Other degree (JD, MD, etc.)			
2. Work Experience: number of <u>months</u> required.		3. Training: number of <u>months</u> required.	
4. Basic Job Requirements (check all that apply)			
<input type="checkbox"/> a. Certification/license requirements <input type="checkbox"/> b. Driver requirements <input type="checkbox"/> c. Criminal background check <input type="checkbox"/> d. Drug screen <input type="checkbox"/> e. Lifting requirement		<input type="checkbox"/> g. Exposure to extreme temperatures <input type="checkbox"/> h. Extensive pushing or pulling <input type="checkbox"/> i. Extensive sitting or walking <input type="checkbox"/> j. Frequent stooping or bending over <input type="checkbox"/> k. Repetitive movements	
5. Additional Information Regarding Job Qualifications/Requirements. (If no additional skills or requirements, enter " NONE " below)			

C. Worksite Information

1. Worksite Address/Location				
2. City	3. State	4. Postal Code	5. County	
6. Additional Worksite Information. (If no additional information, enter " NONE " below)				
7. Is a completed Addendum B identifying all additional worksites and agricultural businesses who will employ workers, or to whom the employer will be providing workers, attached to this job order?				<input type="checkbox"/> Yes <input type="checkbox"/> No

D. Housing Information

1. Housing Address/Location			
2. City	3. State	4. Postal Code	5. County
6. Type of Housing		7. Total Units	8. Total Occupancy (all units)
9. Additional Housing Information/ . (If no additional information, enter " NONE " below)			
10. Is a completed Addendum B identifying the location(s) and description(s) of all other housing that will be provided to workers attached to this job order?			<input type="checkbox"/> Yes <input type="checkbox"/> No

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E. Provision of Meals

1. Describe how the employer will provide each worker with 3 meals a day or furnish free and convenient cooking and kitchen facilities.

2. If meals are provided, the employer:

☐ **WILL NOT** charge workers for such meals.

☐ **WILL** charge workers for such meals at \$ ____ . ____ per day per worker.

F. Transportation and Daily Subsistence

1. Describe how the employer will provide workers with transportation each day from the housing to the worksite(s).

2. Describe how the employer will provide workers with transportation (a) to the place of employment (i.e., inbound) and (b) from the place of employment (i.e., outbound).

3. During the travel described in Item 2, the employer will pay for or reimburse daily meals by providing each worker.

a. no less than \$ ____ . ____ per day

b. no more than \$ ____ . ____ per day with receipts

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G. Referral and Hiring Instructions

1. Explain how prospective applicants may be considered for employment under this job order, including verifiable contact information for the employer, or the employer's authorized hiring representative, methods of contact, and the days and hours applicants will be considered for the job opportunity.

H. Other Material Terms and Conditions of the Job Offer

1. Specify any other material terms, conditions, and benefits (monetary and non-monetary) that will be provided by the employer under this job opportunity. *(If no additional material terms and conditions, enter "**NONE**" below)*

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1. **ASSURANCES FOR CLEARANCE ORDERS:**

- A. Employer agrees to provide to workers referred through the clearance system the number of hours of work disclosed in this clearance order for the week beginning with the anticipated date of need, unless the employer has amended the date of need at least 10 business days before the original date of need by so notifying the Order-Holding Office (OHO) in writing (e.g., e-mail notification). The employer understands that it is the responsibility of the SWA to make a record of all notifications and attempt to inform referred workers of the amended date of need expeditiously. 20 CFR 653.501(c)(3)(i).
- B. If there is a change to the anticipated date of need and the employer fails to notify the OHO at least 10 business days before the original date of need, the employer agrees that it will pay eligible workers referred through the clearance system the specified rate of pay disclosed in this clearance order for the first week starting with the originally anticipated date of need or will provide alternative work if such alternative work is stated on the clearance order. 20 CFR 653.501(c)(5).
- C. Employer agrees that no extension of employment beyond the period of employment specified in the clearance order will relieve it from paying the wages already earned, or if specified in the clearance order as a term of employment, providing transportation from the place of employment, as required under paragraph 7.B above. 20 CFR 653.501(c)(3)(ii).
- D. Employer assures that all working conditions comply with applicable Federal and State minimum wage, child labor, social security, health and safety, farm labor contractor registration and other employment-related laws. 20 CFR 653.501(c)(3)(iii).
- E. Employer agrees to expeditiously notify the OHO or SWA by emailing and telephoning immediately upon learning that a crop is maturing earlier or later, or that weather conditions, over-recruitment or other factors have changed the terms and conditions of employment. 20 CFR 653.501(c)(3)(iv).
- F. If acting as a farm labor contractor (FLC) or farm labor contractor employee (FLCE) on this clearance order, the employer assures that it has a valid Federal FLC certificate or Federal FLCE identification card and when appropriate, any required State FLC certificate. 20 CFR 653.501(c)(3)(v).
- G. Employer assures that outreach workers will have reasonable access to the workers in the conduct of outreach activities pursuant to 20 CFR 653.107. 20 CFR 653.501(c)(3)(vii).
- H. Employer agrees that this ETA Form 790B informs the employer that pursuant to 20 CFR 653.503, if a U.S. worker is placed on a clearance order, the SWA, through its ES offices, and/or Federal staff, must conduct random, unannounced field checks to determine and document whether wages, hours, and working and housing conditions are being provided as specified in the clearance order. Field checks must include visit(s) to the worksite at a time when workers are present. When conducting field checks, ES staff must consult both the employees and the employer to ensure compliance with the full terms and conditions of employment. For more information on Field Checks, the employer may consult 20 CFR 653.503.

I declare under penalty of perjury that I have read and reviewed this entire clearance order, including every page of this Form ETA-790B and all supporting addendums, and that to the best of my knowledge the information contained therein is true and accurate. This clearance 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 (20 CFR 653.501(c)(3)(viii)). I understand that to knowingly furnish false information in the preparation of this form and any supplement thereto or to aid, abet, or counsel another to do so is violation of federal law under 18 U.S.C. 1001.

1. Last (family) name	2. First (given) name	3. Middle initial
4. Title		
5. Signature (or digital signature)		6. Date signed

Employment Service Statement

In view of the statutorily established basic function of the Employment Service (ES) as a no-fee labor exchange, that is, as a forum for bringing together employers and job seekers, neither the Department of Labor's Employment and Training Administration (ETA) nor the SWAs 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 ES constitute a contractual job offer to which the ETA or a SWA is in any way a party. 20 CFR 653.501(c)(1)(i).

Public Burden Statement (1205-0562)

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 of information is estimated to average 1.67 hours per response for all information collection requirements, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The obligation to respond to this data collection is required to obtain/retain benefits (44 U.S.C. 3501, Immigration and Nationality Act, 8 U.S.C. 1101, et seq.). Please send comments regarding this burden estimate or any other aspect of this information collection to the Office of Workforce Investment * U.S. Department of Labor * Room C4510 * 200 Constitution Ave., NW, * Washington, DC * 20210 or by email ETA.OFLC.Forms@dol.gov. **Please do not send the completed application to this address.**

Equal Opportunity Employer/Program

Auxiliary aids and services available upon request to individuals with disabilities.

For deaf or hard of hearing, use Relay 711.