

Procedures for the Processing of H-2B Job Orders

Appendix A: H-2B Job Order Checklist

The Department of Homeland Security (DHS) and the Department of Labor's (DOL) joint Interim Final Rule for the H-2B Program published in the Federal Register on April 29, 2015 and codified at 20 Code of Federal Regulations, Part 655, Subpart A requires that each non-agricultural job order placed in connection with an H-2B *Application for Temporary Employment Certification* (H-2B application/ ETA Form 9142B) comply with specific content requirements in order to assure that U.S. workers who apply for the job opportunity through the State Workforce Agency (SWA) are fully apprised of the material terms and conditions of employment.

The following checklist is intended to assist the SWA staff with processing H-2B job orders. It articulates specific responsibilities for the SWA for each category of content requirements. Where appropriate, the OFLC included minimally sufficient language in "blue" underlined text that an employer can use to apprise U.S. applicants of certain required items in the job order. The employer may abbreviate some of the suggested language below as long as the underlying term or condition can be clearly understood by prospective U.S. applicants.

Important Reminder: As required by 20 CFR 655.16(b), the SWA must notify the Chicago National Processing Center (i.e. the analyst responsible for processing the particular H-2B application with which the job order is associated) if the SWA identifies one or more deficiencies related to the employer's job order within **six (6) business days** from the date the SWA receives the job order. All deficiencies identified by the SWA must be described in detail and based in Federal, state or local law and/or accompanied by documentation or other evidence.

Material Term/Condition	SWA Responsibilities	Regulatory Citation(s) 20 CFR	Job Order Standard of Review	Yes	No
Employer Information	Ensure that the required information is included in the job order	655.18(b)(1) 655.19(e)(2)	✓ State the employer's name ✓ State the employer's contact information <i>Important Reminder: Job orders filed by (or on behalf of) joint employers or job contractors, must clearly identify both employer names and contact information.</i>		
Job Opportunity Information	Ensure that the required information is included in the job order and is sufficient to apprise U.S. workers of the services or labor to be performed	655.18(b)(2)	✓ State the job opportunity is " <u>temporary and full-time</u> "		
		655.18(b)(2)	✓ State the total number of job openings		
		655.18(b)(3)	✓ Provide a description of the job opportunity, including <ul style="list-style-type: none"> - duties to be performed, - minimum education and experience requirements, - work hours and days, and - the anticipated start and end dates of employment 		
		655.18(b)(7)	✓ If applicable, state " <u>on-the-job training will be provided</u> "		
Job Location	Confirm location(s) of the job opportunity	655.18(b)(4) 655.19(e)(2)	✓ Indicate the geographic area of employment sufficiently to apprise applicants of any travel requirements to the job and where applicants will likely have to reside to perform the services or labor <i>Important Reminder: If the applicant is filing as a joint employer or job contractor, the job order must clearly identify all worksite location(s) where workers will perform labor or services.</i>		

Material Term/Condition	SWA Responsibilities	Regulatory Citation(s) 20 CFR	Job Order Standard of Review	Yes	No
Wage Information	Ensure that the required information is included in the job order and inform CNPC of specific State or local requirements regarding wages, if any	655.18(b)(5)	<ul style="list-style-type: none"> ✓ State the actual wage or range of wage offers (in the event there are multiple) that will be provided to workers Important Reminder: <i>The wage offer must equal or exceed the highest of the prevailing wage or the Federal, State, or local minimum wage.</i> 		
		655.18(b)(6)	<ul style="list-style-type: none"> ✓ State whether overtime will be available and, if so, state the actual wage that will be provided to workers working any overtime hours 		
		655.18(b)(8)	<ul style="list-style-type: none"> ✓ State <u>"a single workweek will be used to compute wages due"</u> 		
		655.18(b)(9)	<ul style="list-style-type: none"> ✓ State the frequency with which workers will be paid Important Reminder(s): <i>For frequency of pay, workers must be paid at least every 2 weeks or according to the prevailing practice in the area of employment, whichever is more frequent.</i> 		
	Inform CNPC if any deductions appear unreasonable and include supporting documentation	655.18(b)(11)	<ul style="list-style-type: none"> ✓ State <u>"all deductions from the worker's paycheck required by law will be made"</u> ✓ The job order includes information disclosing any elective deductions ✓ Disclose all other deductions not required by law the employer intends to make Important Reminder: <i>Elective deductions related to the provision of board, lodging or facilities must be reasonable and based on the fair value of such benefits.</i> 		
Employer Provided Items	Ensure that the required information is included	655.18(b)(16)	<ul style="list-style-type: none"> ✓ State <u>"the employer will provide workers at no charge all tools, supplies, and equipment required to perform the job."</u> 		
Three-fourths Guarantee	Ensure that the required information is included in the job order	655.18(b)(17)	<p>The job order includes information disclosing the three-fourths guarantee and includes at least the following language:</p> <ul style="list-style-type: none"> ✓ If the employer's anticipated period of employment will last 120 days or more, state the following: <u>"The employer guarantees to offer work for hours equal to at least three-fourths of the workdays in each 12-week period of the total employment period."</u> <p>OR</p> <ul style="list-style-type: none"> ✓ If the employer's anticipated period of employment will last less than 120 days, state the following: <u>"The employer guarantees to offer work for hours equal to at least three-fourths of the workdays in each 6-week period of the total employment period."</u> 		
First Workweek Guarantee	Ensure that the required information is included in the job order	655.18(b)(15)	<ul style="list-style-type: none"> ✓ The job order includes information regarding the first week reimbursement of certain fees and includes at least the following language: <u>"H-2B workers will be reimbursed in the first workweek for all visa, visa processing, border crossing, and other related fees, including those mandated by the government (excluding passport fees)."</u> 		

Material Term/Condition	SWA Responsibilities	Regulatory Citation(s) 20 CFR	Job Order Standard of Review	Yes	No
Transportation and Subsistence Benefits	Ensure that the required information is included in the job order	655.18(b)(12) 655.18(b)(13)	✓ The job order includes information disclosing the transportation/subsistence reimbursement guarantee and includes at least the following language: <u>“Transportation (including meals and, to the extent necessary, lodging) to the place of employment will be provided, or its cost to workers reimbursed, if the worker completes half the employment period.”</u> <u>“Return transportation will be provided if the worker completes the employment period or is dismissed early by the employer.”</u>		
Board or Lodging or Fringe benefits (Optional)	If applicable, ensure that the required information is included in the job order	655.18(b)(10)	✓ If applicable, the job order discloses the provision and cost of any board, lodging, or other facilities, including fringe benefits or assistance to be provided to the workers in securing such benefits		
Daily Transportation (Optional)	If applicable, ensure that the required information is included	655.18(b)(14)	✓ If applicable, the job order discloses that daily transportation to and from the worksite(s) will be provided to the workers (e.g. centralized designated daily pick-up places will need to be disclosed, if the employer offers such)		
SWA Contact Information	Ensure that the required information is included in the job order	655.18(b)(18)	✓ The job order informs the applicants that they should apply for the job at the nearest office of the SWA ✓ The job order includes the SWA contact information and, if applicable, the job order number		