

Office of Foreign Labor Certification
2015 H-2B Interim Final Rule (IFR) Job Order Content Checklist
January 2016 (Updated)

A completed job order must be submitted to the State Workforce Agency (SWA) **at the same time** the employer submits the H-2B application and a copy of the job order to the Chicago National Processing Center (NPC). 20 CFR § 655.16. The job order must offer U.S. workers no less than the same benefits, wages, and working conditions that the employer is offering, intends to offer, or will provide to H-2B workers. Each job qualification and requirement must be bona fide, disclosed in the job order, and consistent with the normal and accepted qualifications and requirements imposed by non-H-2B employers in the same occupation and area of intended employment.

The job order must address the content requirements at 20 CFR § 655.18, consistent with new requirements contained in the 2016 Department of Labor Appropriations Act, (Division H, Title I of Public Law 114-113) (2016 DOL Appropriations Act), which was enacted on December 18, 2015. Although each employer's job opportunity and business operation is unique, we provide below, where appropriate, example language that may help employers better understand how to disclose their obligations under the regulations. In addition, employers may use abbreviations so long as the abbreviation clearly and accurately captures the underlying job order content requirement.

- ✓ **Employer Information** - State the employer's name and contact information

Example: "ABC Landscaping located in Charlottesville, Virginia, Phone 999-999-999 or Fax 999-999-9999"

- ✓ **Job Information** - Indicate the job opportunity is temporary, full-time, and include the total number of openings

Example: "25 landscape laborers needed for temporary, full-time employment"

- ✓ **Job Duties and Requirements** - Describe the job opportunity, including job duties, minimum education and experience requirements, work hours and days, and anticipated start and end dates of work

Example: "Landscape and maintain grounds of property using hand or power tools or equipment. Workers typically perform a variety of tasks, which may include any combination of mulch, mow, trim, plant, lay sod, water, fertilize, dig, rake and pull weeds. No education or prior work experience is required. Must be able to lift, push, pull, or carry objects up to 50lbs. Employer will offer 40 hours of work per week, Monday – Friday 6:00AM until 3:00PM, depending on weather conditions.

Work on Saturdays may be required. Workers are needed to begin work on 2/15/2016 through 10/15/2016.”

- ✓ **Worksite Location(s)** - Indicate the geographic area of intended employment with enough specificity to apprise applicants of any travel requirements and where they will likely have to reside to perform the job

Example: *“Work will be performed in multiple worksites throughout the Charlottesville area including the counties of Albermarle, Nelson, Fluvanna, and Greene.”*

Wage Offer(s) and Availability of Overtime Pay - Include the wage offer or range of applicable wage offers, which must equal or exceed the highest of the prevailing wage or Federal, State, or local minimum wage. If the employer plans to pay returning workers or workers with more experience a higher hourly wage, include a statement about the plan in the job order. Additionally, state that overtime will be available and the overtime wage offer (if applicable).

Example: *“Workers will be paid no less than \$____ per hour; returning workers and workers with more experience may be paid higher wage rates [insert higher rate or range of higher wage rates per hour]. Overtime hours may vary, depending on weather or other conditions, and will be paid at \$____ per hour.”*

Important Reminder: In accordance with the 2016 DOL Appropriations Act, the prevailing wage is the higher of:

1. The actual wage level paid by the employer to other employees with similar experience and qualifications for such position in the same location; or
2. The wage set under an applicable collective bargaining agreement, if one exists. Otherwise, the prevailing wage shall be the mean wage for the occupation from the Occupational Employment Statistics (OES) survey issued by the Bureau of Labor Statistics, unless the employer submits a private wage survey with methodology and data that is “statistically supported,” that is, it must meet the methodological criteria for surveys set out in the 2015 Wage Rule.

- ✓ **Availability of On-the-Job Training** - If applicable, state that on-the-job training will be provided

Example: *“The employer will provide on-the-job training in the proper use and maintenance of landscaping power tools and equipment.”*

- ✓ **Single Workweek for Pay** - State that a single workweek will be used in computing wages due

Example: *“The employer will use a single workweek as its standard for computing wages due.”*

- ✓ **Frequency of Pay** – State the frequency of pay to the workers, which must be every two weeks or according to the prevailing practice in the area of intended employment, whichever is more frequent.

Example: *“Workers will be paid on Friday (bi-weekly) by check.”*

- ✓ **Provision of Board/Lodging or Other Facilities** - If an employer provides the worker with the option of board, lodging, or other facilities, including fringe benefits, or intends to assist workers to secure such lodging, this must be listed in the job order and the associated cost related to such provision of board, lodging or other facilities. Employers with mobile job opportunities (e.g., carnival or tree planting and reforestation) must cover the cost of lodging to the extent such costs would reduce pay below the offered wage for the area of intended employment.¹ If lodging is not primarily for the employer’s benefit and convenience, however, an employer may require workers to bear the cost of such facilities or assistance in securing such facilities, as long as any costs charged to workers are disclosed, voluntary on the part of the employee, and otherwise reasonable according to the Fair Labor Standards Act (FLSA) principles at 29 CFR Part 531.

Example(s): Disclosure concerning costs of lodging or other facilities:

If lodging is primarily for the employer’s benefit and convenience (e.g., the employer requires a mobile workforce): *“The employer will pay the cost of lodging to the extent such costs would reduce pay below the offered wage rate for the area of intended employment.”*

If lodging is not primarily for the employer’s benefit and convenience: *“Dormitory-style shared lodging is available in employer-owned housing at a rate of \$25 per person per week.”* Note that the language depends greatly on the unique circumstances of the employer’s job opportunity, housing arrangements, and/or business operations.

¹ As explained in the Department’s Frequently Asked Questions (FAQs) published on January 15, 2016, the Secretary has determined if an employer needs a mobile workforce, such as those in the carnival or forestry industries, lodging is primarily for the employer’s benefit and convenience, and the cost of providing facilities (e.g., lodging) determined to be primarily for the employer’s benefit cannot be charged to workers to the extent it would reduce the worker’s pay below the offered wage rate for the area of intended employment. These FAQs are available at https://www.foreignlaborcert.doleta.gov/pdf/H-2B_2015_IFR_FAQ_Job-Order-Content_Mobile-Occupations.pdf,

- ✓ **Deductions from the Worker's Paycheck** – State all deductions from the worker's paycheck required by law

Example: *“The employer will make all deductions from the worker's paycheck required by law.”*

In addition and where applicable, specify any deductions not required by law the employer intends to make from the worker's paycheck (e.g., cost of board, lodging, or other facilities). All deductions must be voluntary on the part of the employee and otherwise reasonable according to the Fair Labor Standards Act (FLSA) principles at 29 CFR Part 531.

Example: *“Employer offers room and board in shared, dormitory housing and will deduct \$50 per person per week for these expenses for employees who choose them.”* Note the language depends greatly on the unique circumstances of the employer's job opportunity and/or business operations.

Inbound/Outbound Transportation and Subsistence - Detail how the worker will be provided with or reimbursed for inbound transportation/daily subsistence, if the worker completes 50 percent of the employment period. Also, state that the employer will provide or pay for return transportation/daily subsistence, if the worker completes the employment period or is dismissed for any reason before the employment period ends. Where a worker must travel to obtain a visa so that the worker may enter the U.S. to come to work for the employer, the employer must pay for the transportation and daily subsistence costs of that part of the travel as well. The Department has interpreted the regulation to require the employer to assume responsibility for the reasonable costs associated with the worker's travel, including transportation, food, and, in those cases where it is necessary, lodging. If not provided by the employer, the amount an employer must pay for transportation and, where required, lodging must be no less than (and is not required to be more than) the most economical and reasonable costs.

- ✓ The current minimum and maximum amounts for the meal component of subsistence expenses to be included in the job order are available on the OFLC Web site at http://www.foreignlaborcert.doleta.gov/meal_travel_subsistence.cfm

Example:

“If the worker completes 50 percent of the work contract period, the employer will [insert suggested language for option A, B, and/or C below]

Option A: *arrange and pay directly for transportation and subsistence*

Option B: reimburse the worker for transportation and subsistence

Option C: provide advance payment for transportation and subsistence

from the place of recruitment to the place of work. Upon completion of the work contract or where the worker is dismissed earlier, the employer will provide or pay for worker's reasonable costs of return transportation and subsistence back home or to the place the worker originally departed to work, except where the worker will not return due to subsequent employment with another employer or where the employer has appropriately reported a worker's voluntary abandonment of employment. The amount of transportation payment or reimbursement will be equal to the most economical and reasonable common carrier for the distances involved. Daily meals will be provided at a rate of at least \$_____ p/day during travel to a maximum of \$_____ p/day with receipts."

- ✓ **Daily Transportation** - If applicable, state that daily transportation to and from the worksite will be provided

Example: *"Workers are responsible for daily transportation to and from the designated pick-up location at the Charlottesville office. Employer will then provide each work crew with daily transportation among the worksite locations in Albermarle, Nelson, and Madison counties."*

- ✓ **First Work Week Reimbursement** - State that the employer will reimburse the worker in the first workweek for all visa, border, and related fees

Example: *"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 (except passport fees)."*

- ✓ **Provision of Tools, Supplies, and Equipment** - State that the employer will provide all tools, supplies, and equipment at no cost to the worker.

Example: *"The employer will provide workers at no charge all tools, supplies, and equipment required to perform the job."*

- ✓ **3/4th Guarantee** – 20 CFR 655.20(f) contains a requirement that the employer guarantee an offer of employment for a total number of work hours equal to at least three-fourths of the workdays in each 12-week period (or each 6-week period if the period of employment is less than 120 days). However, section 113 of the 2016 DOL Appropriations Act prohibits the Department of Labor from expending Fiscal Year 2016 funds to enforce the three-fourths guarantee requirement.

Therefore, the CNPC and SWA cannot require the employer to advertise and offer to workers the three-fourths guarantee. However, the 2016 DOL Appropriations Act did not vacate this regulatory provision, and it remains in effect, even though the Department will not use any Fiscal Year 2016 funds to enforce it. To help employers who want to offer and disclose the three-fourths guarantee, the following language may be included in the job order:

Example (for certified periods of employment lasting fewer than 120 days):

“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.”

Example (for certified periods of employment lasting 120 days or more):

“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.”

- ✓ **SWA Contact Information** - Instruct applicants to contact nearest office of the SWA and include the SWA contact information. At a minimum, the employer should provide job applicants with the name of the nearest office of the SWA and include a current phone number, website, or email address.

Example: *“Please inquire about the job opportunity or send applications and/or resumes, indicating availability, to the VEC office located in Charlottesville on 2211 Hydraulic Road. Phone (999) 999-9999.”*