

**U.S. Department of Labor
Employment and Training Administration
OFFICE OF FOREIGN LABOR CERTIFICATION
2015 H-2B Interim Final Rule FAQs**

Round 17: “Worksites” and “Area of Intended Employment” in the H-2B Program

October 4, 2016

GENERAL

Worksites

- 1. My job opportunity requires work to be performed in multiple locations. Is each one of these locations considered a “worksite” for purposes of an H-2B application?**

For purposes of the H-2B program, a “worksite” is any location where the worker performs one or more duties of the job opportunity. For example, a landscaping crew may meet each morning at the employer’s place of business to gather and prepare equipment, load trucks, and then travel to various other locations to provide landscaping services. The employer’s place of business where the crew gathers and prepares the employer’s equipment or other tools is a worksite, as is each other location where the crew provides landscaping services. This is because the workers engage in one or more job duties at each of these locations.

Other occupations that often perform duties at multiple worksites include itinerant guides and truck drivers. Itinerant tour guides routinely work at multiple worksites in the performance of their job duties, including the location where they pick up their assigned group and then at each location they visit on the tour. Likewise, truck drivers are generally engaged in one or more job duties at multiple worksites, including the location where they pick up their assigned truck, the trucking route while driving, and each location where the drivers perform other job-related activities, including the loading and unloading of the truck or supervision thereof, and the maintenance of the truck. If, while awaiting the return trip from the destination, the drivers are required to maintain the employer’s property, the drivers are also engaged in performing one or more duties under the job opportunity while waiting.¹

¹ With this authoritative interpretation of “worksite” as it is defined for purposes of the H-2B regulations, which reflects the Department’s long-standing and consistently held approach, we expressly reject the application to H-2B cases of the definition of “worksite” under the H-1B regulations, as suggested in *GT Trans, Inc.*, 2016-TLN-00029 (April 15, 2016) and *Brook Ledge, Inc.* 2016-TLN-00033 (May 10, 2016).

2. Is my job opportunity eligible for certification if the work to be performed occurs in multiple locations?

Generally, only one Form ETA-9142B, *Application for Temporary Employment Certification* (H-2B Application), may be filed for worksites within one area of intended employment. 20 CFR 655.15(f). Therefore, whether you may file an H-2B Application for work that will be performed in multiple locations depends in part on whether the multiple locations fall within the same “area of intended employment.”

The Department’s regulations at 20 CFR 655.5 define “area of intended employment” for purposes of the H-2B program as follows:

Area of intended employment means the geographic area within normal commuting distance of the place (worksite address) of the job opportunity for which the certification is sought. There is no rigid measure of distance that constitutes a normal commuting distance or normal commuting area, because there may be widely varying factual circumstances among different areas (e.g., average commuting times, barriers to reaching the worksite, or quality of the regional transportation network). If the place of intended employment is within a Metropolitan Statistical Area (MSA), including a multistate MSA, any place within the MSA is deemed to be within normal commuting distance of the place of intended employment. The borders of MSAs are not controlling in the identification of the normal commuting area; a location outside of an MSA may be within normal commuting distance of a location that is inside (e.g., near the border of) the MSA.

Under this regulation, an area of intended employment may be comprised of more than one worksite provided that the worksites are located within normal commuting distance of each other. In general, the regulations prohibit a CO from certifying an application involving multiple worksites that fall outside of the same area of intended employment, regardless of the number of workers named in the application. See 20 CFR 655.15(e), (f).

The employer must identify the area of intended employment for its job opportunity in Section F.c. of its H-2B Application. It is important that the

Because of the substantial differences between the nature and scope of the work in H-1B and H-2B, and the agency’s statutory and regulatory obligations in each program, the definitions of “worksite” are necessarily different for each program.

employer define the area of intended employment with as much geographic specificity as possible, because this area is the foundation upon which many of the H-2B regulatory requirements attach and are reviewed by the Department. For instance, the prevailing wage assigned to the employer's job opportunity is based in part on the geographic location in which the job is performed, the employer's advertising and recruitment efforts must occur within the defined area of intended employment, and it is used by the Department for ultimately determining whether there are not sufficient qualified and available U.S. workers to perform the job for which the employer seeks to hire foreign workers; and that the employment of H-2B workers will not adversely affect the wages and working conditions of U.S. workers similarly employed. See 20 CFR 655.10 (determination of prevailing wage), 655.16(a) (job order), 655.18(a)(2) (bona fide job requirements), 655.42(a) (newspaper advertisements), and 655.45 (posting of job announcement).

3. My job opportunity sometimes requires travel to different worksite(s) from the worksite where the work is usually performed. Does this infrequent travel render my opportunity ineligible for certification under the H-2B regulations?

As a general rule, an employer seeking to employ workers who will perform work at more than one location outside of a single area of intended employment are required to file a separate application for each area of intended employment, regardless of the number of workers named in the application. However, the Department has recognized that for some job opportunities, work may be required occasionally outside of the usual area of intended employment. For such job opportunities, the Department will consider the primary location where the work is performed as the official worksite and will permit certification of the job opportunity, even though travel may sometimes be required to other locations that extend beyond the area of intended employment. Certification is permissible, because travel is the exception not the norm. For example, the H-2B worker may be required to generally work in one location and to travel occasionally for short periods of time to other locations at the employer's expense to perform work normal to the occupation. In this example, the travel is minimal in relation to the amount of time spent at the location where the work is generally performed and accordingly, only the primary location is a worksite.

In contrast, an application for a job opportunity requiring work to be performed regularly in multiple locations across more than one area of intended employment will generally be denied H-2B certification. For example, an H-2B application for itinerant tour guides to lead trips throughout the Western coast of the United States will be denied because the tour guides would be required to perform their assigned duties in different cities across the region that extend beyond a single area of intended employment. Tour guides must perform their job duties when they initially pick up their tour group and then as the group moves from city to city until the trip ends. Thus, the job duties are performed in a series of locations. In this particular scenario, each of the locations where the tour guides perform work is a worksite. Because the worksites fall outside one area of intended employment and instead extend throughout the Western coast of the United States, the job opportunity would not be eligible for certification. Similarly, if an employer seeks to employ tractor trailer truck drivers to pick up and deliver cargo through routes across the United States, the job duties generally are not performed in one location. Rather, the job duties are performed in a number of locations across the United States and thus outside of a single area of intended employment. Accordingly, the job opportunity would not be eligible for H-2B certification.