



UNITED STATES DEPARTMENT OF LABOR

# PERM/LCA Prevailing Wage and Surveys: Concepts and Filing Tips

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National Prevailing Wage Center  
Office of Foreign Labor Certification  
Employment and Training Administration

July 11, 2023



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## Discussion Topics

- Part 1: NPWC Production Trends
- Part 2: Filing Reminders
- Part 3: Post-Determination Filings
- Break
- Part 4: Wage Survey Requests





## Part 1: NPWC Production Trends

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## NPWC Production Trends

- 23% increase in submissions in first half of FY 2023 over FY 2022.
- 34% increase in determinations in first half of FY 2023 over FY 2022.
- Transition to the 2018 Standard Occupational Classification (SOC) system.
  - Over 220,000 determinations issued since July 1, 2022 transition to 2018 Standard Occupational Classification (SOC) codes.
  - Over 12,400 determinations issued for cases requesting non-OEWS wage sources.
  - Finalizing technical review of 2018 SOC occupations.
- Wage Year 2023-24 runs from July 1, 2023 to June 30, 2024.





**Part 2:**  
**Form ETA-9141**  
**Filing Reminders**

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## General Filing Tips

- Complete all mandatory fields on the Form ETA-9141.
- Do not include information on nature of the employer, offered wage, or working conditions. Examples:
  - “Dynamic leader in the healthcare industry.”
  - “Must walk substantially (up to 15 miles daily)”
  - “Outdoors, exposed to the weather.”
- Do not include personal information on the form.
- Be specific and use plain language. Avoid acronyms and abbreviations.
- Withdraw pending submissions that the employer will not use.





## Sections B-D: Employer and Attorney Information

- Employer point of contact must be an “employee of the employer.”
- All employer contact information must belong to the employer point of contact, including phone number and email address.
- Do not list attorney or agent contact information in Section B, unless the attorney or agent is an employee of the employer.
- If the employer’s point of contact and the attorney/agent information is the same, NPWC will send an RFI to request updated contact information.



## Section E: Wage Sources

- American Competitiveness and Workforce Improvement Act (ACWIA) field in Section E.1. must be completed. If an employer is covered under ACWIA, then they must select “Yes” and an ACWIA wage will be issued.
  - Employers can request a re-evaluation of ACWIA status by selecting “Yes” on question E.1.b.
- In Section E.3. the Collective Bargaining Agreement (CBA) field must be completed. If the position is covered under a CBA, then the employer must select “Yes” to this question.
- Selecting wage source in E.4 is not required. Only complete this question if requesting one of the following wage sources: Davis Bacon Act (DBA), Service Contract Act (SCA), or an alternate wage survey.



## Section F.a: Job Description

- Do not use abbreviations or jargon. Provide detailed duties in plain language.
- Focus only on job duties to be performed. Do not list the position's requirements or general information about the employer.
  - Job duties (F.a.2): The tasks essential to the performance and responsibility of the position.
    - Example: Take blood pressure using cuff and stethoscope.
  - Job requirements (F.b.5.iv or F.c.5.iv): The education, experience, and training qualification(s) necessary for the position.
    - Example: Ability to take blood pressure using a cuff and stethoscope; may be gained through training or experience.
- Generalized job duties may fit into multiple occupational classifications. Thus, for NPWC to properly classify an application, it is important to provide the specifics on the following:
  - Provide specifics on the types of products and services.
  - Specific course(s) that will be taught (for example, business, literature).
  - Type of clinical care that will be provided. (for example: pediatrics, family medicine).





## Section F.a: Job Description (Continued)

- When indicating that the position will supervise the work of other employees, by marking “Yes” in F.a.3.
  - The supervised occupations should be listed in Section F.a.3.a.
  - The job duties should include tasks providing additional information describing the scope and type of supervision performed.
- Do not include personal information in the job duties (or anywhere else on Form-9141).
- Do not include offered wage information or any other compensation values.
- The job duties section has a 4,000-character limit (including any RFI responses).



## Example: Vague Job Duties

### Vague Job Duties

“Manage multiple client engagements. Serve as first point of contact for client relationships. Prepare project plans, drafts, and budgets.”

### Clear Job Duties

“Work on client engagements related to landscape design. Meet with clients at proposed sites to discuss requirements and make design recommendations for plant selection and placement. Prepare drawings of proposed designs using CAD software. Monitor status of ongoing projects by visiting client sites to ensure that project is being developed by construction and landscaping teams according to the design plan. Prepare cost estimates and project proposals for manager’s approval and share approved budget information and proposals with clients.”



## Section F.b: Education Requirements

- Education requirements must be listed as a U.S. degree or diploma.
- NPWC can not evaluate foreign educational requirements.
- Acceptable “Other” degrees are formal diplomas or degrees issued by a U.S. educational institution (Example: a professional degree such as J.D., M.D., D.D.S.)
- Other certifications, training, or courses should be entered into the Special Skills or Other Requirements section (F.b).
- Residencies and fellowships should be included under the Residency/Fellowship section (F.5.iii) and should not be included in the Education section.





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## Section F.b: Experience, Training, and Special Skill Requirements

- Avoid inconsistent experience requirements.
  - Example: stating that the position requires 24 months of experience in F.b.4.a; but requiring 48 months of experience with Python in special skills under F.b.5.
- For medical occupations, residency and fellowship requirements should be clearly stated and listed separately.
- Do not list alternative requirements under this section.



## Section F.c: Alternative Job Requirements

- Section F.c. should always be filled out when an employer accepts alternative requirements. This includes education and experience requirements accepted “in lieu of” employer’s primary requirements.
- Alternative requirements must meet the same standards as primary requirements.
- The minimum and alternative requirements are stand-alone requirements and will each be evaluated independently.
- If the employer requires more than one set of alternative requirements, the employer should submit an additional prevailing wage application.
  - May include a note in the job duties (Subsection F.a.2) to cross-reference multiple filings, which will assist NPWC in reviewing all submissions at the same time.
- If the application states “no” to alternative requirements in F.c.1, but alternative requirements are listed elsewhere on the form, NPWC will send an RFI for clarification.



## Section F.d: Travel

- Providing descriptive details about travel will help NPWC issue the proper prevailing wage determination.
- Distinguish between travel and relocation.
- Specify the geography of travel (examples: local, national, international).
- Indicate the estimated frequency or extent of travel (examples: 25 percent, 1-2 days per month).
- Indicate the purpose of travel (examples: conferences, training, client meetings, site inspections).





## Requests for Information

- NPWC may send a Request for Information (RFI) for a variety of reasons.
- Common examples of RFIs:
  - Attorney/agent contact information provided for employer point of contact
  - Vague job duties
  - Conflicting education and experience requirements
  - Vague supervisory responsibilities
  - Inclusion of Personally Identifiable Information (PII)
  - Travel requirements
  - Missing documents
  - Failure to provide permission to update ETA-9141 or provide all requested information in prior RFI response



## RFI Responses

- The RFI response should confirm that NPWC has permission to correct the applicable section of the form.
- The employer's RFI response must respond to all questions asked in the RFI. If the employer fails to provide all requested information, the application may be returned unprocessed.
- If you receive an RFI pertaining to job duties, you may provide details about job duties or elaborate on the duties. Your response will be added to the job duties section of Form ETA-9141. Note: original submitted job duties cannot be removed.
- Be mindful of character limits. The job duties section has a 4,000 character limit. Initial job duties and the RFI response must both fit within this character limit. If the content does not fit, the response will be classified as an insufficient RFI response, and the case may be returned unprocessed.
- The request for the removal of job duties may lead to the case being returned un-processed; thereby causing the employer to submit a new Form ETA-9141.



## Part 3: Post-Determination Filings (PWD Challenges)

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- Requests for Correction Review
- Requests for Redetermination Review
- Requests for Center Director Review





## Requests for Corrections Review

- All PWDs are considered final, with the sole exception being if an inaccuracy is found in the PWD due to the NPWC's error.
- When an employer or its representative identifies an error on the Form ETA-9141 application or PWD, a correction request can be submitted.
- An employer can make a request for correction via e-mail to the NPWC Help Desk at [flc.pwd@dol.gov](mailto:flc.pwd@dol.gov).
- Examples where an employer may request a correction include, but are not limited to, the following: a mismatch between the wage level and the wage amount; a typographical error in the title of an alternative wage source (survey); or a non-ACWIA wage for an ACWIA-covered institution.





## Requests for Corrections Review (reminders)

- A Correction Request should not be submitted as a Request for Redetermination Review or Request for Center Director Review (CDR).
- A request to amend the provided duties or requirements is not a valid correction request. The employer must submit a new prevailing wage request.
- Disagreement with the assigned occupation or wage level is not a valid correction request. The employer may submit a request for redetermination or Center Director Review (CDR).



## Requests for Redetermination Review

- 20 CFR § 656.40(h): When an employer disagrees with a PERM or LCA PWD, the employer may request a redetermination by submitting supplemental information. For example, the employer may challenge the assigned occupation code, wage level, or wage.
- Requests for redetermination can be submitted through FLAG, e-mail to the NPWC Help Desk, or U.S. mail.
- Requests for redetermination must be made within 30 days of the date the PWD was initially issued.
- Redeterminations are reviewed in order received based on the redetermination request date; processing times vary depending on the workload.
- Pending redetermination requests can be withdrawn through the NPWC Help Desk; the original determination will then be considered final and can be used for PERM or LCA filing.



## Requests for Center Director Review (CDR)

- 20 CFR § 656.41(a): when an employer disagrees with a decision made at redetermination, the employer may request Center Director Review (CDR).
- Requests for PERM and H-1B CDRs must be made within 30 (calendar) days of the date the redetermination was issued.
- Requests for CDR can be submitted through FLAG, e-mail to the NPWC Help Desk, or U.S. mail.
- CDRs are reviewed in order received based on the CDR request date; processing times vary depending on the workload.
- Pending CDRs requests can be withdrawn through the NPWC Help Desk; the issued redetermination will be considered final and can be used for PERM or LCA filing.





Questions?

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## Short Break

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Starting again in 5  
minutes.





## Part 4: Wage Survey Concepts

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Authorities and Tips

Who to Survey: Similarly Employed

Where to Survey: Area of Intended  
Employment

What to Survey: Job Duties

Pay/Wage Data

# Authorities

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## Non-OEWS Wage Source Notes

- If there is a CBA, with negotiated wages, it must be used. No other wage source can be requested.
- Cannot ask for CBA, SCA, DBA, and Survey on the same application.
- There is no order of precedence between SCA, DBA, and Survey.
- DBA is for construction trades only.
- SCA and DBA are not available to ACWIA covered employers.





## Overview of Regulatory Requirements 20 CFR 656.40(g)

- Employer-provided wage information.
- (1) If the job opportunity is not covered by a CBA or by a professional sports league's rules or regulations, the NPC will consider wage information provided by the employer in making a PWD. An employer survey can be submitted either initially or after NPC issuance of a PWD derived from the OES survey. In the latter situation, the new employer survey submission will be deemed a new PWD request.
- (2) In each case where the employer submits a survey or other wage data for which it seeks acceptance, the employer must provide the NPC with enough information about the survey methodology, including such items as sample size and source, sample selection procedures, and survey job descriptions, to allow the NPC to make a determination about the adequacy of the data provided and validity of the statistical methodology used in conducting the survey in accordance with guidance issued by the OFLC national office.
- (3) The survey submitted to the NPC must be based on recently collected data.
  - (i) A published survey must have been published within 24 months of the date of submission to the NPC, must be the most current edition of the survey, and the data upon which the survey is based must have been collected within 24 months of the publication date of the survey.
  - (ii) A survey conducted by the employer must be based on data collected within 24 months of the date it is submitted to the NPC.



## Survey Documents, from FRN December 4, 2009

- i. The name of the published survey, when appropriate;
- ii. The publication schedule for the survey, when appropriate. This should include the publication date of the requested survey, the date of the previous version of the survey and the date of the next release of the survey (actual or anticipated);
- iii. When the data was collected;
- iv. A description of the job duties or activities used in the survey; [includes survey position definitions and leveling standards]
- v. The methodology used in the survey;
  - A. How the universe is defined;
  - B. How the sample size was determined;
  - C. How the participants were selected; and
    - 1. The number of employers surveyed for the occupation in the area;
    - 2. The number of wage value responses (employees) for the occupation in the area;
  - D. A list of employer participants or explanation of how the cross-industry nature of the survey was maintained;
  - E. How the presented wage was determined and if it is mean or median;
  - F. Any other appropriate information on the survey's methodology;
  - G. The area covered by the survey or relevant portion and an explanation of any expansion of the area beyond normal commuting distance, when applicable;

[https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/E928963\\_120409.pdf](https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/E928963_120409.pdf)





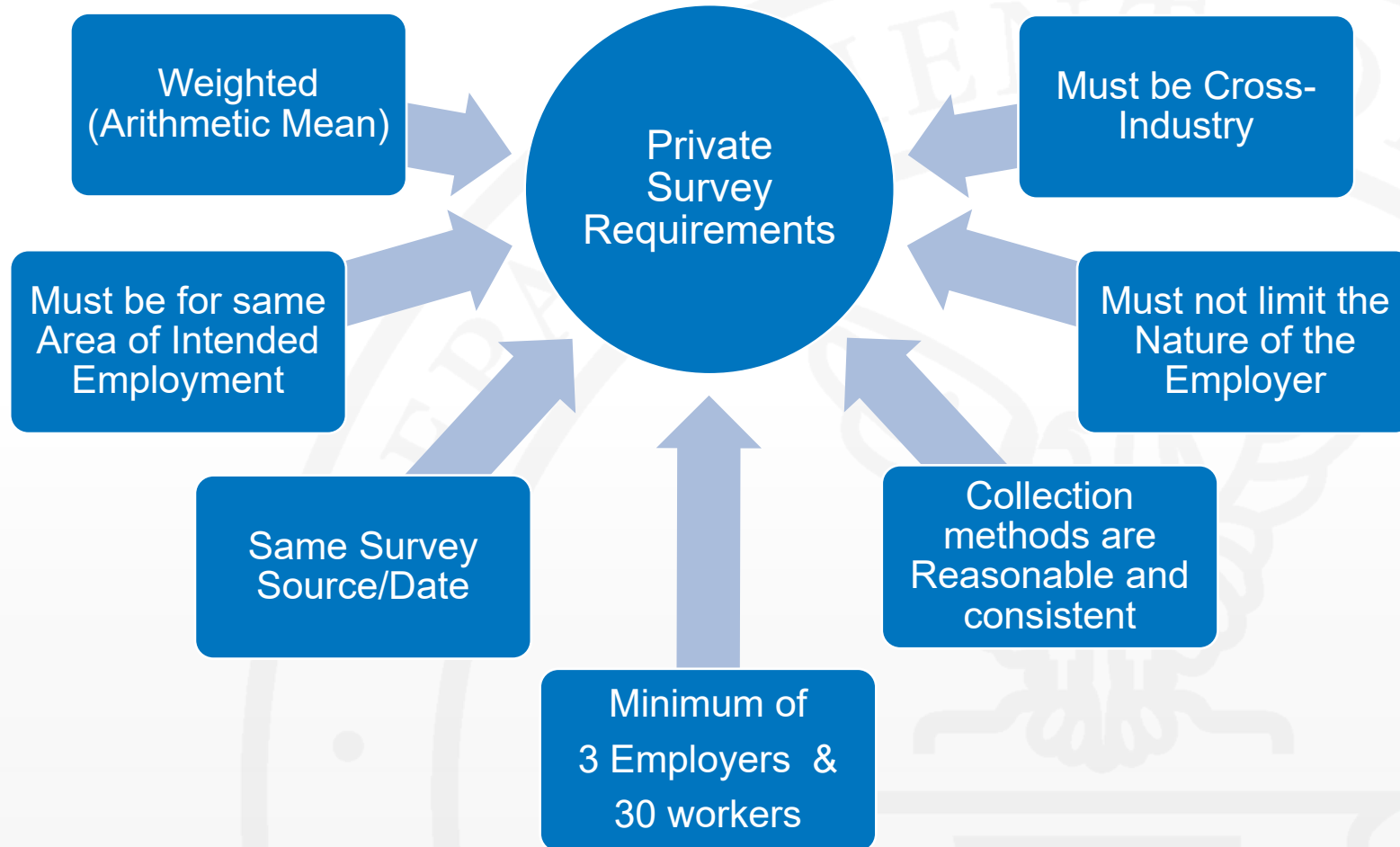
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## PWD Policy Guidance Nonagricultural Immigration Programs (rev. Nov 2009)

- Factors relating to the nature of the employer, such as whether the employer is public or private, for profit or nonprofit, large or small, charitable, a religious institution, a job contractor, or a struggling or prosperous firm, do not bear in a significant way on the skills and knowledge levels required and, therefore, are not relevant to determining the prevailing wage for an occupation under the regulations at 20 CFR 655.10 and 20 CFR 656.40. As noted above, the relevant factors are the job, the geographic locality of the job, and the level of skill required to perform independently on the job.
- In order to minimally limit bias, the survey must include wages for at least 30 workers who are employed by at least 3 employers. This is not the same as statistically valid.



## Private Survey Requirements





## Survey Document Requirements

- Same survey, same edition
- Methodology
- Survey position description
- Leveling information (if applicable)
- Wage data:
  - Number of employers used to get wage
  - Number of workers used to get the wage
- Evidence of cross-industry:
  - Methodology
  - List of participants
- Evidence of most recent edition
- When the wage data was collected
- Publication date – Includes posting to the online database



## Survey Documents – Tips

To allow us to select the most appropriate wage based on the information on the 9141 compared to the survey criteria:

- Include wage information from:
  - all survey wage levels
  - similar survey occupations
- Survey geographic coverage:
  - Explanation of where the surveyed employers are located
    - More specific than just a city name
    - Example: Pittsburgh
      - Incorporated area only?
      - City plus select suburbs?
      - OMB-defined MSA?



## Survey Documents – Tips (continued)

- Where the survey covers larger areas, provide an explanation of those areas as well.
- Provide wage data for each area covered.
- Include an explanation of why the surveyed area is larger than the area of intended employment.



The background of the slide features a large, faint, circular seal of the U.S. Department of Labor. The seal contains an eagle with wings spread, perched atop a shield, with the words "DEPARTMENT OF LABOR" and "UNITED STATES OF AMERICA" visible around the perimeter.

# **Who to Survey: Similarly Employed**

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## 20 CFR 656.40(d)

- **Similarly employed.** For purposes of this section, similarly employed means having substantially comparable jobs in the occupational category in the area of intended employment, except that if a representative sample of workers in the occupational category can not be obtained in the area of intended employment, similarly employed means:
  - (1) Having jobs requiring a substantially similar level of skills within the area of intended employment; or
  - (2) If there are no substantially comparable jobs in the area of intended employment, having substantially comparable jobs with employers outside of the area of intended employment.



## Survey Documents – Occupations/Surveyed Jobs

- Provide survey information for the most detailed occupation. While the regulations, under the definition of similarly employed, do allow a more general occupation, only if the occupation does not have enough workers in the area of intended employment

Function	Code
<b>IT Development</b> Designs, develops, modifies, adapts and Implements short- and long-term solutions to information technology (IT) needs through new and existing applications, systems architecture, network systems and applications infrastructure. Reviews system requirements and business processes; codes, tests, debugs and Implements software solutions.	<b>AID</b>
<b>Applicable Career Bands</b> M (Supervisory/Management)      P (Professional)      T (Technical Support)	
<b>Discipline</b> <b>AID000</b> <b>IT Development Generalist/Multidiscipline</b> <ul style="list-style-type: none"><li>• Designs, develops, modifies, adapts and Implements short- and long-term solutions to information technology (IT) needs through new and existing applications, systems architecture, network systems and applications infrastructure</li><li>• Reviews system requirements and business processes; codes, tests, debugs and Implements software solutions</li><li>• Responsibilities are within the IT Development Function as a generalist or in a combination of Disciplines</li></ul>	
<b>AID010</b> <b>Application Development</b> <ul style="list-style-type: none"><li>• Provides application software development services or technical support typically in a defined project</li><li>• Develops program logic for new applications or analyzes and modifies logic in existing applications</li><li>• Codes, tests, debugs, documents, implements and maintains software applications</li></ul>	

*The examples provided are for illustration, are not an endorsement, and do not reflect the Department's approval or endorsement of any one particular product.*



# **Where to Survey: Area of Intended Employment**

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## 20 CFR 656.3 “Area of intended employment”

**Area of intended employment** means the *area within normal commuting distance of the place (address) of intended employment*. 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., normal commuting distances might be 20, 30, or 50 miles). If the place of intended employment is within a Metropolitan Statistical Area (MSA) or a Primary Metropolitan Statistical Area (PMSA), **any place within the MSA or PMSA is deemed to be within normal commuting distance of the place of intended employment**; however, not all locations within a Consolidated Metropolitan Statistical Area (CMSA) will be deemed automatically to be within normal commuting distance. The borders of MSAs and PMSAs are not controlling in the identification of the normal commuting area; **a location outside of an MSA or PMSA (or a CMSA) may be within normal commuting distance of a location that is inside (e.g., near the border of) the MSA or PMSA (or CMSA)**. The terminology CMSAs and PMSAs are being replaced by the Office of Management and Budget (OMB). However, ETA will continue to recognize the use of these area concepts and their replacements.



## Area of Intended Employment (AIE)

- The geographic area within normal commuting distance of the place of intended employment (worksite address).
- There is no rigid measure of distance that constitutes a normal commuting distance or normal commuting area.
- The borders of Metropolitan Statistical Areas (MSA) are not necessarily controlling, but any place within an MSA is deemed to be within normal commuting distance.
- OMB Bulletin No. 20-01, Revised Delineations of Metropolitan Statistical Areas, Micropolitan Statistical Areas, and Combined Statistical Areas, and Guidance on Uses of Delineations of These Areas
  - <https://www.whitehouse.gov/wp-content/uploads/2020/03/Bulletin-20-01.pdf> (MSA,  $\mu$ SA, CSA)
  - [https://www.bls.gov/oes/current/msa\\_def.htm#A](https://www.bls.gov/oes/current/msa_def.htm#A) (MSA, non-MSA)



## Area of Intended Employment (AIE) con't

- Metropolitan Statistical Areas (MSA):
  - Have at least one urbanized area of 50,000 or more population, plus adjacent territory that has a high degree of social and economic integration with the core as measured by commuting ties.
  - Defined in terms of whole counties (or equivalent entities).
  - May have Metropolitan Divisions.
    - Those that contain a single core with a population of 2.5 million or more may be subdivided to form smaller groupings of counties referred to as Metropolitan Divisions.
- Micropolitan Statistical Areas ( $\mu$ SA):
  - Have at least one urban cluster of at least 10,000 but less than 50,000 population, plus adjacent territory that has a high degree of social and economic integration with the core as measured by commuting ties.
  - Defined in terms of whole counties (or equivalent entities).



## Area of Intended Employment (AIE) (CSA)

- Combined Statistical Areas (CSA):
  - A CSA may comprise two or more MSAs, and MSA and a  $\mu$ SA, two or more  $\mu$ SAs, or multiple MSAs or  $\mu$ SAs that have social and economic ties as measured by commuting but at lower levels than are found among counties within MSAs or  $\mu$ SAs.
  - Combinations for adjacent areas with an employment interchange of 25 percent or more are automatic.
  - Combinations for adjacent areas with an employment interchange of at least 15 percent but less than 25 percent are based on local opinion as expressed through the Congressional delegations.





## Area of Intended Employment (AIE) (non MSA)

- Non-Metropolitan Area:
  - Not an OMB Area.
  - Created for the Occupational Employment and Wage Statistics (OEWS) program.
  - Each state may have up to six.
  - The State Workforce Agency (SWA) Labor Market Information Units work with the Bureau of Labor Statistics (BLS) to establish names and counties.
  - Need not be contiguous.
  - Do not represent a commuting area.
  - May contain a  $\mu$ SA.
  - [https://www.bls.gov/oes/current/msa\\_def.htm#A](https://www.bls.gov/oes/current/msa_def.htm#A)



## AIE Examples

- Maryland:
  - MSA
  - $\mu$ SA
  - non-MSA
- Nebraska:
  - MSA
  - $\mu$ SA
  - non-MSA
- Worksite Near the Border of MSA
- CSA listing from the OMB Publication



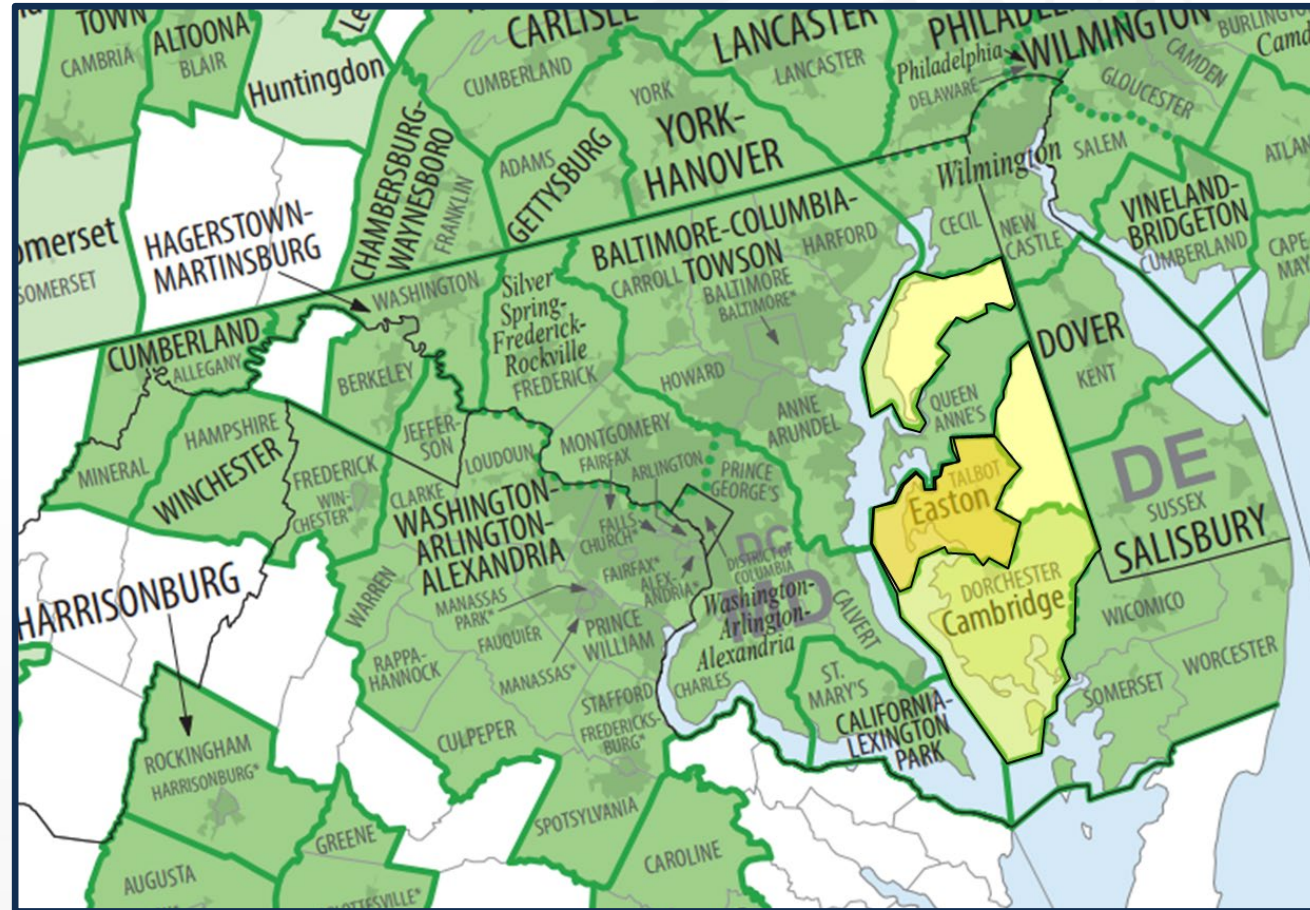






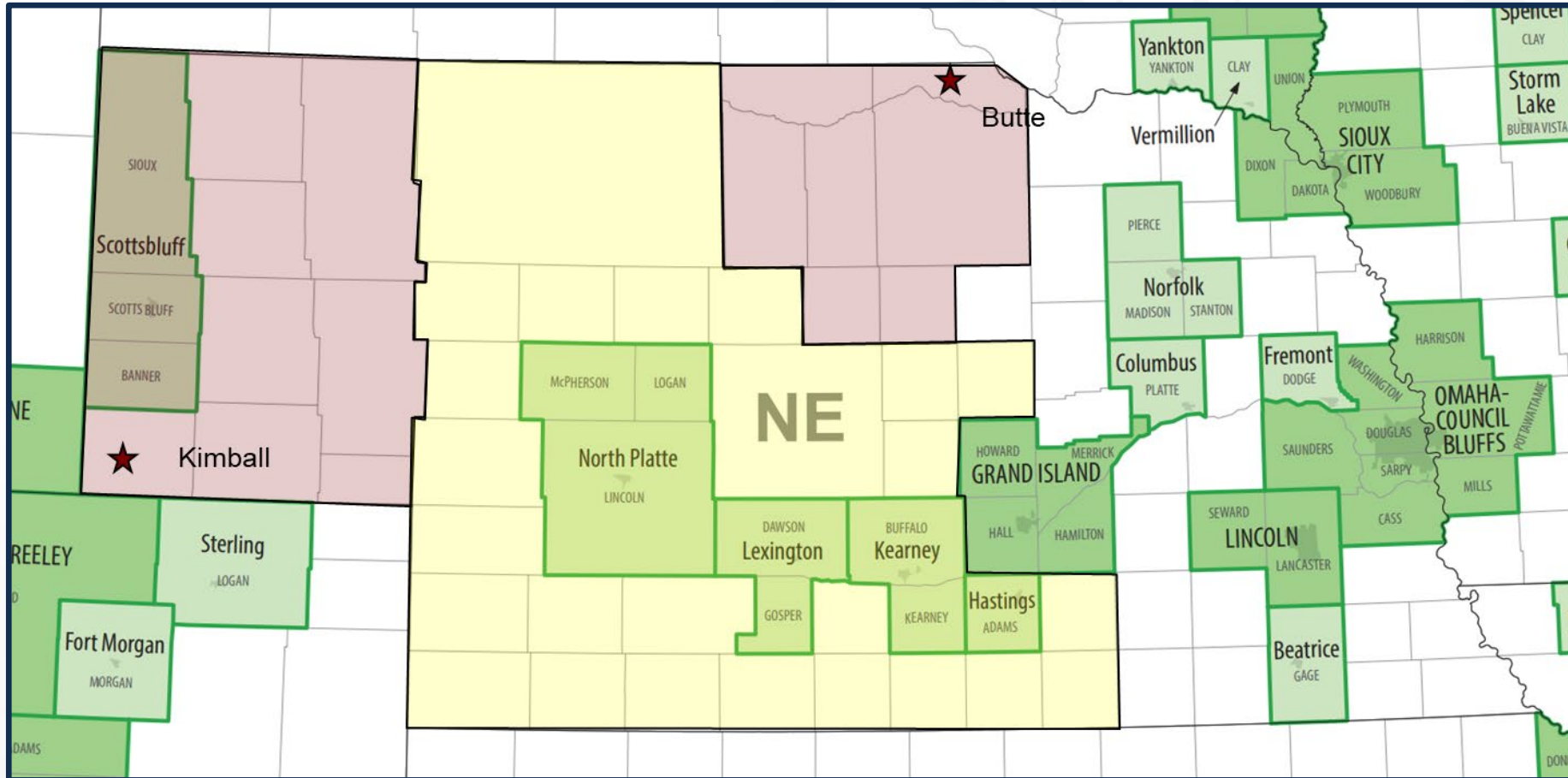


## Maryland Example: $\mu$ SA





## Nebraska Example: MSA, non-MSA, $\mu$ SA



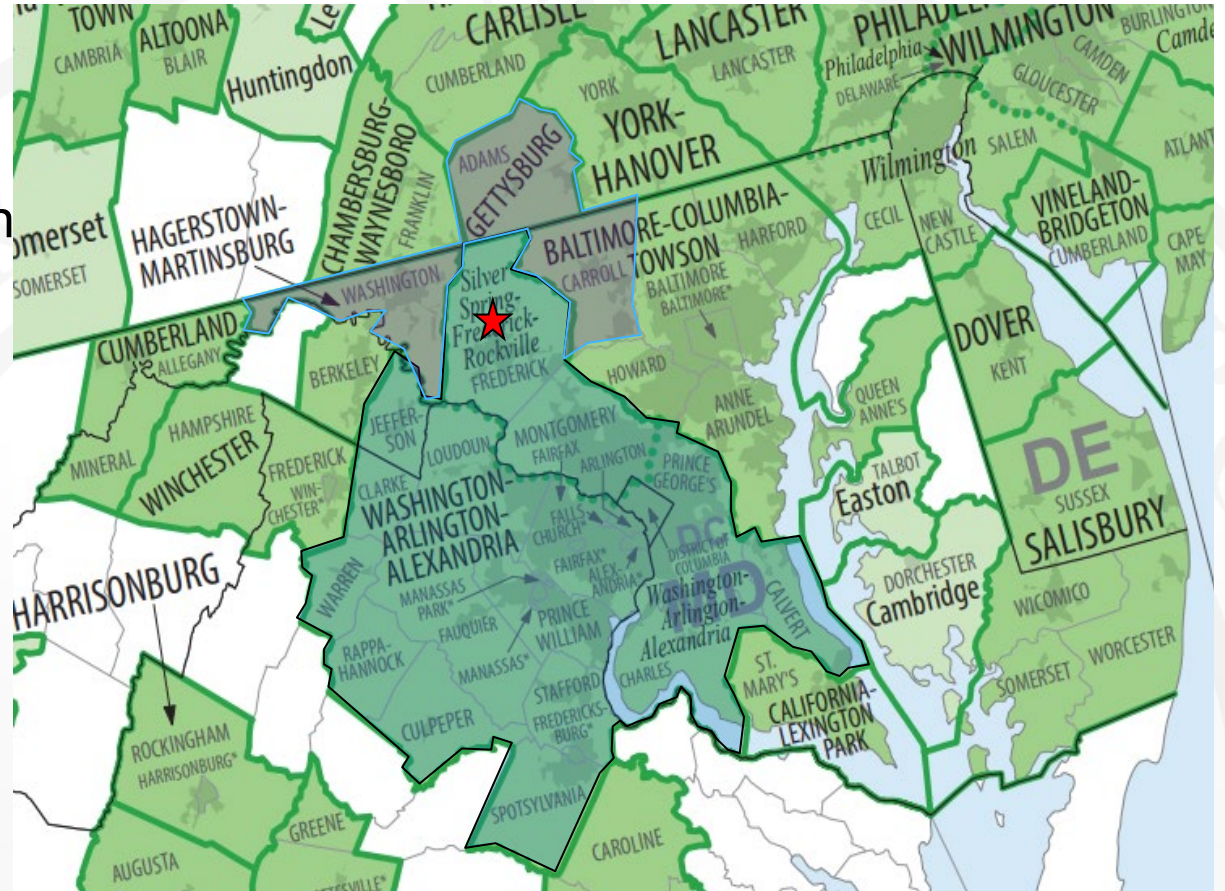




## Example: Worksite Near Border of MSA

- Depending on the location of the worksite, area(s) outside the MSA may also be considered to be within normal commuting distance.
- MSA + additional areas within normal commuting distance = AIE

**Important Note:** This is not authorization to use this as the AIE.





## CSA Example: Maryland $\mu$ SA

- 545 Virginia Beach-Norfolk, VA-NC Combined Statistical Area
  - Elizabeth City, NC Micropolitan Statistical Area
  - Kill Devil Hills, NC Micropolitan Statistical Area
  - Virginia Beach-Norfolk-Newport News, VA-NC Metropolitan Statistical Area
  
- 546 Visalia-Porterville-Hanford, CA Combined Statistical Area
  - Hanford-Corcoran, CA Metropolitan Statistical Area
  - Visalia-Porterville, CA Metropolitan Statistical Area
  
- 548 Washington-Baltimore-Arlington, DC-MD-VA-WV-PA Combined Statistical Area
  - Baltimore-Columbia-Towson, MD Metropolitan Statistical Area
  - California-Lexington Park, MD Metropolitan Statistical Area
  - Cambridge, MD Micropolitan Statistical Area
  - Chambersburg-Waynesboro, PA Metropolitan Statistical Area
  - Easton, MD Micropolitan Statistical Area
  - Hagerstown-Martinsburg, MD-WV Metropolitan Statistical Area
  - Washington-Arlington-Alexandria, DC-VA-MD-WV Metropolitan Statistical Area
  - Winchester, VA-WV Metropolitan Statistical Area

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## Prerequisites for Expanding Survey Beyond AIE

- The surveyor must first attempt to gather wage data from within the AIE.
- The geographic area surveyed may be expanded beyond the AIE if the survey of the AIE includes wage data from:
  - Fewer than 30 workers' wages; or
  - Fewer than 3 employers.
- If expansion is permitted, the survey area may expand only as necessary to include wage data from:
  - At least 30 workers; and
  - At least 3 employers.

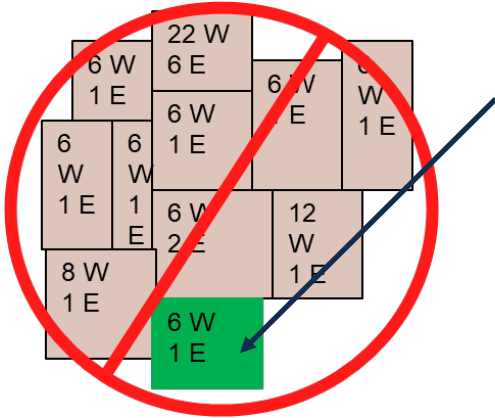


## Guidelines for Expansion of Survey Area

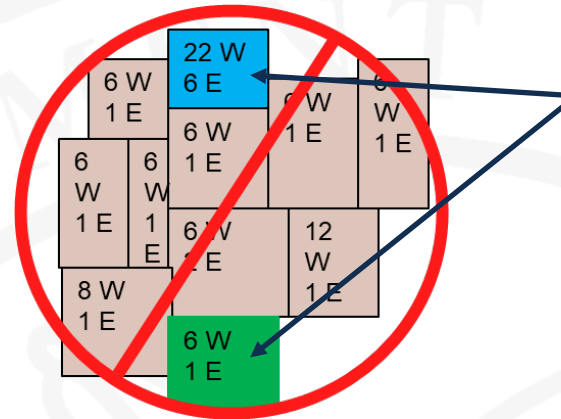
- Smallest area to meet standards.
- Contiguous area (areas with economic and commuting ties have priority).
- May cross state lines.
- For work locations in one of the OMB CSAs, this is usually the most appropriate first expansion direction.



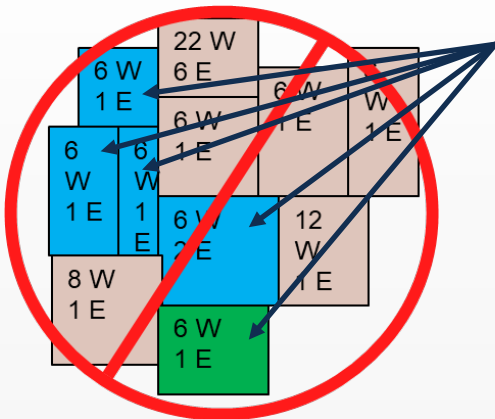
## Examples: Survey Area Expanded Beyond AIE



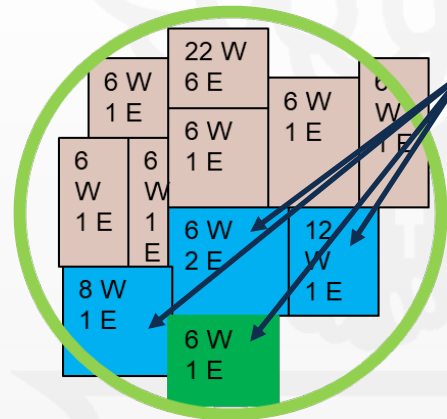
Area does not meet standards



Area not contiguous



Area is not smallest



Area meets standard (contiguous & smallest)

<span style="color: green;">■</span>	Area of Intended Employment	<b>E</b> – Employers
<span style="color: blue;">■</span>	Area used in Expansion	<b>W</b> – Workers





# Questions

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