



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

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

April 19, 2022



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Discussion Topics

- General filing tips
 - 9141 and 9089
- General reminders
 - 9141
- Wage Survey Concepts
 - Authorities and Tips
 - Who to Survey...
 - Where to Survey...



Part 1: Filing Tips/Reminders

- General Filing Tips
- General Reminders



General Filing Tips

Validity Period

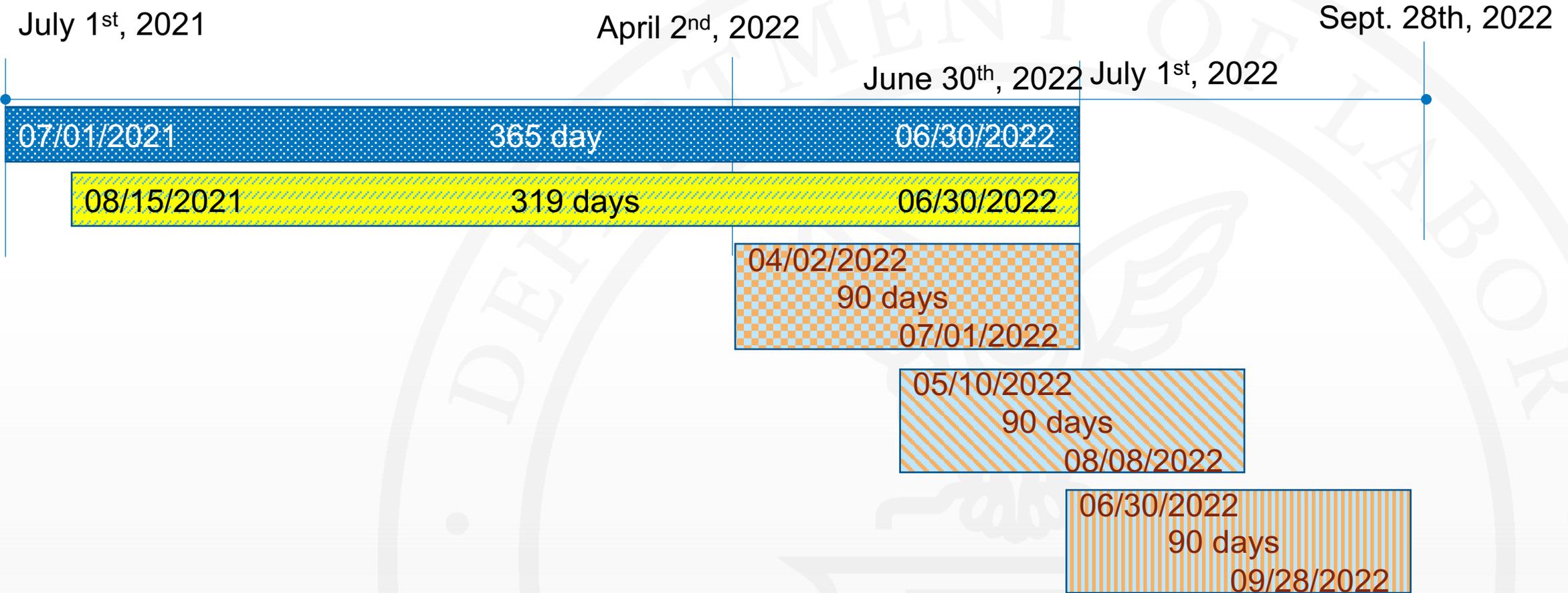
- No more than 365 days
- No less than 90 days
- July 1st thru April 1st – End on June 30th
- April 2nd thru June 30th – End 90 days later
- The first day of the validity period is the day the PW determination is issued.



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General Filing Tips

Validity Period Examples





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General Filing Tips

Form ETA-9141

- When submitting requests for Prevailing Wage Determinations (PWDS) the filer should:
 - Ensure the Form ETA-9141 mandatory fields are complete
 - Ensure job duties provided are detailed and include as much specificity as possible
 - Ensure supervision tasks are detailed and include the occupations being supervised
 - Ensure the correct wage source in Section E is selected (e.g., ACWIA, DBA, SCA, or Survey)
 - Ensure the application does not include irrelevant information such as the nature of the employer, working conditions, etc. (e.g., *“Must walk substantially (up to 15 miles daily), also stoop, bend while carrying a pack (up to 50lbs) through rough terrain (non-trail). Attention to detail; complete work tasks timely. Outdoors, exposed to weather.”*)



General Filing Tips

Vague job tasks

- Please remember that vague job tasks may overlap with other occupations. Thus, it is imperative to provide the specifics on the following:
 - Types of products being sold. (e.g., technical vs. non-technical)
 - Types of projects or services being managed. (e.g., sales)
 - Specific course(s) that will be taught
 - Type of clinical care that will be provided.(e.g., pediatrics)
 - Type of products or processes that will be worked on



General Filing Tips

Conflict of experience

- The Form ETA-9141 may not contain conflicting experience requirements. The experience requirements listed in Section F.b.4 or F.c.4 (minimum and alternative experience requirements) of the form refers to any experience required for the job opportunity
- Therefore, if the employer selects “no” experience is required in Section F.b.4 or F.c.4, but Section F.b.5 or F.c.5 (special requirements) includes experience, this would be a conflict. An RFI will be sent to the employer to clarify the experience requirements
- The employer’s RFI response should confirm the experience indicated on the Form ETA-9141. If the employer fails to provide the information, the application will be returned unprocessed



General Filing Tips

Supervised occupations

- When submitting applications that include supervisory tasks it is important to provide the occupations that are being supervised. Employers are now able to select up to ten O*NET occupations from the drop-down menu in FLAG in Item F.a.3.a on the Form ETA-9141 (see illustration below). This information will allow NPWC to ensure that the assigned wages are reflective of the supervisory tasks as well

F.a.3. Does this position supervise the work of other employees? *

Yes

No

F.a.3.a. If "Yes," please indicate the SOC code(s) and SOC title(s) of the occupation(s) of the employees to be supervised: § *

Type search term here

13-1161.00 -- Market Research Analysts and Marketing Specialists



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PERM Labor Certification General Reminders

Form ETA-9089 (also seen as ETA Form-9089)

- Ensure travel, certifications, licenses and other special requirements from the Form ETA-9141 are listed on the Form ETA-9089
- Ensure there are no typographical errors regarding the validity dates listed on the Form ETA-9089 (e.g., Form ETA-9141 validity date is 3/5/2020 to 6/30/2020; Form ETA-9089 validity date is 3/5/2020 to 6/30/2000)
 - Verify date and year
- If skills or other requirements are entered on the Form ETA-9141 they must also appear on the Form ETA-9089
- Ensure that the correct PWD number is entered on the Form ETA-9089
 - Verify the correct employer
 - Verify the job opportunity
- May use a PW with PERM or any LCA visa in A.1, but not H-2B.
 - Enter the following classification symbol to indicate the type of visa supported by this application: “**H-2B**,” “**H-1B**,” “**H-1B1 Chile**,” “**H-1B1 Singapore**,” “**E-3 Australian**,” “**PERM**”

General Reminders



General Reminders

RFIs

- NPWC may send a Request for Further Information (RFI) if the following is unclear:
 - Vague job duties
 - Conflicting education and experience requirements
 - Occupations being supervised
 - Missing documents (e.g., ACWIA, survey, etc.)
 - Incorrect worksite information



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General Reminders

RFIs

- Please take note of the following RFI reminders:
 - If you receive an RFI pertaining to job duties in question, you may provide details about job duties or elaborate on the duties; however, please NOTE that the original submitted job duties cannot be removed
 - The request for removal of job duties may lead to the case being returned un-processed; thereby, causing the employer to submit a new Form ETA-9141
 - Ensure the RFI response confirms that NPWC has permission to correct the applicable section of the form

***Note: The job duties in section F.a.2 contains a 4,000 – character limit. Therefore, when submitting additional information, the original job duties and RFI response will need to fit in this section**



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General Reminders

Revised Form ETA-9141

- The revised Form ETA-9141 included the following updates:
 - New Section for Attorney or Agent Information (Section D)
 - Employers may select which ACWIA provision they are covered under and notify NPWC if there was a change in ACWIA status (Section E.1.a)
 - Supervised occupations from the O*NET database
 - Additional fields have been added for the following requirements: license/certification, foreign language, residency/fellowships and other special skills or requirements
 - Alternative Requirements (Section F.c)



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General Reminders

Employer and Attorney Information

- Section B of the Form ETA-9141:
 - The General Instructions for Section B of Form ETA-9141 state that the employer point of contact must be an "employee of the employer" and also state that "[T]he employer point of contact information in this Section, specifically the **name, telephone number, and email address**, must be **different** from the attorney/agent information listed in Section D, except when an attorney listed in Section D is an employee of the employer
- Section D of the Form ETA-9141:
 - The General Instructions for Section D of Form ETA-9141 must be completed if an attorney or agent is filing the application on behalf of the employer
- **Note: If the employer's point of contact and the attorney/agent information is the same, NPWC will send an RFI to request clarification, except when an attorney listed in Section D is an employee of the employer**



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General Reminders

Alternative Requirements

- The revised Form ETA-9141 includes a section for the alternative requirements:
 - Section F.c. should be filled out when an employer requires alternative requirements
 - If the application states “no” to alternative requirements in F.c, but alternative requirements are listed else where on the form, NPWC will send an RFI for clarification
 - The equivalency of the alternative requirements to the minimum requirements will not be evaluated and wages will be assessed for the minimum and alternative requirements separately
 - The minimum and alternative requirements are stand alone requirements. Therefore, the employer may not enter “see minimum requirements” in the alternative requirements section
 - If the employer requires more than one set of alternative requirements, the employer should submit an additional prevailing wage application



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General Reminders

Other Degree Requirements

- Education Section F.b.1 “Other Degree” and F.1.b.a fields:
 - The General Instructions for Section F.1 of Form ETA-9141 states to identify the minimum U.S. diploma or degree required for the job opportunity
 - When “Other Degree” is selected in Item F.b.1, the employer must enter a formal credential issued by a U.S. educational institution (Example: a professional degree such as J.D., M.D., D.D.S., etc.) in Item F.b.1.a.
 - If the application includes other certifications, training or courses listed in the “Other Degree” field that are not professional degrees (as identified above), NPWC will send an RFI to request permission to move the requirements to the special requirement sections (F.b.5 or F.c.5).



General Reminders

Job Duties

- Item F.a.2 Job Duties
 - The Form ETA-9141 General Instructions for Item F.a.2 (job duties) states, the employer should include a detailed description of the job duties to be performed with as much specificity as possible
 - Therefore, when the job duties do not provide the actual tasks that will be performed but rather the abilities for the position, NPWC will send an RFI for clarification
 - Job duties are the tasks that are essential to the performance and responsibility of the position. Whereas the job requirements are the education, experience, and training qualification(s) necessary to have for the position

Illustrative example:

Job Duty: Take blood pressure using cuff and stethoscope

Requirement: Ability to take blood pressure using a cuff and stethoscope; may be gained through training or experience



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General Reminders

Character Limitations

- Character Limitations for free text fields in FLAG:
 - When the information entered exceeds the maximum number of characters allowed, NPWC will not be able to review all the requirements for the job opportunity
 - FLAG displays a 200-character limitation for Sections F.b.1.b (Major and/or field of studies) and F.b.4.b (Occupation required)
 - Employers should enter additional information in Sections F.b.5 or F.c.5 (special requirements) as these fields have a 4,000-character limitation



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General Reminders

Pertinent Information

- Section F.b.1.b/ F.c.2.b (Major and/or field of studies)
 - Employers should enter the major(s) and/or field of studies required for the job opportunity (e.g., Education, Social Work, etc.)
- Section F.b.4.b (Occupation required)
 - Employers should list the occupations in which experience is required by the employer for the job opportunity (e.g., related occupation, Marketing Manager, Health Manager, etc.)
 - The number of months of experience required for the job opportunity should not be restated in this field



General Reminders

Pertinent Information

Section F.b.1.b
✓ (Major and/or field of studies)

Majors [F.b.1.b] Social Work,
Mental Health
Counseling,
Psychology or
Education (or
foreign degree
equivalent).

Section F.b.1.b
✗ (Major and/or field of studies)

Majors [F.b.1.b] • Conferred
Master's degree
and completed
internship from
a FL license-
eligible program
that allows the
practitioner to
register as an
intern in the
social work,
therapeutic
mental health
counseli



General Reminders

Pertinent Information

✓ Section F.b.4.b (Occupation required)

Experience In the job
Occupation [F.b.4.b] offered,
 Business
 Analyst,
 Project/Function
 Lead, IT
 Executive, or
 related
 occupation

✗ Section F.b.4.b (Occupation Required)

Experience Related job and
Occupation [F.b.4.b] over two years
 up to three
 years of
 manager
 experience to
 include two
 years up to
 three years with:
 response to the
 SAAS bid RFP,
 bidding SAAS
 project , and
 troubleshooting
 SAAS projec



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Questions



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Short Break

**Starting again in 5
minutes.**



Part 2: Wage Survey Concepts

- Authorities and Tips
- Who to Survey: Similarly Employed
- Where to Survey: Area of Intended Employment
- What to Survey: Job Duties
- Pay/Wage Data

Authorities



Non-OEWS Wage Source Notes

- If there is a CBA, it must be used. No other wage source can be requested.
- Cannot ask for CBA, SCA, DBA, and Survey on 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

- ***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 upon 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.



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FRN December 4, 2009

https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/E928963_120409.pdf

- 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;
- 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;



Prevailing Wage Determination Policy Guidance Nonagricultural Immigration Programs Revised November 2009

II,C

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.

Appendix F

- Obtain a valid directory of employers in the area of intended employment (or expanded area) that would most likely employ the occupation to be surveyed.
- Count (or estimate) the number of employers in the applicable area.
- Decide how many employers must be contacted to produce usable wage results from at least three employers and at least 30 workers. Results for 30 workers is the minimum acceptable sample; for most occupations there should be wage data for many more workers.
- Divide the number of employers to be contacted (the sample) by the number of employers in the applicable industry[s] (the universe). Use the number calculated in this last step to methodically select a random sample of employers to contact. For example, if the number is one tenth, select every tenth employer in the universe or listing of employers in the industry.



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Survey Documents Needed

- ✓ Same survey, same edition
- ✓ Methodology
- ✓ Survey Position Description
- ✓ Leveling Info if appropriate
- ✓ 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
- ✓ When the wage data was collected
- ✓ Publication Date – Includes posting to online database



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Survey Documents – Tips

To allow us to select the most appropriate wage based upon 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 provides larger areas, an explanation of those as well
- ✓ Provide wage data for each area
- ✓ An explanation of why the surveyed area is larger than the area of intended employment

Who to Survey: Similarly Employed



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 – Tips (*continued*)

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 AIE

	<u>Function</u>	<u>Code</u>
	IT Development	AID
	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.	
	Applicable Career Bands	
	M (Supervisory/Management) P (Professional) T (Technical Support)	
	Discipline	
Only if Expansion	AID000	
	IT Development Generalist/Multidiscipline	
	<ul style="list-style-type: none"> • 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 • Responsibilities are within the IT Development Function as a generalist or in a combination of Disciplines 	
	AID010	
Normal Use	Application Development	
	<ul style="list-style-type: none"> • Provides application software development services or technical support typically in a defined project • Develops program logic for new applications or analyzes and modifies logic in existing applications • Codes, tests, debugs, documents, implements and maintains software applications • Analyzes requirements, and maintains, tests and integrates application components • Ensures that system improvements are successfully implemented 	

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



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 which 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 MSA's and PMSA's 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 as well as 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, μ SA, CSA)
 - https://www.bls.gov/oes/current/msa_def.htm#A (MSA, non-MSA)



Area of Intended Employment (AIE)

- 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 (μ 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)

- Combined Statistical Areas (CSA)
 - A CSA may comprise two or more MSAs, and MSA and a μ SA, two or more μ SAs , or multiple MSAs or μ SAs that have **social and economic ties as measured by commuting** but at lower levels than are found among counties within MSAs or μ 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-Metropolitan Area:
 - Not an OMB Area
 - Created for the Occupational Employment Statistics (OES) 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 μ SA
 - https://www.bls.gov/oes/current/msa_def.htm#A

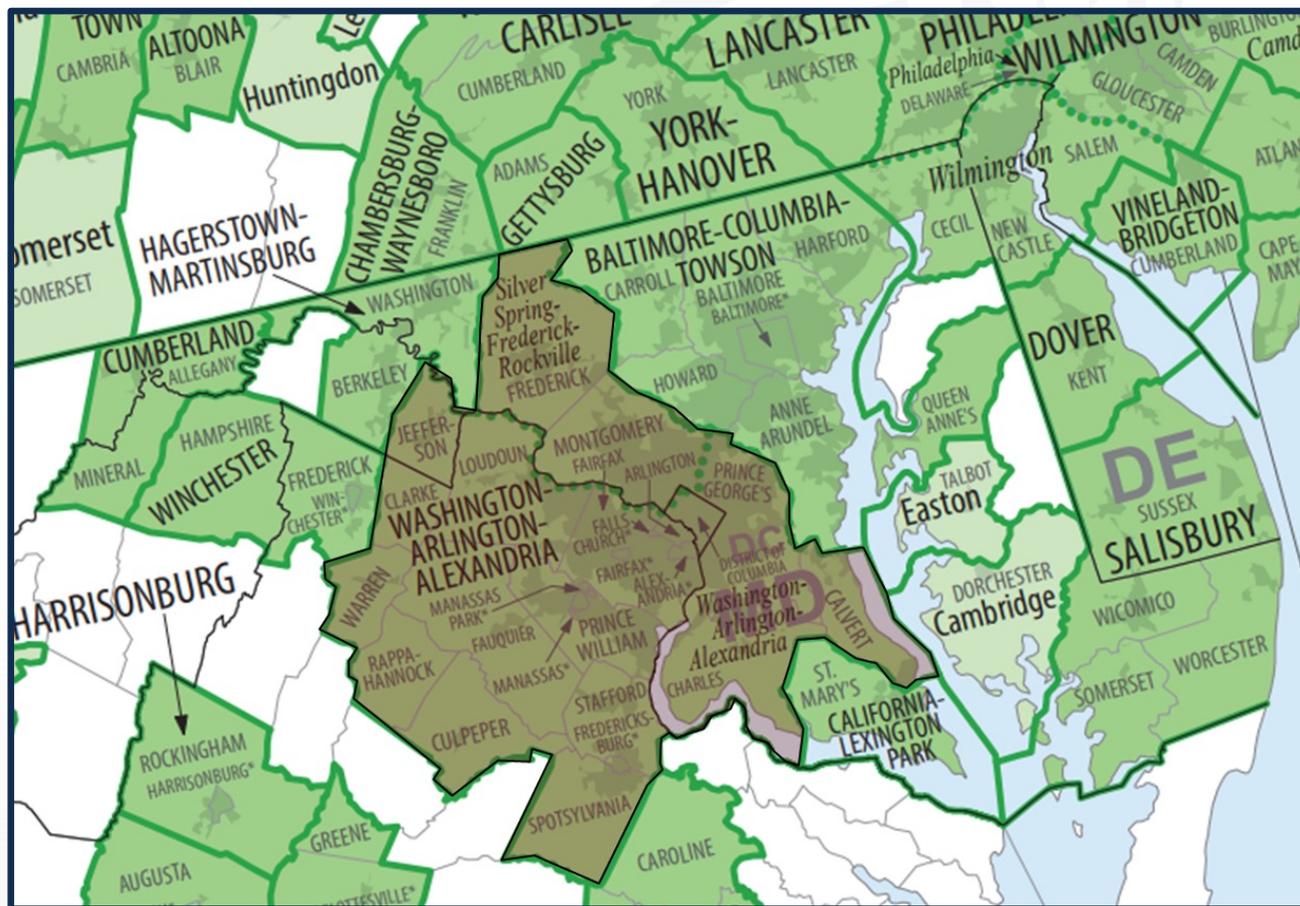


AIE Examples

- Maryland:
 - MSA
 - μ SA
 - non-MSA
- Nebraska:
 - MSA
 - μ SA
 - non-MSA
- Worksite Near the Border of MSA

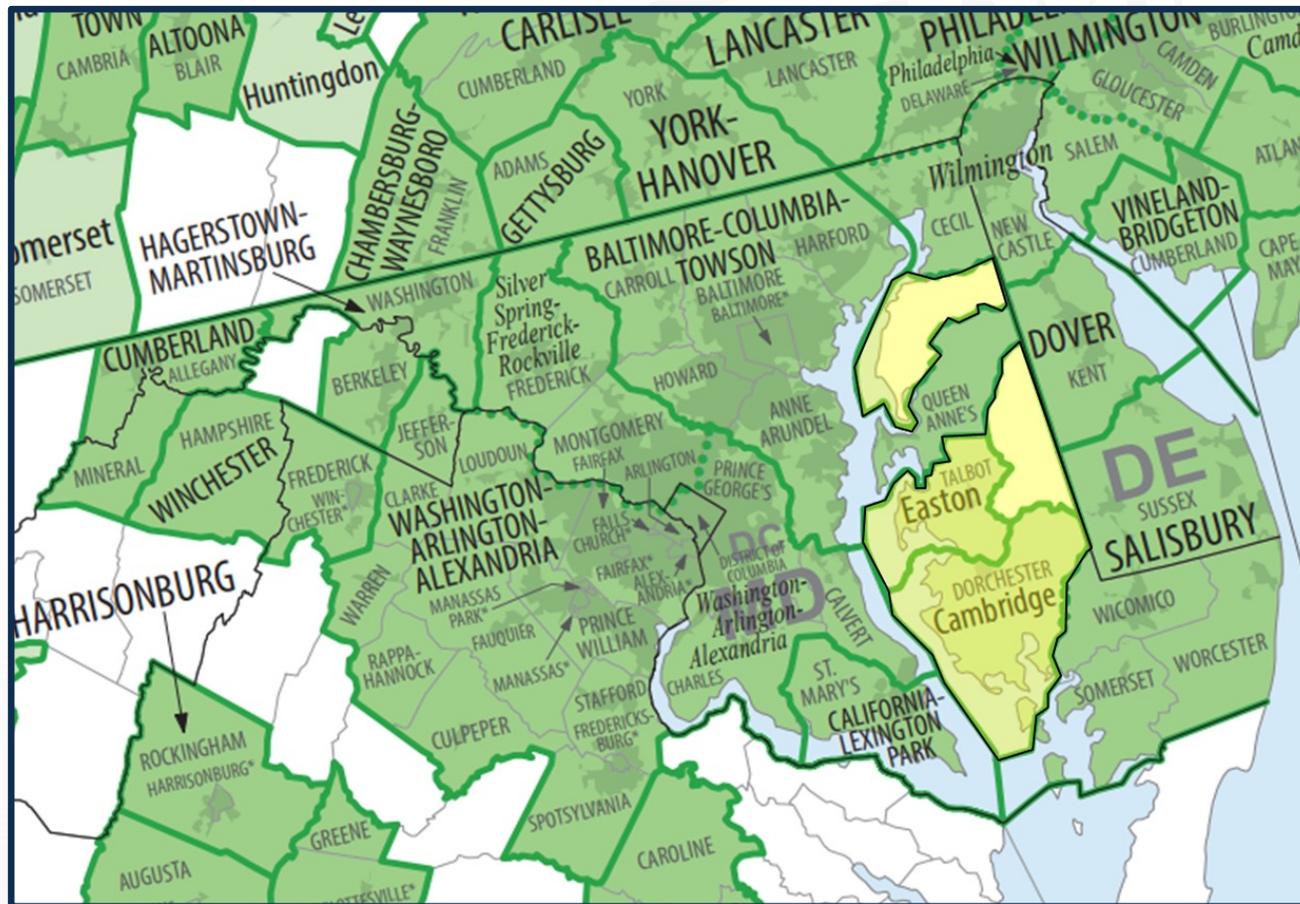


Maryland Example: MSA



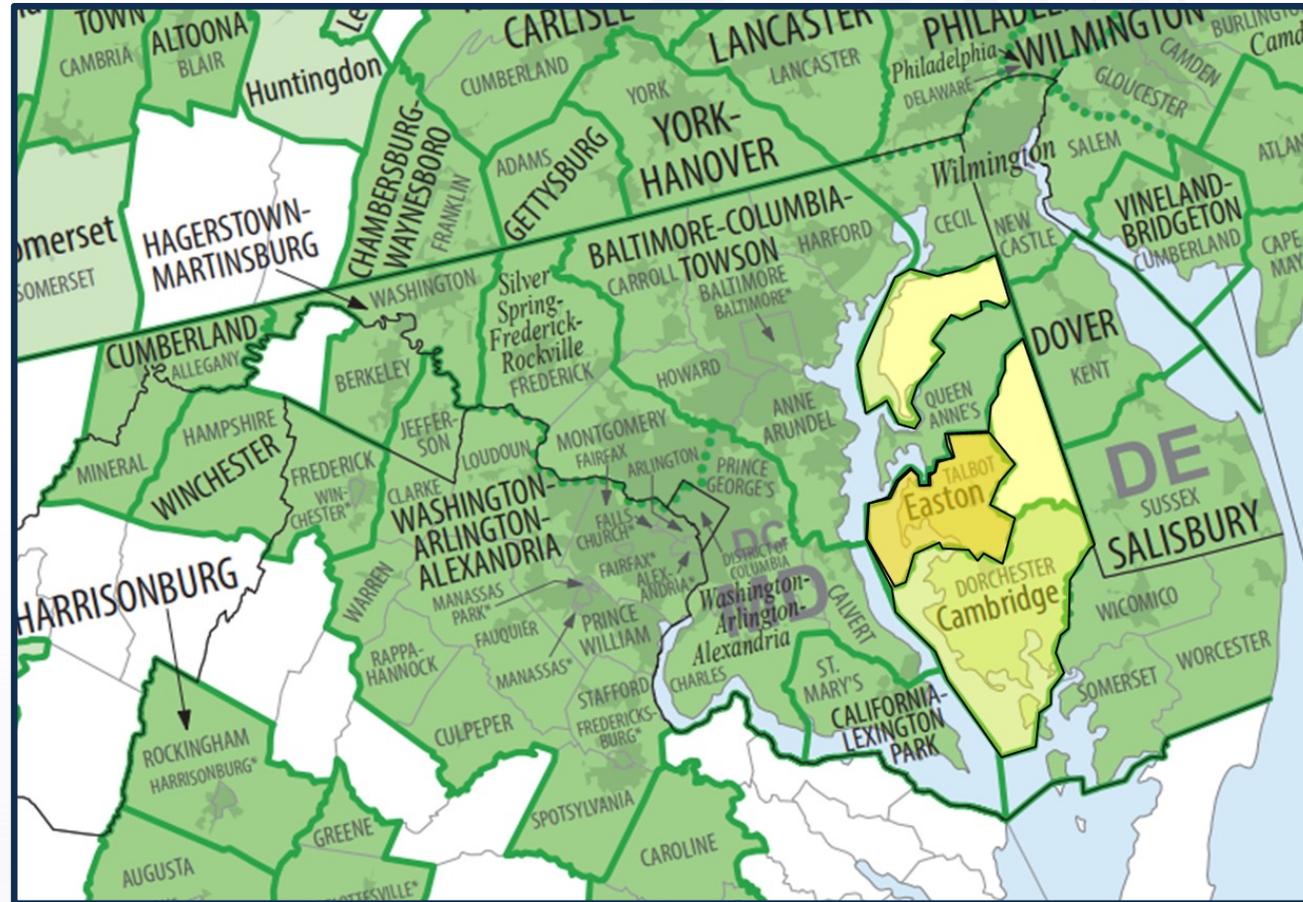


Maryland Example: non-MSA





Maryland Example: μ SA

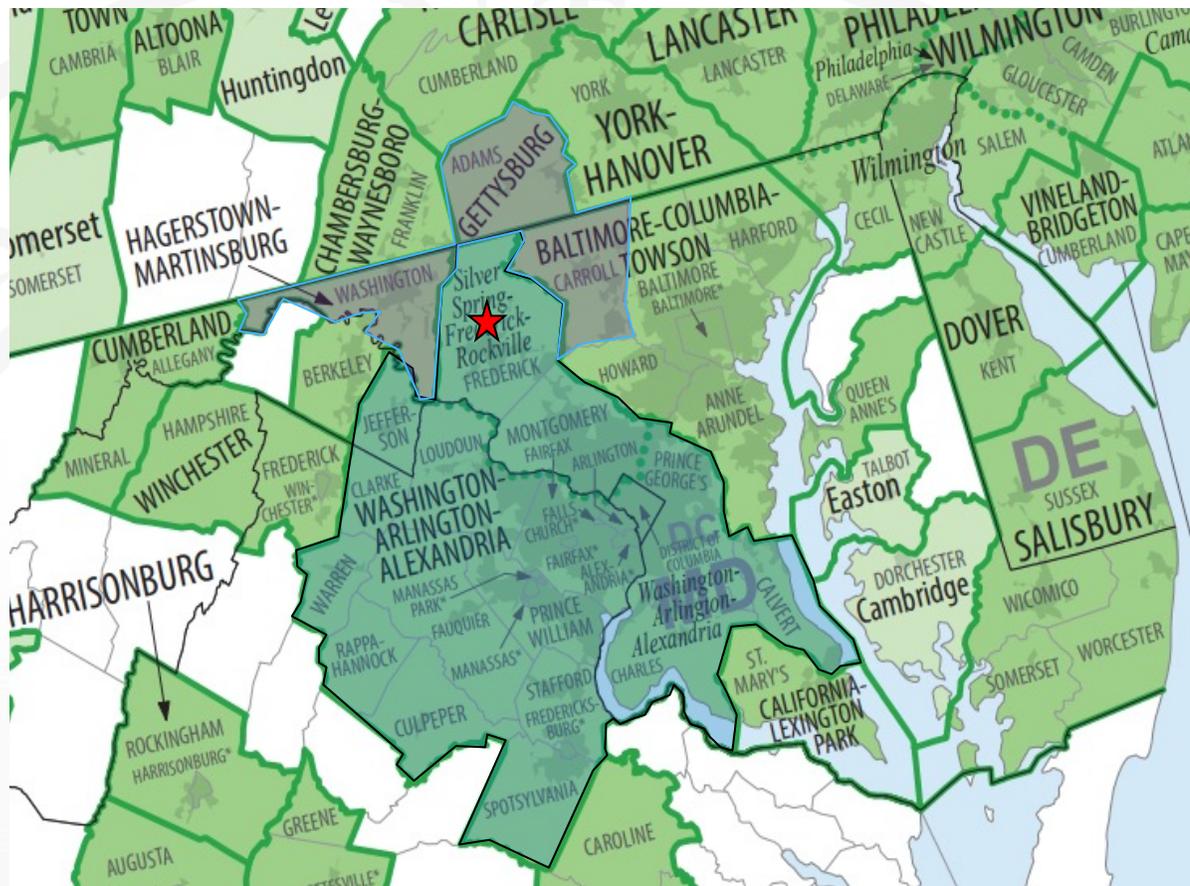




Example: Worksite Near Border of MSA

- 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.





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.

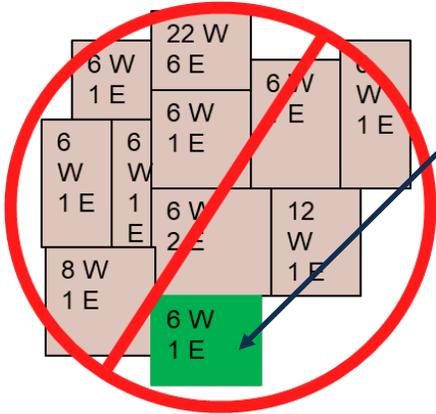


Guidelines for Expansion of Survey Area

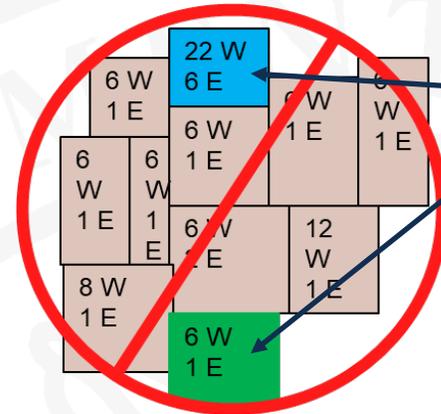
- Smallest area to meet standards.
- Contiguous area (areas with economic and commuting ties have priority).
- May cross state lines.
- For work locations in one of the OMB CSAs, this is usually the most appropriate first expansion direction.



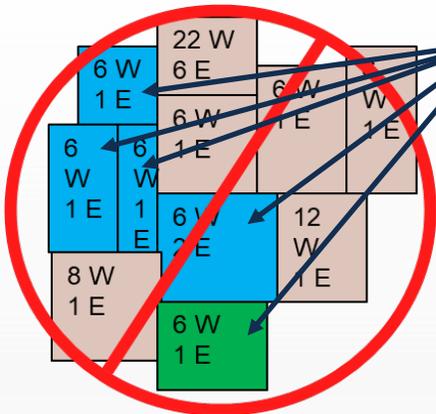
Examples: Survey Area Expanded Beyond AIE



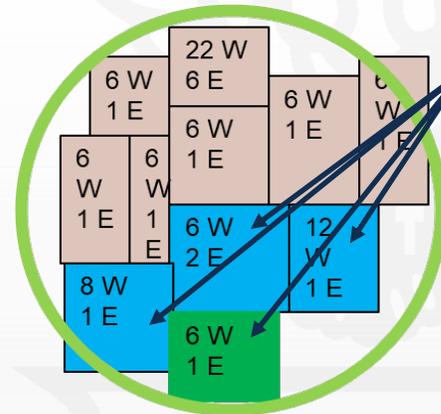
Area does not meet standards



Area not contiguous



Area is not smallest



Area meets standard (contiguous & smallest)

	Area of Intended Employment	E – Employers
	Area used in Expansion	W – Workers



CSA Example: Maryland μ 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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Questions
