



Joint Comments of the International Association of Sheet Metal, Air, Rail and Transportation Workers (SMART) and the Sheet Metal and Air Conditioning Contractors' National Association (SMACNA) in Response to the U.S. Department of Labor's Proposed Revision of the WD-10 Form

Control Number 1235-0015

The International Association of Sheet Metal, Air, Rail and Transportation Workers (SMART) and the Sheet Metal and Air Conditioning Contractors' National Association (SMACNA) submit these comments in response to the DOL's proposed revision of the information collection request (ICR) titled "Report of Construction Contractor's Wage Rates," which describes the WD-10 form and its use in wage surveys to implement the prevailing wage requirements of the Davis-Bacon and Related Acts.¹

SMART has approximately 203,000 members in diverse occupations, with more than 136,000 members employed in the sheet metal trade. SMACNA is a national employer association representing 3,500 contributing unionized sheet metal contractors. In the construction industry, the sheet metal trade encompasses a broad range of work functions, including but not limited to installation of duct and units on heating, ventilating, and air conditioning (HVAC) systems; testing, adjusting, and balancing of HVAC equipment and duct work; custom fabrication of duct; non-HVAC interior work; exterior sheet metal work (e.g., sheet metal work on building "envelopes," such as metal roofs, siding, panel, gutters, etc.), and welding.

SMART and SMACNA support efforts to make the WD-10 form more user-friendly in furtherance of the DOL's goal of increasing the amount of usable data submitted in wage surveys. These comments focus primarily on the two most significant changes to the proposed WD-10: elimination of peak week as an indispensable means to increasing the total amount of data on which prevailing rates are based; and inclusion of a "picklist" of "labor classifications" from which a submitter may choose, along with a creation of a Directory of Classifications and Sub-classifications." We recommend in these comments additional modifications to the WD-10 form

¹ *Agency Information Collection Activities; Comment Request; Report of Construction Contractor's Wage Rates, 87 Fed.Reg. 36152 (June 15, 2022).*

that would provide greater clarity for submitters, including, for example, adding a designated space and instructions on how to report zone pay, shift differentials, premiums for working forepersons, and other compensation above the base rate of pay for journeypersons that is provided pursuant to a collective bargaining agreement (CBA).

As discussed below, Secretary Walsh provided explicit direction on sub-classifications and area practice in a July 15, 2022 decision, which reiterates that proper classification of work must be “supported by the practices” within the locality surveyed.² SMART and SMACNA greatly appreciate that the Secretary has provided clear direction to the WHD that job classifications must reflect local prevailing practice; that the WHD must include area practice surveys as an essential part of the survey process; and that the WHD must consult unions during such surveys when union practices govern the local labor market. Secretary Walsh’s decision stands for the proposition that if the classifications selected by the DOL do not reflect the prevailing practices in an area, the prevailing rates cannot reflect local labor markets. Most importantly, from SMART and SMACNA’s point of view, whichever methodology the WHD ultimately selects to avoid proliferation of sub-classifications, we urge the WHD to choose a process that does not jeopardize SMART’s ability to prevail on the lion’s share of the work in the sheet metal industry – HVAC duct installation.

It is important to emphasize the difference between use of “labels,” i.e., classifications and sub-classifications within key classifications, for data collection and for analysis/combination of data collected in calculating rates. The former provides notice to submitters and wage analysts of work that is encompassed within a trade, the latter looks to area practices to determine if the

² Decision of Secretary Walsh, *District Council of Ironworkers of the State of California v. Wage and Hour Division*, 2020-0035 (July 15, 2022), quoting *Audio-Video Corp.*, ARB Nos. 95-047, 96-117, 97-119, 96-120, 96-149, 96-163 (July 17, 1997).

sub-classifications in a locality are appropriate based on data collected. Proper resolution of the classification and sub-classification questions at the data analysis and combination stage will prevent issuance of open shop rates in labor markets where union data predominate. It will also prevent issuance of no rates for one or more sub-classifications in a trade based on the alleged insufficiency of data when data would be sufficient if the key classification were not artificially subdivided into meaningless sub-classifications.³ During the Obama administration, the WHD devised a methodology to address circumstances when the unions submitted 100% of the data on a classification or sub-classifications but the rates were not paid at the same CBA rate. That stopgap was necessary but inadequate. Any methodology that requires that unions submit 100% of the data to prevail is contrary to the “purpose” of the DBA, and is an outgrowth of the DOL’s post-*Mistick*, “to the penny”⁴ approach in determining rates.⁵

³ See e.g., Appendix A, “Discarded Sheet Metal Data in Knoxville MSA.” In the building survey of that MSA, 88.7% of the discarded data were submitted by SMART Local 5.

⁴ See DOL’s Notice of Proposed Rulemaking, *Updating the Davis-Bacon and Related Acts Regulations*, to amend Parts 1, 3, and 5 of these regulations. 87 *Fed.Reg.* 15711, 15706 (Mar. 18, 2022). (“To the extent that an inflexible, ‘to the penny’ approach to determining if wage data reflects the ‘same wage’ promotes the use of average rates even when wage rate variations are exceedingly slight and are based on practices reflecting that the rates, while not identical, are functionally equivalent, such an approach would be inconsistent with these authorities and the statutory purpose they reflect.”)

⁵ *Mistick Construction*, ARB Case No. 04-051, at 7, 2006 WL 861357 (ARB March 31, 2006).

SUMMARY OF COMMENTS

The DOL cannot cure the methodological deficiencies in the survey process by creating labels in a Directory for selected work functions included in construction trades. Those deficiencies, which necessitate regulatory changes, are discussed at length in SMART and SMACNA's joint comments in response to the recent NPRM, with a particular emphasis on the *Mistick* rule.⁶

For the sheet metal trade, the fundamental problems presented by the DOL's artificial subdivision of sheet metal work are not rooted in the labels used to describe sub-classifications, but rather, in the regulatory definition of prevailing wage, the DOL's failure to honor union practices when data submitted by one or more union(s) for a classification or sub-classification predominate, and the unpredictability of its use of sub-classifications when analyzing data in this trade. The latter problem is driven by the WHD's lack of understanding of the sheet metal trade, which often results in discarding work on sub-classifications within the sheet metal trade rather than combining it with the key classification of sheet metal and/or other errors attributable to disaggregation of data.⁷ Appropriate labels can, however, be useful in providing notice to submitters of the parameters of each trade and for analysis by wage analysts so long as the DOL: 1) ends its practice of disaggregating data, and thereby, de-skilling craft work by artificially subdividing work into meaningless sub-classifications; 2) undertakes an area practice survey, with appropriate

⁶ We encourage the DOL to consider the impact of the *Mistick* rule on classifications and sub-classifications. In response to the NPRM, SMART and SMACNA proposed that the DOL modify proposed §1.3(e) as follows to ensure that submission of data by more than one craft does not cause open shop rates to prevail when union data predominate. *See* joint comments at pages 23 to 26 for a discussion of our recommendation advocating for inclusion of the following language in bold:

(e) In determining the prevailing wage, the Administrator may treat variable wage rates paid by a contractor or contractors to employees within the same classification as the same wage where the pay rates are functionally equivalent, as explained by **one or more collective bargaining agreement(s), a local or national jurisdictional agreement**, or written policy otherwise maintained by the contractor.

⁷ *See* Appendix A.

consultation with unions, to obtain clarification when it appears that more than one craft represents workers performing the same work (e.g., HVAC unit installation and installation of metal roofs); and 3) does not diminish the amount of data available on sheet metal work when the same workers perform many different work functions or “sub-classifications” on a single project.

Area Practice Surveys

These comments address the complex issues that underscore the difficult task that the WHD has undertaken. Most fundamentally, when union data predominate in a survey, the WHD’s methodology should not prevent union rates from prevailing. Based upon our review of the survey results for sheet metal workers and the sub-classifications included therein, it appears that the WHD has largely abandoned the practice of conducting area practice surveys in the context of wage surveys. As delineated in step-by-step instructions in the *Davis-Bacon Construction Wage Determinations Manual of Operations* (1986) and *Conducting Surveys for Davis-Bacon Construction Wage Determinations: Resource Book* (1989), the WHD devised a reliable methodology for addressing submission of data on the same sub-classification by more than one craft many decades ago. Its failure to follow this methodology⁸ has caused SMART and other unions not to prevail in labor markets in which union practices govern.⁹ The need for area practice surveys has greatly increased in the post-*Mistick* era. In some cases, jurisdiction may be defined in a national or local agreement; in other cases, shared jurisdiction is *de facto*. In either case, union practices may dominate the local market, but the rates paid in accordance with applicable CBAs are not the same.

⁸ See May 17, 2022 joint comments of SMACNA and SMART in which we recommend that the DOL codify the requirement that it conduct area practice surveys under the following circumstances: 1) more than one union submits data on the same work; 2) no single union rate predominates; and 3) the total amount of union data demonstrates that union practices govern the local labor market.

⁹ See pages of 28 to 40 of joint comments for examples of the impact of the DOL’s failure to undertake area practice surveys.

Overlapping Jurisdiction

The proposed Directory includes terse, uninformative labels. This approach to selection of sub-classifications ignores two fundamental questions: 1) how to address boundaries between one or more trade(s), which are often amorphous, and require a detailed understanding of each trade’s work functions to discern; and 2) how to address shared jurisdiction between one or more trade over “sub-classifications” of work. By contrast, many state DOL have produced materials that take a nuanced approach to boundaries and provide clear guidance on potential overlap. These comments provide examples from many states – Minnesota, Oregon, Missouri, Delaware, etc. – that demonstrate that defining the work of each trade is complicated by the fact that there are often no clear demarcations for some work functions where crafts overlap.

Recommended Changes to Work Encompassed with the Key Classification “Sheet Metal Worker” in the Proposed Directory

SMART and SMACNA strongly recommend changes to the classifications and sub-classifications in the Directory that pertain to work performed by sheet metal workers. For the reasons detailed below, it is imperative that the DOL delete “HVAC mechanic/technician” and the sub-classifications included thereunder from the Directory, which currently read as follows:

1301. HVAC Mechanic/Technician	1302. HVAC Pipe Install 1303. HVAC Duct Install 1304. HVAC System Install
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Sub-classification, “1303. HVAC Duct Install” above duplicates “2402. HVAC Duct Install” in the proposed “2401. Sheet Metal Worker.”¹⁰ Furthermore, the sub-classifications within proposed

¹⁰ Here are the sub-classifications that are currently listed in the Directory for the sheet metal trade:

2401. Sheet Metal Worker	2402. HVAC Duct Install 2403. Metal Building Erection 2404. Metal Flashing/Sheeting
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HVAC mechanic/technician include overlapping work. “HVAC System Install,” for example, includes “HVAC Duct Install” and HVAC unit installation. Despite the fact that “HVAC unit installation” appears on virtually all WD-22’s (the DOL’s summaries of survey data), the DOL has chosen not to include this work as a separate sub-classification in the proposed Directory. Since SMART and the UA share jurisdiction over HVAC unit installation pursuant to a national agreement, it is critical that the DOL include this work as a separate sub-classification in the Directory. As discussed in our joint comments in response to the NPRM, the combination of SMART and UA data on this work has resulted in the issuance of open shop rates when the total amount of union data was 73%.¹¹

We further urge the DOL to modify the sub-classifications included under “sheet metal worker” under “2401.Sheet Metal Worker” in the Directory in the following manner so that it more accurately describes HVAC work and “non-HVAC” exterior and interior sheet metal work and provides notice to submitters of the scope of sheet metal work. These work functions are used by the WHD in determining prevail rates in the sheet metal trade and/or in definitions of sheet metal worker in state administrative codes that implement state prevailing wage laws.

2401. Sheet Metal Worker	2402. Installation and fabrication of HVAC duct (includes testing, adjusting, and balancing) 2403. Installation of HVAC unit 2404. Sheet Metal Worker (excluding HVAC duct and unit work). Metal building erection/metal flashing/sheeting: (installation of metal roofs, gutters, panels, siding and wall panels, and similar exterior components) and interior sheet metal work
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Flashing is a sheet of thin, impervious material used to prevent water penetration or seepage into a building and to direct the flow of moisture in walls.

¹¹ SMART and SMACNA’s joint comments, at 33 to 34.

Area practice surveys will determine whether SMART prevails in all the work described above. Improper sub-division of sheet metal work, particularly exterior work, has resulted in the WHD's issuance of wage determinations that deprive workers of the wages that should prevail for the work functions performed.¹²

Disaggregation of Data

We also request that the DOL clarify the function of proposed "5000. Other Classification." The Directory already lists 27 "classifications," which far exceeds the 16 key classifications listed for "building" construction in the *Prevailing Wage Resource Book*.¹³ The instructions appear to invite submitters to include new classifications, which would increase the number of classifications and decrease the amount of data upon which each prevailing rate is based. The instructions for "Labor Classification number" and "Labor Classification name" state, in pertinent part, that:

If no classification is listed in the directory that reflects the trade of the worker(s), please select "Other Classification" number and provide the classification name.

It is unclear which characteristics a work function must have to be considered a "classification," as distinguished from a "sub-classification." This is a significant "unknown" because the DOL combines data at the "supergroup" and "state" level for classifications but does not do so for "sub-classifications." The DOL should clarify whether the expansion of proposed "classifications" signals an intent to calculate the prevailing rates for the 11 additional classifications¹⁴ at the

¹² As discussed below, SMART and SMACNA urge the WHD to avoid further sub-classification of our trade during the data collection phase. Non-HVAC sheet metal work should be treated as a single sub-classification unless area practices dictate otherwise.

¹³ See *Prevailing Wage Resource Book*, DB SURVEYS, which lists the following "key classifications": heat and frost insulators, bricklayers, boilermakers, carpenters, cement masons, electricians, iron workers, laborers – common, painters, pipefitters, plumbers, power equipment operators (operating engineers), roofers, sheet metal workers, tile setters, and truck drivers.

¹⁴ The "classifications" in Directory that are not listed as key classifications in the *Prevailing Wage Resource Book* are: 101. asbestos worker, 701. drywall finisher, 901. elevator constructors, 1101. floor covering, 1201. glazier, 1301. HVAC mechanic/technician, 1701. millwright, 1901. pile driver, 2501. sprinkler fitter, 2701. traffic control, 2801, and 2801. low voltage wiring system worker.

“supergroup” and “state” level if there is insufficient data at the county or group level. Rather than inviting submitters to add classifications, and thereby, contribute to the proliferation of classifications and sub-classifications, the DOL should state in the instructions: “If no classification is listed in the directory that reflects the trade of the worker(s), contact Davis-Bacon Survey Center at 866-236-2773 or email DavisBaconInfo@dol.gov for assistance.”¹⁵

It is also unclear whether the instructions on “sub-classification number” and “sub-classification name” refer to sub-classifications under classifications that are already in the Directory or to sub-classifications in classifications that are not listed in the Directory. The current instructions are vague and the form itself does not provide clarity:

If no sub-classification is listed that reflects the trade of the worker(s), please select “other sub-classification” number, and provide the sub-classification name.

Despite this instruction, the proposed WD-10 form does not provide a space for the adding sub-classifications within the classifications that are already listed.¹⁶ For the sheet metal trade, SMART and SMACNA urge the WHD to avoid further sub-classification of our trade during the data collection phase by sub-dividing work listed in “2404. Sheet Metal Worker (excluding HVAC duct and unit work). Metal building erection/metal flashing/sheeting: (installation of metal roofs, gutters, panels, siding and wall panels, and similar exterior components) and interior sheet metal

¹⁵ The resolution of the question of proliferation of new classifications may differ depending upon whether industry practice in a trade is to pay a single CBA rate for all journey person work or to divide work within the trade into different groups in a CBA, with different rates of pay for each group. SMART CBAs provide the same wage and fringe benefits rates for all journey person sheet metal workers regardless of the duties performed within the trade. When a CBA provides for multiple wage rates, it is often necessary to use separate classifications to prevent *Mistick* issues. See e.g., Multnomah County (Portland), Oregon, where the IBT prevails on 7 groups, each of which has a different rate of pay (\$29.33, \$29.20, \$29.34, \$29.62, \$29.85, \$30.03, and \$30.24). The difference in pay between two of the groups is \$0.13; the difference in pay for two other groups is \$0.14. <https://sam.gov/wage-determination/OR20220029/7> To reflect the predominant practices in local labor markets, the DOL may be required to devise different solutions based on the number of wage rates for journey persons in a CBA for a trade. Additionally, on a related matter, depending upon the DOL’s interpretation of the term “laborer or mechanic” in current 29 C.F.R. § 5.2(m), it may be necessary to add new classifications (e.g., surveyors and material testers) on the WD-10.

¹⁶ Once again, the consequences of creating additional “sub-classifications” for reporting purposes will differ depending upon whether there are multiple rates or a single rate for journey person work in a trade’s CBA.

work.” If, during the data analysis phase, it becomes apparent that area practice necessitates the use of a sub-classification that is not listed, we recommend that the WHD confer with local union representatives in localities in which union data governs.

Avoiding an Unintended Consequence of Eliminating Peak Week

As discussed in section VI below, there is currently a separate peak week for each sub-classification within a trade; consolidation of some sub-classification has the potential to decrease how the DOL counts data. SMART and SMACNA urge the DOL to avoid an unintended consequence – decreasing the amount of usable data – as it seeks to decrease the number of sub-classifications.

Recommendations for Consistency with the NPRM and the WHD’s Potential Revisions to All Agency Memorandum No. 130, to Make the WD-10 Form More User-Friendly, and to Collect Information Pertinent to Verification of Data

As discussed in section VII below, SMART and SMACNA strongly encourage the DOL to make changes to the WD-10 form and instructions to 1) ensure consistency with proposed 29 C.F.R. § 1.3(e) in the NPRM, which addresses “functionally equivalent” wage rates; 2) ensure consistency with potential revisions to the residential and building categories of construction in All Agency Memorandum No. 130 (1978) that are needed to modernize these outdated guidelines; 3) provide clearer and less repetitious instructions to make the WD-10 form more user-friendly; 4) collect as an optional item the estimated project value since such information is a strong indicator of the number of workers employed on a project and serves as an important tool when the DOL seeks to verify the accuracy of the data submitted; and 5) insert a space under sheet metal work in the Directory to provide the submitter an opportunity to explain differences in local terminology and practices.

COMMENTS

I. SECRETARY WALSH HAS PROVIDED EXPLICIT DIRECTION ON THE MANDATORY USE OF AREA PRACTICE SURVEYS AS AN INTEGRAL PART OF THE SURVEY PROCESS

In developing a nationwide Directory of classifications and sub-classifications for use in collection and analysis of data, the WHD must ensure that its national approach is consistent with Secretary Walsh's unequivocal reiteration of the DOL's long-held view that locally prevailing classifications and sub-classifications control the survey process. His guidance militates against reliance on unvarying national classifications and subclassifications in analyzing and combining wage data, since "crafts are local labor standards"¹⁷ and their component work functions become apparent when wage data are tabulated. As stated by labor economist, Dr. Peter Philips, "craft formations and boundaries describe and circumscribe the opportunities" a worker has in the local construction market.¹⁸ Data collected in surveys demonstrate that different sub-classifications within a trade may dominate in some localities but be less frequently used in other areas depending upon the type of construction surveyed, local and national jurisdictional agreement, *de facto* shared jurisdiction, union density, and the volume of construction in an area.

A. The Classifications and Sub-classifications Used in Data Collection Greatly Influence Data Analysis and Combination of Data

Before elaborating upon our recommendations concerning modification of the WD-10 form, it is important to acknowledge Secretary Walsh's explicit direction in a July 15, 2022

¹⁷ Dr. Peter Philips, Professor of Economics, University of Utah. *How Should Davis-Bacon Surveys Be Conducted?* May 17, 2022, at 15. See section on "Determining How to Survey Construction Occupations." The artificial subdivision of trades into many sub-classifications in issuing wage determinations is based on the fiction that workers sustain their livelihood over the course of three or four decades in the construction industry by mastering only one sub-classification of work within a key classification. A sheet metal worker's employability and marketability in the construction industry is based on acquisition and maintenance of a broad base of skills as the technology used in the sheet metal trade evolves during a career.

¹⁸ *Id.*

decision that area practices must inform the process of data analysis in conducting wage surveys. This direction is consistent with the WHD's longstanding position that it does not survey classifications and sub-classifications; rather, it surveys wage data to ascertain the rates that prevail for the classifications and sub-classifications that are found to exist in a county, group, supergroup, or state.¹⁹ As the Secretary's decision illustrates, it is an abuse of discretion for the WHD to adhere to use of rigid sub-classifications when local practices demonstrate that the sub-classifications traditionally used by the WHD do not reflect prevailing practices concerning classifications and sub-classifications in a locality.

The labels used on the WD-10 form for data collection will greatly influence the evidence available for data analysis and combination of data to determine prevailing rates since the WHD cannot use evidence that it has not collected. Furthermore, to the extent that the proposed change in data collection signals a change in how the DOL intends to combine data in determining prevailing rates, it is important that the DOL understand that its failure to consistently use area practice in past surveys has resulted in the issuance of open shop rates when union data predominate. The rationale for the Secretary's decision and the section of the 1986 Manual of Operations upon which the decision relies are instructive in addressing computation of prevailing rates when more than one trade submits data on the same work within a "sub-classification."

B. Relying on *Fry Brothers*, the Secretary Reiterated that When Union Rates Govern, Classification Issues Must be Resolved Based on Classifications Under Applicable Collective Bargaining Agreements

In the July 15, 2022 case, the Secretary found that the Administrator abused her discretion in declining to issue a residential rates for ironworker in rural counties in California even though

¹⁹ If a union prevails in a "sub-classification" that is outside its historic jurisdiction (or on work that is not generally deemed to be within its craft), that union is entitled to prevail under the DOL's methodology. There may, at times, be a difference between the trade within which a work function falls and the union that represents the workers performing it.

the survey results demonstrated that 94% of workers – 17 of 18 – in this classification were paid the same rate under the same CBA and worked on a total of 7 projects during the survey period. The Administrator’s rationale (rejected by the Secretary) was that the WHD had historically treated reinforcing and structural ironwork as separate classifications and there were “insufficient” data for either sub-classification.

Relying on *Fry Brothers* principles,²⁰ Secretary Walsh reiterated the “critical importance” of “proper classification of workers” to administration of the DBA, and further stated that “publication of prevailing rates based on local area practice is the central purpose of the DBA.”²¹ In reversing the Administrator’s decision, the Secretary pointed to her failure to follow the methodology delineated in a “step-by-step chart” in the WHD’s 1986 Manual of Operations. The Secretary identified the steps that the Administrator omitted, including its failure to undertake an “intensive effort” to “reconcile ambiguities and incompleteness in the data and to investigate thoroughly unique ‘area practice’ issues, if any, that are indicated by the survey responses or other sources.”²² According to the decision, the Manual of Operations “expressly” states that determining the “nature of work performed by various occupational classifications reported is an area that often needs clarification.”²³ The Secretary then states, quoting the Manual of Operations that “if the applicable wage determination reflected union negotiated rates for the particular classifications in question, it is necessary to determine how the work is classified by those firms who are signatory to the applicable collective bargaining agreements.”

²⁰ *Fry Brothers*, WAB Case No. 76-06 (June 14, 1977).

²¹ Walsh decision at 5, quoting *Bldg. Const. Trades' Dept. v. Donovan*, 712 F.2d 611, 619 (D.C.Cir. 1983).

²² Walsh decision at 6, quoting Manual of Operations at 58.

²³ *Id.* at 59-60.

C. The 1986 Manual of Operations Delineates How to Address Jurisdictional Disputes in the Context of Surveys

The 1986 Manual of Operations details the steps that the WHD must take in clarifying occupational classifications when union rates govern the labor market surveyed, including those circumstances when jurisdictional disputes between unions arise:²⁴

This is accomplished by contacting the respective unions and asking if they perform the work in question and confirming the information provided by the unions with management's collective bargaining representative (e.g., contractor associations such as local chapters of The Associated General Contractors of America, National Electrical Contractors Association, etc.). If all parties agree, the practice is established. If, however, all parties do not agree as to the proper classification of the work in question (i.e., **jurisdictional dispute between the unions**, or management does not agree with union), it is then necessary to determine by survey which classification actually performed the work in question on similar projects (e.g., if the WD in question is a building wage schedule, then survey building projects) in the time period prior to the current project.

It is well-settled that “where a wage determination is based on a collective bargaining agreement, the proper classification of employees is determined exclusively by the practices of the signatory unions.”²⁵ The WHD fails to respect union governance of local labor standards in accordance with *Fry Brothers* and the 1986 Manual of Operations, when it combines predominant union data from two or more trades with data from open shop contractors and issues an open shop rate rather than conducting an area practice survey. The failure to conduct an area practice survey in instances where union data predominate greatly contributes to the increase in open shop rates in the post-*Mistick* era.

²⁴ *Id.* at 6-7. Manual of Operations, at 59-60; emphasis added.

²⁵ *Abhe & Svoboda, Inc. v. Chao*, 508 F.3d 1052, 1059-62 (D.C. Cir. 2007), citing *Fry Brothers Corp.*, WAB No. 76-06, slip op. at 17 (WAB June 14, 1977).

D. In the 1989 Manual, the DOL Identifies Work – Including Work Within SMART’s Core Jurisdiction – Over Which More than One Union May Perform Work in a Locality

SMART and SMACNA have a strong interest in area practice surveys since the WHD identified in the 1989 Manual core work within the sheet metal trade as work over which area practice issues “frequently occur.”²⁶ In the 1989 Manual, the WHD stated that determining prevailing rates for “HVAC work” is often complicated because two key trades – sheet metal worker and pipefitter – perform “specialty” work included therein. *See* 1989 Manual:²⁷ “When there are two classifications overlapping a third classification,” this situation “most often occurs with the question of who does HVAC work.” The 1989 Manual further states that “As a general rule, two unions working in the same area do not claim the same craft work.”²⁸ The Manual recognizes, however, that this “general rule” does not apply to “specialty” work shared by sheet metal workers and pipefitters.

The 1989 Manual describes identification of “potential area practice issues” and defines job classifications as “general crafts” and “specialty crafts.” It states that there is an “area practice” issue if “some workers of the general craft are performing the same work as workers of the specialty craft.”²⁹ According to the 1989 Manual, general crafts are those which traditionally perform a “number of different functions, such as carpenters, electricians, and plumbers.”³⁰ The 1989 Manual states that specialty crafts have a “narrower focus and their job titles describe

²⁶ *Id.*

²⁷ 1989 Manual at 95.

²⁸ *Id.* at 77.

²⁹ *Id.* at 85.

³⁰ *Id.* at 77.

specifically what the employees do, such as drywall hanger, drywall finisher, alarm installer, or HVAC mechanic.”³¹ Pages 79 to 80 of the Manual include a chart of the “specialty crafts and general crafts in which potential area practice issues frequently occur.” Of the ten specialty crafts listed, two involve the general craft of sheet metal worker.³² The following excerpt from the WHD’s chart addresses HVAC work and includes in an asterisk describing how to address situations when more than one union submits data:³³

SPECIALTY CRAFT (Usually reported by open shop contractors)	GENERAL CRAFT	TYPE OF WORK (Reported by all contractors)
HVAC mechanics (heating, ventilation, and air conditioning mechanics) Refrigeration mechanics/workers Furnace installers Burner repairmen	Sheet metal workers Plumbers* Pipe fitters* Electrician	Installation of commercial, industrial, or residential central air conditioning, refrigeration and/or heating systems. Mounting of components/parts; joining of tubes or pipes, installation of internal electrical circuitry, installation or duct work to central unit and testing or system

*When both are reported, this may constitute a separate classification based on duties.

In addition to HVAC work, the 1989 chart describes other core sheet metal work – namely, “metal building assemblers/builders/erectors” – as work for which there may be “competing claims”:

SPECIALTY CRAFT (Usually reported by open shop contractors)	GENERAL CRAFT	TYPE OF WORK (Reported by all contractors)
Metal building assemblers/builders/erectors	Iron workers Sheet metal workers Laborers Carpenters	Installation or repair of metal buildings. Classes may vary depending on whether pre-fab or mechanical

³¹ *Id.*

³² “Metal building assemblers/builders/erectors” is addressed in the 1989 Manual, at 80.

³³ This issue arises in the context of HVAC unit work. SMART performs HVAC duct work and the UA performs HVAC pipefitting.

Under the WHD's approach in the 1989 Manual, historical jurisdiction does not dictate which union's rate prevails when more than one trade submits data on work performed in a "sub-classification" pursuant to a local or national jurisdictional agreement or based upon "unofficial" shared jurisdiction.

E. The DOL Has Largely Abandoned the Practice of Conducting Area Practice Surveys in the Context of Wage Surveys

In SMART and SMACNA's comments in response to the NPRM, we discussed at length the impact of the WHD's failure to undertake area practice surveys when more than one union submits data on the same work.³⁴ As explained in those comments, the DOL fails to conduct an area practice survey when more than one trade submits wage data for the same sub-classification(s) pursuant to a jurisdictional agreement between two trades. It also fails to conduct an area practice survey when more than one trade submits wage data for the same sub-classification(s) regardless of whether the work is within the historic jurisdiction of the trade(s). Consistent use of area practice surveys will minimize the circumstances under which the DOL issues open shop rates when union data predominates. It is inconsistent with *Fry Brothers* to issue open shop rates when the combined amount of union data comprises more than 50% of the data submitted.

F. The DOL Continues to Conduct Area Practice Surveys in the Context of in the Enforcement Context, with *Fry Brothers* Controlling the Results

The DOL has demonstrated its ability to conduct area practice surveys, and to confer with unions in so doing, when it investigates complaints. On enforcement, the DOL is routinely called upon to determine whether construction workers are paid the amount to which they are entitled based upon the specific tasks performed. The DOL continues to use area practice surveys during

³⁴ See pages 28 to 38 of SMART and SMACNA's joint comments.

enforcement to determine the appropriate wage and fringe benefits rates for calculation of backpay obligations. In localities in which union rates prevail, the DOL contacts the union involved to conduct an area practice survey in accordance with *Fry Brothers*, using the methodology set forth in the Field Operations Handbook.³⁵ The need for an area practice survey often arises during enforcement when a contractor claims that its employees performed work in a classification with a lower prevailing rate.³⁶ The DOL endeavors to prevent misclassification in the context of enforcement by ensuring that the correct prevailing wage is paid to workers.

G. The DOL Reiterated the Importance of *Fry Brothers* in the Conformance Context in Issuing All Agency Memorandum No. 213

In 2007, the U.S. Court of Appeals for the District of Columbia Circuit recognized the importance of DOL-established classifications in rejecting a contractor’s internal system of classifying workers in the conformance context. The Court stated, quoting *Fry Brothers*, that “If a construction contractor who is not bound by the classifications of work at which the majority of employees in the area are working is free to classify or reclassify, grade or subgrade traditional craft work as he wishes, such a contractor can, with respect to wage rates, take almost any job away from the group of contractors and the employees who work for them who have established the locality wage standard.”³⁷ It further opined that there will be “little left to the Davis-Bacon Act.”

³⁵ Field Operation Handbook, 15f05, *Area practice: determining proper classification of work*.

³⁶ See February 25, 2016 letter (attached) from Rebecca Clark, Regional Enforcement Coordinator for Government Contracts, to SMART Local 66 concerning “the installation of metal siding/metal wall panels/metal composite wall panels, regardless of the fastening method, or what it is fastened to,” on building construction projects within Pierce County, Washington. See also, June 20, 2017 letter (attached) from Steven Hill, Regional Enforcement Coordinator, Midwest Region, to SMART Local 20 regarding an area practice survey of “installation of exterior/interior metal wall panels” and other work in Marion County, Indiana.

³⁷ *Abhe & Svoboda, Inc. v. Chao*, 508 F.3d at 1059.

In issuing All Agency Memorandum No. 213, *Application of the Davis-Bacon and Related Acts Requirement that Wage Rates for Additional Classifications, When "Conformed" to an Existing Wage Determination, Bear a "Reasonable Relationship" to the Wage Rates in that Wage Determination* (2013), the WHD corrected its historic failure to consider the relative number of union rates and open shop rates on the wage determination in selecting conformed rates.³⁸ In so doing, the DOL drew upon *Fry Brothers* principles in modifying its methodology issuing AAM No. 213. For the first time in the history of the WHD's administration of the conformance regulation, the WHD acknowledged that where union rates predominate, it is "appropriate" to look to union rates within each category in selecting conformed rates:

[I]f a wage determination contains predominantly union prevailing wage rates for skilled classifications, it typically would be appropriate to look to the union sector skilled classifications in the wage determination and rates for those classifications when proposing a wage rate for the additional classification. Conversely, if a wage determination contains predominantly weighted average prevailing wage rates for skilled classifications, it would typically be appropriate to look to the weighted average/non-union sector skilled classifications in the wage determination and the rates for those classifications when proposing a wage rate for the additional classification.

Basing a conformed rate on union classifications when union rates predominate is consistent with *Fry Brothers*, which holds that when the DOL "determines that the prevailing wage for a particular craft derives from experience under negotiated arrangements, the Labor Department has to see to it that the wage determinations carry along with them as fairly and fully as may be practicable, the classifications of work according to job content upon which the wage rates are based."³⁹ Honoring

³⁸ The WHD also announced that it was ending the practice of using of the lowest rate on the wage determination within a "category" as the automatic benchmark in selection of conformed rates. Prior to the issuance of AAM No. 213, WAB and ARB cases repeatedly affirmed the Administrator's selection of the lowest rate on the wage determination as the conformed rate regardless of whether union rates predominated for skilled classifications on the wage determination. It is patently clear that selection of the lowest rate on a wage determination within a category is contrary to DOL's statutory obligation to require that covered workers are paid no less than the prevailing rates of pay. This dereliction of the DOL's duty was further compounded by the Agency's failure to use, as a factor in deriving conformed rates, the relative number of union rates and weighted-average rates.

³⁹ *Fry Brothers*, WAB Case No. 76-06 (June 14, 1977).

union practices when union data control labor markets is important in preventing deliberate misclassification in the conformance context.⁴⁰

II. AS A THRESHOLD MATTER, SMART AND SMACNA ENCOURAGE THE WHD TO DEVELOP A CLEAR UNDERSTANDING OF THE SHEET METAL TRADE

The DOL's efforts to address the complicated issue of how workers should be classified in determining prevailing rates of pay are commendable. However, before issuing the final version of Directory, it is imperative the DOL staff understand the work functions performed by construction workers in all relevant trades. Expertise in distinguishing among the work performed by separate key classifications of workers working together in composite crews will aid wage analysts in appropriate combination of data. A thorough understanding of the overlap between trades is a prerequisite to ensure that workers are not deprived of the wage rates that are commensurate with their skills and in identifying when the DOL must undertake an area practice survey.

⁴⁰ *American Building Automation, Inc.*, ARB Case No. 00-67, (May 30, 2001) (The WHD denied the contractor's request that a conformed rates for "Building Automation and Controls Technician" (BACT)" be added to the wage determination. The contractor maintained that the work of installing building automation and controls work did not "fall squarely" within any single trade classification listed in the wage determination, because in order to properly integrate the building's systems, the workers had to be "knowledgeable in all of the traditional trades including electrical, mechanical, telecommunications, and networks." The ARB upheld the WHD; *See also, Terrebonne Parish Juvenile Justice Center Complex*, 17-0056 (Sept. 4, 2020), where the Administrator rejected a request for a conformed rate for "mechanical insulator" at a wage rate of \$12.58 per hour, with no fringe benefits and approved a rate of \$22.96 per hour plus \$7.75 in fringe benefits, for a combined total of \$30.71. The ARB rejected the contractor's contention that the skill level of a "mechanical insulator" is "more similar to the skill required of a common laborer and does not merit a combined wage rate of \$30.71."; *See also, System Tech v. U.S. DOL* (2021). where the Administrator rejected a request for a conformed rates for "telecommunications installer" at a rate of \$15.00 per hour, plus \$4.75 in fringe benefits, and approved a conformed rate of \$27.77 per hour plus \$14.08 in fringe benefits, for a combined total of \$41.85. The proposed rate was more than 50% lower than nearly every union skilled classification rate and was also lower than a majority of the non-union skilled classification rates.

A. An Improved Understanding of Work Functions Will Enable the WHD to Avoid Disaggregation of Data and Reliance on Miniscule Amounts of Data

An improved understanding of work functions will avoid disaggregation of data. Issues of “aggregation” and “disaggregation” present themselves in the process of conducting wage surveys of occupations. Disaggregation results in use of miniscule amounts of data for an indeterminate number of sub-classifications and yields inconsistent results. Furthermore, a failure to recognize the full array of skill sets included in a craft in determining prevailing rates effectively “deskills” a trade and undercuts labor standards. The WHD’s current artificial subdivision of crafts through its survey methodology has the same effect as the tactics used by contractors that seek to evade prevailing wage obligations.

The current requirement that the WHD needs separate “proof,” based on evidence submitted in the survey for each individual work function in a key classification disaggregates data, and thereby, undermines the ability of unions to prevail at the craft level. The WHD’s practice of refusing to rely on often overwhelming data for one or two “sub-classifications” of work as a basis for issuing a wage determination for the entire key classification often leads to a breakdown in the survey process. This practice is contrary to the NPRM’s recognition in the conformance context that when workers “perform only a subset of the duties of a classification, they are still performing work that is covered by the classification.”⁴¹ That understanding in the conformance context should inform the DOL’s approach to wage surveys since the relationship between the number of sub-classifications generated by the WHD in issuing wage determinations is inversely proportional to the amount of data available to support the wage determination.

⁴¹ 87 *Fed.Reg.* at 15722, 15735, citing *Fry Brothers*, 1977 WL 24823, at 6. (contractor could not divide carpentry work between carpenters and carpenter tenders in order to pay a lower wage rate for a portion of the work; under the DBA it is not permissible to divide the work of a classification into several parts according to the contractor’s assessment of each worker’s skill and to pay for such division of the work at less than the specified rate for the classification).

B. The Recent NPRM Demonstrates that the DOL Does Not Understand that HVAC Duct Installers are Sheet Metal Workers

During the recent NPRM seeking to amend Davis-Bacon regulation, the DOL demonstrated its lack of understanding of sheet metal work when it mischaracterized our trade in stating that:⁴²

The Department recognizes that differences in industry practices mean that the precise types of work done and tools used by workers in particular classifications may not be uniform across states and localities. For example, in some areas, a significant portion of work involving the installation of heating, ventilation, and air-conditioning (HVAC) duct work may be done by an HVAC Technician, whereas in other areas such work may be more typically performed by a Sheet Metal Worker.

Contrary to this misstatement, an “HVAC technician” in the construction industry is a sheet metal worker. In other words, all HVAC duct installers perform the work of sheet metal workers, but sheet metal workers have the training and skill, and do, in fact, perform other work functions. This misunderstanding of the scope of work included within the sheet metal trade appears to be the basis for its proposal to include “HVAC technician/mechanic” as a separate classification in the Directory.

C. As a Result of the DOL’s Lack of Understanding of the Sheet Metal Trade, the DOL Applies Inconsistent Methodologies in Determining Prevailing Rates

A review of post-*Mistick* wage determinations shows that the DOL’s lack of understanding of the sheet metal trade results in application of inconsistent methodologies in determining prevailing rates. The DOL sometimes strips from the key classification of sheet metal worker nearly all work functions included within the trade, and thus, relies on a relatively minute amount

⁴² NPRM, 87 *Fed.Reg.* at 15711.

of data in issuing wage determinations. The WD-22's from building surveys conducted in the post-*Mistick* era demonstrate that the WHD currently uses dozens of craft identification numbers in analyzing and combining data to determine prevailing rates of pay for sheet metal workers. This approach often subdivides sheet metal work, especially exterior work, in an unpredictable number of sub-classifications and produces inconsistent results. On exterior sheet metal work, for example, the same workers may perform installation of metal roof, metal flashing, gutters, siding/wall panels, and other similar work. Depending upon how the WHD subdivides exterior sheet metal work, the prevailing rate for a worker performing this work may differ from hour to hour or day to day. The results of this disaggregation of sheet metal data are addressed in section III of these comments after our review of the WHD's current methodologies for the sheet metal trade, as gleaned from our study of the craft ID numbers used in post-*Mistick* surveys.

1. Separating HVAC Work – Duct and Unit Installation – from Other Sheet Metal Work is Important Based on Labor Markets and Data Typically Collected

The data submitted in wage surveys reflect the usual dominance of HVAC work in the sheet metal industry; such data typically constitute the highest percentage of the overall data on sheet metal work. The data from the WD-22's for the metropolitan counties in Connecticut, for example, demonstrate the extent to which data on HVAC duct installation may dominate a local market for sheet metal work:⁴³

⁴³ The symbol † means that federal data were used in determining prevail rates. “0” indicates that the rates were derived at the county level and “1” indicates that the rates were determined at the group level.

County	Sheet Metal Worker	HVAC Unit Installation	HVAC Duct Installation	Metal Roofs	Installer - Metal Flashing
Fairfield	59/39 - M 1	32 - M†1	144 - M 0	14/14 - M 0	33/21 - M 0
Hartford	42/42 - M 0	68/67 - M 0	315/307 - M 0	77 - M 0	24/24 - M 0
Middlesex	56/56 - M 1	72/71 - M 1	324/316 - M 1	no data	29/29 - M 1
New Haven	43/39 - M 0	32 - M†1	560/555 - M 0	18 - M 0	66/65 - M 0
New London	43/43 - M†0	3/3 – insufficient	136/136 - M 0	11/11 - M 1	22/22 - M 1
Tolland	56/56 - M 1	72/71 - M 1	324/316 - M 1	109 - M 1	29/29 - M 1
Windham	47/47 - M 1	3/3 - insufficient	139/139 - M 1	11/11 - M 1	11/11 - M 0

The WHD typically uses several craft ID numbers in analyzing data on “HVAC” work; does not combine HVAC data with other sheet metal data;⁴⁴ and calculates HVAC duct installation and HVAC unit installation separately. SMART and SMACNA encourage the DOL to continue these practices of surveying HVAC duct and HVAC unit installation separately because, as demonstrated by the results in post-*Mistick* surveys, SMART is the only union that prevails on HVAC duct work. On HVAC unit work, SMART or the UA prevail when union rates are issued.

29880	Sheet Metal Worker (HVAC Duct and HVAC Unit Installation Only)
27592	Sheet Metal Worker (HVAC Unit Installation)
30869	Sheet Metal Worker (HVAC Unit Installation Only)
27994	HVAC Mechanic (Installation of HVAC Unit Only, Excludes Installation of HVAC Pipe and Duct)
26502	Sheet Metal Worker (HVAC Duct Installation Only)
1562	HVAC Mechanic: Duct Installation
12571	Industrial: HVAC Mechanic – Duct Installation

When a submitter uses a label to describe HVAC work that may be unfamiliar to WHD staff, the WHD sometimes uses internally inconsistent labels. Based on wage determinations issued for the sheet metal trade in the Michigan metropolitan survey, for example, it appears that the DOL has confused HVAC system installation with HVAC unit installation. As a result, the WHD issued

⁴⁴ On rare occasion, the DOL has combined HVAC data with other sheet metal work. *See e.g.*, the WD-22 for the New York Building Survey – Madison, Onondaga, and Oswego Group, in which the DOL appears to have combined HVAC data with other sheet metal data in producing a rate for “SHEET METAL WORKER, Including Installation of HVAC Duct, Metal Flashing, and Siding (Aluminum, Metal, Vinyl).”

wage determinations that are internally inconsistent. In numerous Michigan counties – Eaton, Ionia, Ingham, and Saginaw – for example, SMART Local 7 prevails on “sheet metal work (including HVAC duct installation; excluding HVAC system installation).”⁴⁵ This wage determination makes no sense since HVAC duct installation is part of HVAC system installation. In Shiawassee County in Michigan, SMART Local 7 prevails on “sheet metal worker (Including HVAC Duct & System Installation).”⁴⁶ On this wage determination, the WHD effectively lists HVAC Duct installation twice since it is included in system installation. In other counties in the same state, such as Genesee, the DOL issues internally consistent rates. In that county and others, SMART Local 7 prevails on “sheet metal worker, includes HVAC duct and unit installation.”

2. The WHD Typically Uses the Greatest Number of Sub-Classifications in Analyzing Exterior Sheet Metal Work

The DOL uses many crafts ID numbers to analyze exterior sheet metal work and does not combine this data with HVAC work. In some surveys, data on “sub-classifications” of exterior sheet metal work are combined to produce a single sheet metal worker rate (excluding HVAC work). In other surveys, the WHD separates the data on these work functions in analyzing data and calculating rates. The results of these two practices differ depending upon: 1) whether other crafts – Carpenters, Iron Workers, Roofers, etc. – submit data on exterior sheet metal work; 2) the WHD discards significant amount of data on the sub-classifications based upon alleged

⁴⁵ The sheet metal rates Clinton County are obviously incorrect: “Sheet Metal Worker (Including HVAC Duct Work; Excluding HVAC Duct & System Installation).” The DOL rarely describes work as HVAC system installation. It nearly always describes SMART’s HVAC work as HVAC duct installation and HVAC unit installation.

⁴⁶ See also, Midland County, SMART Local 7 prevails on “sheet metal worker (HVAC duct & system installation), and survey rates prevail for “sheet metal worker, excludes HVAC duct and unit installation.”

insufficiency of data under the 6 worker/3 contractor standard; 3) the total amount of sheet metal data submitted in the survey; and 4) the level of open shop participation in the survey.

12713	Installer – Metal Flashing
1643	Installer – Siding
1034	Installer – Sign
1354	Installer – Gutters
30929	Sheet Metal Worker (Metal Roof Installation Only)
29998	Sheet Metal Worker (Metal Buildings - Installation of Siding/Wall Panels)
30563	Sheet metal worker (sheeting installation)
30587	Sheet metal worker (metal building erection)

3. *The WHD’s Approach to Analyzing Interior Sheet Metal Work (excluding HVAC work) is Unclear*

To our knowledge, the WHD does not sub-classify non-HVAC interior sheet metal work; rather, it appears that the WHD includes this work under the key classification of sheet metal worker. Non-HVAC interior work includes: installing, repairing, or replacing all stainless steel kitchen equipment including, but not limited to, countertops, sinks, coolers, bars, exhaust hoods, ovens, and cabinets; installing, repairing, or replacing skylights; installing lockers, metal toilet partitions, trash chutes, laundry chutes, metal shelving; installing, repairing, or replacing all cornice work; installing louvers; and installing metal ceiling hangers/metal acoustical ceiling systems.

Missouri’s *Rules of Department of Labor and Industrial Relations* provides the following examples of interior sheet metal work:⁴⁷

- 6. The installing of sheet metal ceilings with cornices and mouldings of plain, ornamental, enameled, glazed, or acoustic type;
- 7. The installing of side walls, wainscoting of plain, ornamental, enameled, or glazed types, including sheet metal tile;

⁴⁷ See 8 CSR 30-3.010 *Applicable Wage Rates for Public Works Projects*: <https://s1.sos.mo.gov/cmsimages/adrules/csr/current/8csr/8c30-3.pdf>

13. The installing of equipment utilized in the operation of kitchens including ranges, canopies, steam tables, worktables, dishwashers, coffee urns, soda fountains, warming closets, sinks, drainboards, garbage chutes, incinerators, and refrigerators;

Likewise, the Minnesota code also list extensive examples of sheet metal work, including but not limited to:⁴⁸

- (13) Installing lockers.
- (14) Installing metal toilet partitions.
- (15) Installing trash chutes.
- (16) Installing laundry chutes.
- (17) Installing metal shelving.

(21) Fabricating, installing, repairing, or replacing all stainless steel kitchen equipment including, but not limited to, countertops, sinks, coolers, bars, exhaust hoods, ovens, and cabinets.

4. The Remaining Work in the Key Classification of Sheet Metal Worker is Sometimes Miniscule Relative to the Total Amount of Data Submitted in the Trade

The DOL uses additional craft ID numbers that refer to “sheet metal worker.” The designated ID numbers often relates to the type of sheet metal work that that is explicitly excluded from the key classification in the wage determination.

26536	Sheet Metal Worker, Excludes HVAC Duct Installation
27046	Sheet Metal Worker, Excludes HVAC Duct and Unit Installation
1381	Sheet Metal Worker
30949	Sheet Metal Worker, Excludes HVAC Duct, Metal Roof, and Metal Flashing Installation
12378	Industrial: Sheet Metal Worker

⁴⁸ Minn. Admin. Rules 5200.1102, Job Classification Descriptions; Special Crafts. § Subp. 21. Code No. 721, Sheet metal workers

III. SURVEY RESULTS DEMONSTRATE THAT THE TYPES AND NUMBER OF SUB-CLASSIFICATIONS USED BY THE DOL ARE DRIVEN BY THE LABELS USED BY SUBMITTERS IN SECTION 7 OF THE WD-10 FORM

Survey results demonstrate that, in compiling wage data, the DOL combines the data based upon the manner in which work is labelled on the WD-10 form rather than on the work functions performed. On the current WD-10 form, submitters are asked to fill in “classifications” and “type of work performed” in section 7. The WHD uses the labels as a basis for determining which classifications and sub-classifications should be combined in determining prevailing rates. Using this approach, the WHD sometimes consolidates all exterior and non-HVAC interior work in tabulating data; at other times, it creates numerous sub-classifications within “sheet metal worker” based on labels. It is an absurd result when a worker is entitled to prevailing wage for one hour but not entitled in the next hour depending upon the work function performed within the same trade.

A. Combination of All Non-HVAC Sheet Metal Data into a Single Classification

As noted above, the WHD has sometimes recorded all exterior work and (non-HVAC) interior work in the sheet metal trade “sheet metal worker.” The WD-22’s for the Ohio building and Michigan surveys illustrate this phenomenon.

1. *Ohio Building Survey*

The Ohio building survey of metropolitan counties is an example of the WHD’s combination of all non-HVAC sheet metal work into a single classification in determining prevailing rates. In a group of six counties in the Cleveland MSA, for example, the WHD did not subdivide the work in determining prevailing rates for non-HVAC sheet metal work in any of the counties even though much of the work performed by union contractors falls with the various sub-classifications commonly used by the WHD in determining prevailing rates for the sheet metal trade:

County in Cleveland MSA	Summary of Data on WD-22	Results
Erie	6/4 – county	Open shop
Cuyahoga	273/273 – county	Union
Geauga	406/402 – group	Union
Lake	26/26 – county	Union
Lorain	70/70 – county	Union
Medina	27/27 – county	Union

The result of the WHD’s decision not to subdivide sheet metal data in this MSA is that the prevailing rates for the key classification of sheet metal worker were based on abundant data.

2. Michigan Building Survey

Likewise, for counties in the Detroit MSA, the WD-22 for the building survey demonstrates that the WHD did not subdivide the non-HVAC work in the sheet metal trade.

County in Detroit MSA	Summary of Data on WD-22	Results
Genesee	48/38 – county	Union
Lapeer	595/579 – group	Union
Livingston	595/579 – group	Union
Macomb	94/85 – county	Union
Monroe	61/58 – county	Union
Oakland	74/74 – county	Union
Washtenaw (Ann Arbor)	10/10 – county	Union
Wayne (Detroit)	383/376 – county	Union

Once again, the result of the WHD’s decision not to subdivide sheet metal data in this MSA is that the prevailing rates for the key classification of sheet metal worker were based on abundant data.

B. Subdividing Exterior Sheet Metal Work into Numerous Sub-classifications

In other surveys, the DOL divides exterior sheet metal work into as many sub-classifications as appear on the WD-10’s. The distinctions are often meaningless because the same worker performs many “sub-classifications” on the exterior of a building in a single project. The results in Tennessee, Connecticut, and Minnesota illustrate the impact of this methodology.

1. Tennessee Building Survey

As noted above, when the sheet metal trade is stripped into indefinite number of sub-classifications based on the labels used by submitters (open shop and union), there is essentially no work left within the key classification of “sheet metal worker” on which to base prevailing rates. Significant amounts of work are discarded by this disaggregation of data. The WHD’s combination of sheet metal data in the Knoxville MSA exemplifies this phenomenon. The following excerpt for Knox County (Knoxville) shows that non-HVAC sheet metal work was divided into “sheet metal worker” and five sub-classifications: metal roof installation, sheeting installation, metal building erection, installer - gutter, and installer - siding(metal/aluminum/vinyl):

* INSTALLER - GUTTERS 1354 \$0.00 \$0.00 26/24 M†1
INSTALLER - SIDING (METAL/ALUMINUM/VINYL) 1643 \$0.00 \$0.00 30/19 M 0
SHEET METAL WORKER (HVAC Duct Installation Only) 26502 \$0.00 \$0.00 126 M†1
SHEET METAL WORKER (HVAC Unit Installation Only)..... 30869 \$0.00 \$0.00 27 M†1
* [SHEET METAL WORKER (Metal Building Erection)] 30587 \$0.00 \$0.00 17/15 M†1
* SHEET METAL WORKER (Metal Roofs Installation) 27991 \$0.00 \$0.00 22/22 M†1
* SHEET METAL WORKER (Sheeting Installation)..... 30563 \$0.00 \$0.00 30/21 M 1
SHEET METAL WORKER, Excludes HVAC Duct and Unit Installation 27046 \$24.19 \$7.52 9 A 0

In 4 of the 5 sub-classifications (all but siding), the WHD discarded the data because it was allegedly insufficient under the 6 worker/3 contractor standard. The discarded data submitted by SMART Local 5 accounted for 86 workers; 11 workers in these sub-classifications were submitted by open shop contractors.⁴⁹ Thus, 88.7% of the discarded data were union. After discarding this

⁴⁹ See Appendix A, “Discarded Sheet Metal Data in Knoxville MSA.”

data, the WHD issued open shop rates for sheet metal worker in 7 of the 9 counties in the group. In so doing, the WHD relied upon wage data on only 9 “sheet metal workers.”⁵⁰

2. *Connecticut Building Survey*

In the Connecticut building survey, the WHD issued SMART rates on sheet metal worker and on four sub-classifications: HVAC duct installation, HVAC unit installation, metal roof installation, and metal flashing installation. No open shop rates were issued in our trade. The subdivision of data did not thwart SMART’s ability to prevail because, there was limited open shop participation, and with one exception, other crafts did not submit data on the key classification or these 4 sub-classifications.⁵¹

3. *Minnesota Building Survey*

WHD staff often overlook internally created sub-classifications for each trade when combining data for the purposes of calculating wage determinations. In the Minnesota metropolitan building survey, for example, the WHD subdivided installation of metal roofs from the sheet metal trade and used only data from the United Brotherhood of Carpenters in determining rates for this work even though the total data submitted by SMART Local 10 on this work exceeded the amount of data submitted the UBC.⁵² This error appears to be the result of different labeling of metal roofing by each union. SMART Local 10 appears to have described the metal roofing as sheet metal work⁵³ and the UBC described it as metal roofing. Both traditional jurisdiction and

⁵⁰ See SMART and SMACNA’s joint comments at 56 to 58 for a fuller analysis of survey results in the Knoxville MSA.

⁵¹ The UA submitted HVAC unit data on a project, Bridgewater Associates, in Fairfield County.

⁵² See Appendix B, “Union Data on Metal Roofs Submitted in Minnesota Metropolitan Building Survey.”

⁵³ SMART Local 10 no longer has the data that it submitted to the WHD in 2015.

area practice support the fact that SMART Local 10 prevails on this work. The consequence of the WHD’s mistake is that workers are deprived of the rates of pay to which they are entitled. In Hennepin County (Minneapolis), for example, SMART Local 10’s total package (\$43.65 in wages and \$31.24 in fringe benefits) are \$9.17 higher than the Carpenters’ total package (\$ 39.71 in wages and \$26.01 in fringe benefits). The following summary of data appear to indicate that SMART Local 10 did not sub-classify its non-HVAC data on sheet metal work.

Counties	Sheet Metal Worker (HVAC Duct Installation Only) ⁵⁴	Sheet Metal Worker	Results
Anoka ⁵⁵	Not separately listed on WD-22	83/63 – county	Union
Carver	11 – county	13/12 – county	Union
Chisago	467 – group	347 – group	Union
Hennepin (Minneapolis)	176/153 – county	175 – county	Union
Isanti	467 – group	347 – group	Union
Ramsey (St. Paul)			
Scott	18/14 – county	39 – county	Union
Sherburne	347 – group	467 – group	Union
Washington	13/13 – county	467 – group	Union

⁵⁴ SMART-SMACNA’s May 17, 2022 comments discuss the survey results on HVAC unit installation. As explained therein, the WHD failed to undertake an area practice survey.

⁵⁵ The WD-22 for Anoka County categorizes “HVAC Mechanic: Duct Installation (see SHEET METAL WORKER) 1562” and does not state how many of the total number of sheet metal workers for whom data were reported performed HVAC duct work.

IV. SMART AND SMACNA RECOMMEND THAT THE WHD MODIFY THE DIRECTORY TO PROVIDE CLEAR GUIDANCE ON THE SCOPE OF WORK IN THE SHEET METAL TRADE

The key benefits to a Directory are that it can serve as notice to submitters of the anticipated number and type of sub-classifications for each key classification and it can aid wage analysts in rejecting novel labels, which are usually different descriptions of the same work, which should not constitute separate classifications or sub-classifications. The DOL's description of the sheet metal trade in the Directory further demonstrates its lack of understanding of our work. As currently written, the labels for sheet metal work in the Directory overlap, i.e., the same work functions or sub-classifications are included under more than one classification – or are too terse to provide adequate information to the submitter. The union and contractors are left with limited guideposts in deciding to keep its key classification intact with the goal of prevailing on work of the entire trade or separate its work in sub-classifications and defend each sub-classification based on the 6 worker/3 contractor standard.

A. The DOL's Inconsistent Use of Sheet Metal Sub-Classifications Leaves Submitters with Limited Guidance in the Submission of Data

Under the current approach, a submitter lacks a clear road map on how to best ensure that each union submits more than 50% of the data at the same wage on each "sub-classification" within key classifications. The "sub-classifications" for which the DOL seek data are unknown in advance. The current survey methodology causes unions and signatory contractors to effectively guess how to describe their work within their trade to increase the likelihood that key classifications and sub-classifications within it prevail. Based on experience, unions know that if open shop contractors submit a sufficient amount of data on a work function or sub-classification

within their key classification, the DOL will issue a separate wage determination for that function instead of including the data in determining the rate for the key classification.

SMART Local Unions and signatory contractors face a quandary: submit all exterior sheet metal data (metal roofing, metal sidings, gutters, soffits, louvers, etc.) as “sheet metal work” in support of obtaining a CBA rate for the key classification of “sheet metal worker” or dilute exterior sheet metal work into separate “sub-classifications” within the sheet metal trade in anticipation that open shop contractors will do the latter. The more sub-classifications that the union sector elects to “defend” against submittals by open shop, the more unions dilute data needed to ensure that they prevail on key classifications.

B. The Guidance in the Directory on HVAC Work is Based on a Fundamental Misunderstanding of Sheet Metal Work and Will Confuse Submitters

The DOL’s lack of understanding of our trade is further demonstrated by the classification and sub-classifications on the proposed Directory that pertain to sheet metal work. SMART and SMACNA strongly urge the WHD to delete “1301.HVAC technician/mechanic” and the sub-classifications included thereunder in their entirety to avoid artificially sub-dividing the work within our trade. ⁵⁶ Sub-classification, “1303. HVAC Duct Install” in “1301.HVAC technician/mechanic” duplicates “2402. HVAC Duct Install” in the proposed “2401. Sheet Metal Worker.” As stated above, HVAC duct install is the “sub-classification” in which sheet metal workers log the greatest number of hours in the construction industry. The proposed sub-division

⁵⁶ “1301. HVAC Mechanic/Technician” includes the following sub-classifications:

1301. HVAC Mechanic/Technician	1302. HVAC Pipe Install 1303. HVAC Duct Install 1304. HVAC System Install
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of data on this work into two separate key classifications will undermine SMART's ability to prevail on it.

From a practical point of view, inclusion of the same work under more than one classification creates confusion. If open shop contractors choose, for example, to submit data on "HVAC duct install" and union contractors choose to submit data on this work under the sheet metal worker classification, it is unclear how the submitter is expected to know which classification to choose in reporting the very same work. As a practical matter, SMART local unions and signatory contractors will be put in the precarious position of having to guess whether it would be more beneficial to characterize HVAC duct installation as sheet metal work or as HVAC mechanic/technician. Under the WHD's current methodology, SMART local unions are most likely to prevail on HVAC duct installation since the greatest amount of union data within the sheet metal trade is submitted on this work.

Another deficiency in the labels that the WHD proposal for sheet metal work is that the sub-classification of "HVAC System Install," under proposed HVAC mechanic/technician includes work that overlaps with "1303. HVAC Duct Install." HVAC system work encompasses both "HVAC Duct Install" and HVAC unit installation. Moreover, despite the fact that, "HVAC unit installation" appears on virtually all WD-22's for building surveys, the DOL has chosen not to include this work as a separate sub-classification in the proposed Directory.⁵⁷ Since SMART and the UA share jurisdiction over HVAC unit installation pursuant to a national agreement, it is critical that the DOL include this work as a separate sub-classification in the Directory.

⁵⁷ "System install" is rarely used by the DOL in issuing wage determinations.

C. The WHD Should Include in the Sheet Metal Classification and Sub-classifications All Work Commonly Listed on Wage Determinations

SMART and SMACNA strongly urge the DOL to use the following sub-classifications in determining prevailing rates for sheet metal worker. As discussed above, these work functions are used by the WHD in determining prevail rates in the sheet metal trade and/or in definitions of sheet metal worker in state administrative codes that implement state prevailing wage laws.

2401. Sheet Metal Worker	2402. Installation and fabrication of HVAC duct (includes testing, adjusting, and balancing) 2403. Installation of HVAC unit 2404. Sheet Metal Worker (excluding HVAC duct and unit work). Metal building erection/metal flashing/sheeting: (installation of metal roofs, gutters, panels, siding and wall panels, and similar exterior components) and interior sheet metal work
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As is evident, with this modification, all the work within the sheet metal trade is included in one of the three sub-classifications. This approach best reflects labor markets – the division between HVAC work and other sheet metal work – and will ensure that the ability to prevail on HVAC work is not undermined when SMART does not prevail on non-HVAC work.⁵⁸ SMART and SMACNA’s proposal includes “fabrication” of HVAC duct to ensure consistency with revisions to the definition of “site of the work” in the NPRM.

In considering proposals from other organizations concerning modification to the WD-10 form and instructions, SMART and SMACNA urge the WHD not to include “other sub-classification” under sheet metal worker classification.⁵⁹ The non-HVAC sheet metal work should

⁵⁸ The WD-22’s for a building survey of Maricopa County (Phoenix) demonstrates a labor market, based on data collected in 2008, in which there is abundant union data on HVAC duct installation but far less union data on non-HVAC sheet metal work:

SHEET METAL WORKER (HVAC Duct Installation Only) 26502 \$0.00 \$0.00 352/306 M 0
SHEET METAL WORKER, Excludes HVAC Duct Installation... 26536 \$18.85 \$2.79 101 A 0

⁵⁹ SMART and SMACNA make no comments concerning use of “other sub-classification” under the classifications of other trades. We note, however, that for trades that have CBAs with multiple wage groups for journeypersons depending upon the work function

be treated as a single sub-classification unless area practices dictate otherwise. It would be more appropriate for the WHD to provide a space under sheet metal worker to provide the submitter with the option to include a fuller explanation of the work performed. This explanation may include a description of local terminology that may differ from the language used in the Directory.

V. STATES ADDRESS THE BOUNDARIES BETWEEN TRADES IN A NUANCED MANNER, AND THUS, ENSURE THAT WORKERS RECEIVE THE PREVAILING WAGE PROTECTIONS TO WHICH THEY ARE ENTITLED BASED ON THE WORK PERFORMED

In many states, the departments of labor have devoted significant resources to delineation of boundaries between trades. As currently written, the Directory fails to recognize the amorphous boundaries between trades. Various states have addressed the distinction between sheet metal work and trades in the context of HVAC work and non-HVAC exterior and interior sheet metal work. Defining the scope of work within trades requires far more nuance than selecting labels to include within key classifications. The Washington Labor & Industries (L&I) has adopted definitions of the work of construction trades, but the L&I's Industrial Statistician is nonetheless often called upon to determine which trade work falls within. In one matter, for example, the Industrial Statistician confirmed that metal roofing is covered within the definition of sheet metal worker when SMART Local 66 "expressed" its "concern and belief that contactors installing sheet metal roofs on public works are compensating workers at prevailing wage rates established for carpenters":⁶⁰

The plain language contained in the Scope of Work for Roofers (WAC 296-127-01370) states that Roofers apply and install all types of roofing materials, other

performed, use of the term "sub-classification" mis-conveys that the WHD combines data at the county of group level, and not at the supergroup level or statewide.

⁶⁰ See Industrial Statistician David J. Soma's June 8, 2006 letter to SMART Local 66 concerning metal roofing: https://lni.wa.gov/licensing-permits/_docs/SheetMetalRoofing.pdf

than sheet metal. It is clear from this language that the Scope of Work for Roofers is not the appropriate classification for this work.

It is not practical to include all the work functions encompassed within a trade on a reporting form. In many states with prevailing wage laws, the state DOL has promulgated regulations that include detailed descriptions of the work of each trade. In those descriptions, the regulations indicate work functions that may appear to overlap to provide appropriate guidance internally and to the regulated community.

A. State DOLs Recognize that Craft Delineations Dictate the Rates of Pay to Which Workers Are Entitled

State departments of labor recognize that boundaries between trades determine the rates of pay to which workers are entitled and are proactive in preventing misclassifications by contractors seeking to undercut wage protections. In a 2019 decision, for example, the Washington L & I rejected an application by a contractor, Northshore Sheet Metal, which would have resulted in the underpayment of sheet metal workers.⁶¹ Northshore sought to undercut state prevailing wage rates for sheet metal workers who perform "custom prefabrication of architectural sheet metal for building exteriors" by applying the lower "Metal Fabricator" prevailing wage to "custom prefabrication of architectural sheet metal" on a Washington public works job. Northshore falsely claimed that that the ornamental metal work performed at the "Metal Fabricator" rate is the same as architectural sheet metal. After conducting an on-site investigation of the work performed by sheet metal workers, L&I stated that "sheet metal fabrication is distinct from plate steel fabrication" in the construction industry. According to L&I, the "skills are different. The

⁶¹ Industrial Statistician Jim Christensen to Northshore Sheet Metal, Jan. 4, 2019 decision: https://lni.wa.gov/licensing-permits/_docs/01042019.pdf

applications are different. The wages are different,” with the wages of plate steel fabrication “somewhere near half the levels of sheet metal fabrication wages.” The L&I further stated that:

Conflating these two disparate industry segments in prevailing wage administration and enforcement would represent both an inaccuracy and an injustice. Just as it would be unfair to inflate Metal Fabricator prevailing wages with the much higher sheet metal fabrication wage data, it would similarly be unfair to allow Northshore to pay wages lower than the industry standard sheet metal wages paid by the bulk of contractors in this industry. Though certainly attractive, architectural sheet metal does not fit within the term "ornamental" as given in WAC 296-127-01352.

B. States Delineate the Work of Sheet Metal Workers and Pipefitters

When trades work in composite crews and/or share the same work pursuant to national or local jurisdictional agreements, the task of establishing the boundaries between trades requires a detailed analysis. In Minnesota and Oregon, for example, state departments of labor use the same language in defining the parameters of work on refrigeration equipment.

1. Minnesota

In Minnesota, the sheet metal work is described, in pertinent part, in its administrative rules, with a reference to pipefitters and steamfitters:

(2) Installing panels and structures for refrigeration equipment. See subpart 17, Pipefitter -- Steamfitter for installation of refrigeration units or systems.⁶²

Likewise, a Minnesota administrative rule describes work of “pipefitters-steamfitters” with a reference to sheet metal work:⁶³

(9) Installing piping systems for refrigeration, cooling, and heating equipment, including, but not limited to, compressors, coils, pumps, tanks, gauges, valves, tubes, and pipes. See "Sheet Metal Worker" for the installation of sheet metal duct work.

⁶² Minn. Admin. Rules, Subp. 21. Code No 721, Sheet metal workers

⁶³ Minn. Admin. Rules, Subp. 17. Code No 717, Pipefitters - steamfitters.

2. Oregon

Oregon uses the same language in delineating between the two trades. The typical duties of a sheet metal worker include: “installs panels and structures for refrigeration equipment. See ‘Plumber/Pipefitter/Steamfitter’ for installation of refrigeration units or systems.” The typical duties of plumber/pipefitter/steamfitter include: “installs piping systems for refrigeration, cooling, and heating equipment, including but not limited to compressors, pumps, tanks, gauges, valves, tubes, and pipes. See ‘Sheet Metal Worker’ for the installation of sheet metal duct work.”

3. Various States: Testing, Adjusting, and Balancing

Various states that have issued regulatory definitions of classifications covered under prevailing wage law include testing, adjusting, and balancing in the work categorized as sheet metal work. The Delaware code includes TAB work in its definition of sheet metal work, stating:⁶⁴

Tests, adjusts, and balances heating, cooling, and ventilation systems in commercial and industrial buildings using specialized tools and test equipment to attain performance standards specified in system design. ... Adjusts system controls to settings recommended by vendor to prepare to perform tests. Tests performance of air systems, using specialized tools and test equipment, such as pitot tube, manometer, anemometer, velometer, tachometer, psychrometer, thermometer, to isolate problems and to determine where adjustments are necessary.

See also Alaska,⁶⁵ Missouri,⁶⁶ Washington,⁶⁷ and Minnesota. It is also included as sheet metal work in states that include a description of the work in each classification. *See e.g.*, Nevada’s 2020-

⁶⁴ Classification of Workers under Delaware Prevailing Wage Law:
<https://laborfiles.delaware.gov/main/dia/olle/Prevailing%20Wage%20Classification%20of%20Workers.pdf>

⁶⁵ <http://labor.alaska.gov/lss/forms/pamp600-4-1-06.pdf>;

⁶⁶ Missouri’s regulations include “testing and balancing of air-handling equipment and duct work” in the definition of sheet metal work. <https://sl.sos.mo.gov/cmsimages/adrules/csr/current/8csr/8c30-3.pdf>

⁶⁷ *See* Washington Administrative Code 296-127-01372 (3), which includes “testing and balancing of air-handling equipment and duct work” in the definition of sheet metal worker.”

2021 Prevailing Wage Job Description, which covers “testing and balancing of all air-handling equipment and ductwork” as sheet metal work.⁶⁸ A Pennsylvania court described TAB work as follows in finding that to be covered sheet metal work under applicable prevailing wage law:⁶⁹

[E]very HVAC system that pushes air through a system of ducts requires fans at various places to push air through the system in sufficient quantities and at sufficient pressure to ensure that all parts of the building receive proper air flow. A TAB technician may, as needed, go to each fan and remove the housing and safety guards from the motor, measure the fan's output, and then adjust the fan speed so that the fan will move the correct amount of air. Adjustment of fan speed generally means taking a wrench and adjusting the pulleys or sheaves that run the fan belts from the motor to the fan and then further adjusting the alignment of the pulleys. They must use, in addition to measuring devices, wrenches of various types to open motor and fan housings, remove fan guards, adjust fan sheaves and to adjust some types of dampers and terminal devices. In addition to measuring and recording fan speed, the TAB technician must make certain that every fan is adjusted to deliver the correct air to the system. Similarly, the TAB technician must measure air flow within the duct work of the building, sometimes requiring drilling holes into the ducts in measured locations and then recording the results. If this method is used, the holes must be plugged or capped after measurements are complete. After initial readings are recorded, the TAB technician must adjust the air flow at terminal devices, remeasure the air flow and record the results.

C. States Delineate Non-HVAC Exterior and Interior Sheet Metal Work

Various state codes delineate the distinction between non-HVAC sheet metal work and the work of other trades, with a particular emphasis on metal roofing. The Maryland Department of Labor, for example, lists metal roofing on the prevailing wage determination for sheet metal worker so that it reads “sheet metal roofing (including metal roofing).”⁷⁰

⁶⁸ https://labor.nv.gov/PrevailingWage/Job_Descriptions/2020-2021_Prevailing_Wage_Job_Classifications/.

⁶⁹ See *Butler Balancing Co. v. Department of Labor & Industry Prevailing Wage Appeals Board* (2001). <http://caselaw.findlaw.com/pa-commonwealth-court/1186925.html>

⁷⁰ See state prevailing rates for sheet metal worker (including metal roofing)” for Baltimore County: <https://www.dllr.state.md.us/PrevWage/web/content/TempLetters/32B0EBD0-14DE-4598-9CFF-C0462846259D.pdf>

In Minnesota, for example, the definition of sheet metal worker includes a reference to the work of other trades:

(4) Installing sheet metal roofing and siding materials including soffit and fascia, except as installed by a carpenter or ironworker.

The definition of “roofer/waterproofer” in an administrative rule references sheet metal workers:⁷¹

A. Nature of work: applying and installing any and all types of roofing materials. For sheet metal roofs see "Sheet Metal Workers."

VI. SMART AND SMACNA SUPPORT ELIMINATION OF PEAK WEEK TO INCREASE DATA USED TO DETERMINE PREVAILING RATES, AND THEREBY, IMPROVE SURVEY ACCURACY

SMART and SMACNA support the WHD’s proposed elimination of peak week. This change has the potential to increase the amount of data collected and ensure that surveys more accurately reflect the prevailing rates in relevant labor markets. The greater the amount of data submitted and ultimately used by the DOL in issuing wage determinations for each in a trade, the more reliable the results for each one. The current practice of using data during only a single week drives down the amount of data submitted and used to calculate prevailing rates of pay, and thus, detracts from accuracy.

A. Peak Week is Confusing to Submitters and Results in Underreporting of Wage Data

The peak week methodology is confusing to survey participants and often leads to the underreporting of data on projects by persons who do not understand it. Under the current

⁷¹ Minn. Admin. Code, Subp. 20. Code No 720, Roofer/waterproofer.

methodology, the WHD advises submitters (union and open shop) at pre-survey briefings to submit data for each possible sub-classification recognized by the DOL since each “sub-classification” has its own peak week. However, because the number of sub-classifications is unknown until the results of the survey are analyzed, submitters often do not submit data for each sub-classification and select a single peak week in which the greatest number of workers in a trade worked on a project. With advance notice of the likely number and identity of sub-classifications for which the DOL plans to issue wage determinations and elimination of the peak week methodology, the amount of survey data should increase.

B. Elimination of Peak Week Should Ensure that Proper Weight is Accorded to Projects with Higher Value

As a result of widespread misunderstanding of the peak week methodology, projects of greater value are not accorded appropriate weight relative to projects that have a lower value. The WD-22’s and WD-22a’s for surveys issued in the post-*Mistick* era amply demonstrate that the projects with a high monetary value, such as construction of new public or private buildings (as contrasted with alteration or repair of existing facilities that typically has a relatively low monetary value) are not given weight in the survey process commensurate with their impact in the local labor market.

C. Avoiding the Unintended Consequence of Eliminating Peak Week

Since there is currently a separate peak week for each sub-classification within a trade, consolidation of some sub-classifications has the potential to decrease the total data used in deriving prevailing rates depending upon how the DOL tallies data in the future. SMART and SMACNA urge the DOL to avoid an unintended consequence – decreasing the amount of usable data – as it seeks to decrease the number of sub-classifications.

VII. SMART AND SMACNA RECOMMEND MODIFICATIONS TO THE INSTRUCTIONS AND WD-10 FORM

In addition to the recommendations described above in section IV, SMART and SMACNA strongly encourage the DOL to make changes to the WD-10 form and instructions to 1) ensure consistency with proposed 29 C.F.R. § 1.3(e) in the NPRM, which addresses functionally equivalent wage rates; 2) ensure consistency with potential revisions to the residential and building categories of construction in All Agency Memorandum No. 130 (1978) to modernize the out-of-date definitions that fail to capture modern construction techniques; 3) collect as an optional item estimated project value since such information serves important functions in the survey process; 4) direct submitters to contact the DOL for assistance if a classification does not appear in the Directory; 5) insert a space under sheet metal work in the Directory to provide the submitter to explain differences in local terminology or practices; and 6) provide clearer and less repetitious instructions to make them more user-friendly.

A. Include a Designated Space and Instructions for Reporting CBA-Provided Payments Above Base Rates

In the NPRM, the DOL proposed an amendment,⁷² which would permit the Administrator to count wage rates together – for the purpose of determining the prevailing wage – if the rates are functionally equivalent and the variation can be explained by a CBA or a “written policy” otherwise maintained by the contractor. The NPRM uses zone pay, escalators, and shift differentials as examples of functional equivalents. SMART and SMACNA recommend, therefore, that the WHD designate a space on the WD-10 and include instructions on how to report zone pay, shift differentials, premiums for working forepersons, and other compensation above the

⁷² 29 C.F.R. § 1.3(e).

base rate of pay for journeypersons that is provided pursuant to a CBA. The WD-10 form should include a designated space for including “CBA-provided payments above base rate,” along with instructions that should read as follows:

CBA- Provided Payments Above Base Rate	Report zone pay, shift differentials, premiums for working forepersons, and other compensation above the base rate of pay for journeypersons provided pursuant to a CBA.
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B. Include Multi-Use Buildings with Commercial Establishments on the Lower Floor(s) as an Example of Building Construction Even if the Buildings are Only 3 or 4 Stories

The proposed instructions concerning the definitions of types of construction are based on the out-of-date categorization of housing construction in AAM No. 130 and do not, therefore, reflect many decades of industry and technological change. AAM No. 130 does not envision that apartment buildings of the 21st century would evolve into small communities with retail space on the first and/or second floors and housing above, with a footprint covering entire blocks and high occupancy. Reexamination of the DOL’s mechanical application of the 4-story/5-story standard, which was designed to differentiate between “walk-up, garden-type” (residential) and “high-rise” apartments” (building), is long overdue.⁷³ Beginning in the 2000’s, apartments have evolved into small communities that span across entire city blocks. There has been a widespread growth of mixed-use buildings with commercial establishments on the first floor and/or second floors and

⁷³ The apartment buildings of the 1960s were generally two stories high, with no elevators, and known as “walk-up, garden-type.” Apartment buildings constructed in the 1970’s were slightly higher, often two to three stories in height, with no elevators. In determining the applicable wage schedule was general building or residential, the WAB noted in a 1965 case that “walk-up or garden-type residential construction includes two and three floor buildings usually without elevators” and that “high-rise apartment construction includes generally those buildings over three floors, always with elevators.” *Mattapony Towers Apartments, at Bladensburg, Prince Georges County, Maryland*, WAB Case No. 64-02 (June 29, 1965).

housing above to achieve higher occupancy and use, as developers respond to the demand for urban, walkable neighborhoods. In failing to update AAM No. 130, the DOL has artificially limited the data available in building surveys by misclassifying building work, such as mixed-use buildings, as residential.

To make the instructions consistent with urgently needed updates to AAM No. 130, SMART and SMACNA recommend the following modifications to them:

Residential: Involves the construction, alteration, or repair of single-family houses or apartment buildings of no more than four (4) stories in height, excluding multi-use buildings commercial establishments on the lower floor(s) and residences above.

Building: Involves the construction, alteration, or repair of a sheltered enclosures with walk-in access for the purpose of housing persons, machinery, equipment, or supplies. Building construction includes residential buildings that are five (5) stories in height or greater and multi-use buildings with commercial establishments on the lower floor(s) and residences above regardless of the number of stories in the building.

C. Include Project Value as an Optional Item

SMART and SMACNA encourage the DOL to include project value as an optional item on the WD-10 form and to add the language in bold:

Project Value	Indicate whether the total value of the project is more than \$2,000, if known. If you are unsure if the project value is more than \$2,000, select “Don’t know.” If you know the estimated or actual value of the project, you have the option to include this information.
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Project value is a strong indicator of the number of workers employed on a project and serves as an important tool when the DOL seeks to verify the accuracy of the data submitted. In this regard,

the WHD's internal guidelines inform staff that they should flag WD-10's which report a number of workers that is disproportionate to the dollar value of the project.⁷⁴

If the reported number of employees seems large (20 or more), but the dollar value of the project is between three and five million, accept the reported number of employees without calling to verify. For key classes, this apparently large number of employees, in fact, is relatively small for such a large contract.

According to the WHD's internal guidelines, project value is a useful gauge in flagging whether the project falls within the survey time frame. The 1989 Manual provides the following guidance to wage analysts concerning project value:⁷⁵

2) The project is of a small dollar value (\$60,000 or less) and the start date is two months or more before your reference period starts. Check with the contractor to see if it is still ongoing by the time the survey starts. A small job will be completed quickly – generally in two months or less.

3) For projects between \$60,000 and \$100,000 and where the estimated start date is at least two months before the survey time frame begins, call the contractor to see if the project has begun.

Project value serves many other important functions, such as aiding the DOL in: 1) determining whether work is incidental; 2) prioritizing follow up with submitters during the verification phase of surveys; 3) understanding the economic impact of a project on a local labor market, since data on the relative value of federal data to non-federal data is a reliable indicator of the often “outsized” role of the federal government on local labor markets.⁷⁶ This information also aids unions or

⁷⁴ 1989 Manual at 22.

⁷⁵ 1989 Manual at 8.

⁷⁶ See SMART and SMACNA's May 17 comments at 86 to 106, which advocate for unrestricted use of federal data in residential and building surveys. In our comments, we maintained, alternatively, that if the DOL does not include all usable federal data in building and residential surveys, its sufficiency standard for use of such data should take into account relative value of federal projects since a handful of low value, non-federal projects that have a minimal impact on the local labor market should not determine prevailing rates of pay.

organizations that may wish to appeal a wage determination in ascertaining whether mistakes were made in submission or analysis of data.

D. Clarify Instructions on Fringe Benefits

SMART and SMACNA recommend that the instructions provide greater clarity concerning the full range of benefits that may be reported as fringe benefits, such as contributions to safety and health funds and supplemental unemployment funds. Submitters will likely assume that contributions to these funds should not be submitted if these items are not included on the extensive examples of covered fringe benefits.

E. Eliminate Redundant Instructions on Working Forepersons

Eliminate redundant instructions for reporting on “working forepersons” in three separate instructions – “sub-classification number,” “sub-classification name,” and “# of workers performing on this project at this wage rate” – and substitute a single instruction. Additionally, remove “only” in the first sentence of the current instructions on working forepersons so that this modifier does not discourage submitters from data on working forepersons:⁷⁷

<p># of working forepersons performing on this project at this base rate/hourly premium</p>	<p>Include “working forepersons” if they spend at least 20% of their time during a workweek performing the work of a classification or sub-classification in the “Classification and Sub-Classification Directory.” Report the premium (if any) above the base hourly wage rate paid to working forepersons. If one or more working foreperson(s) received an increase in pay pursuant to an escalator in a CBA during the survey period, use the same wage line to report this information. Include both wage rates: original CBA rate/updated CBA rate. Do not average the wage rate paid to all workers in a classification.</p>
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⁷⁷ The proposed instructions on working foreperson currently state (emphasis added): “Working supervisors/forepersons should **only** be included if they spend at least 20% of their time during a workweek performing the work of a classification in the ‘Classification and Sub-Classification Directory’, in which case they should be reported as a worker in that classification.”

F. Eliminate References to Working Supervisors

SMART and SMACNA recommend that the DOL eliminate references to “working supervisors” on the WD-10 form and instructions. In the NPRM, the DOL proposed using the term “working supervisor” in the definition of “laborer or mechanic.” SMART and SMACNA opposed use of this term in our May 17, 2020 comments.⁷⁸ The term “working supervisor” does not appropriately describe the many years of training and skill attainment necessary to achieve the stature of “journey person.” In the construction industry, working forepersons are journey persons who also have additional responsibilities and are compensated for these added duties. An additional reason for removing the word “supervisor” is that it has a specific meaning under the National Labor Relations Act that should not be imported into Davis-Bacon regulations and subregulatory guidance.

G. Eliminate Redundant Instructions on Apprentices

We suggest that the DOL eliminate redundant instructions informing submitters not to submit data on apprentices. The proposed instructions inform the submitter not to submit data on apprentices in three sections: “sub-classification number,” “sub-classification name,” and “# of workers performing on this project at this wage rate.” We suggest that the DOL replace these three references to apprentices with a single instruction to avoid redundancies:

Apprentices (excluded from all sections of the WD-10)	Do not report on apprentices
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⁷⁸ SMART and SMACNA joint comments at 21.

H. Clarify Instruction on Project Begin/Completion Date

We urge the DOL to clarify that a trade may submit data performed at any time during a multi-year contract by adding the language in bold follows:

Project Begin/Completion Date	Provide the beginning and completion date of the overall project, if known. For projects that have not yet been completed, please provide the estimated completion date. Please indicate whether the dates are actual or estimated. These dates are used to determine whether the project was under construction during the construction period of the survey. Report all data on multi-year contracts if known.
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I. Modify Instructions on Classifications and Sub-classifications to Avoid Proliferation of Classifications and Sub-classifications and Consolidate the Instructions to Eliminate Redundancies

In modifying the WD-10 form and instructions, SMART and SMACNA urge the DOL to avoid proliferation of classifications and sub-classifications and to base them on traditional craft lines. We recommend the language in bold below to strike a balance between the need for flexibility in data collection to address regional or local differences in terminology or practices and the need to avoid proliferation of classifications and sub-classifications.

Proliferation of classifications and sub-classification will result in disaggregation of data within trades and issuance of less accurate results. To make the instructions more user-friendly, we also recommend that the DOL consolidate the instructions pertaining to classifications and sub-classifications to eliminate redundancies by combining the instructions for “labor classification number” and “labor classification name” and the instructions for “sub-classification number” and “sub-classification name.”

Presently, the instructions repeat the same language verbatim. SMART and SMACNA recommend that the instructions read as follows:

Labor Classification number and name	Insert classification number and name as listed in the Classification and Sub-Classification Directory” that best characterizes the trade of the worker(s) on which you wish to report. If no classification is listed in the directory that reflects the trade of the worker(s), please contact Davis-Bacon Survey Center at 866-236-2773 or email DavisBaconInfo@dol.gov for assistance.
Sub-Classification number and name	If applicable, insert sub-classification number as listed on the “Classification and Sub-Classification Directory.” Select multiple sub-classifications if applicable and report them on a single wage line. If no sub-classification is listed that reflects the trade of the worker(s), describe the work performed in the space provided under the relevant classification.

a. Labor Classification Number and Name

The DOL’s apparent goal in issuing the Directory is to prevent the proliferation of classifications and sub-classifications that will result in reliance on very limited amounts of data for each wage determination. However, the proposed instructions on classifications will have the opposite effect because, as written, they invite submitters to create new classifications, which will have the unintended effect of disaggregating data. Disaggregation results in use of miniscule amounts of data for an indeterminate number of sub-classifications and yields inconsistent results. Thus, SMART and SMACNA recommend that the DOL remove “other” from the picklist and that the instruction direct the submitter to contact the Davis-Bacon Survey Center if a classification is not included on the picklist.

In increasing the number of classifications far beyond those listed in the *Prevailing Wage Resource Book*, the WHD ignores the consequences of treating a work function as a “classification” instead of a “sub-classification. The labelling of work functions as classifications

or sub-classifications has significant consequences because wage rates for classifications may be determined at the county, group, supergroup, or state level for classifications. For sub-classifications, prevailing rates are determined at the county or group level. There is a disconnect between the number of “key” classifications purportedly used by the DOL in issuing prevailing rates and the actual number of so-called “key” classifications posted on wage determinations. A 2013 ARB decision, *Coalition for Chesapeake Housing Development*,⁷⁹ and a subsequent decision by former Administrator Davis Weil demonstrate this disconnect.⁸⁰ In *Chesapeake*, the ARB states that the WHD was “able to recommend prevailing wage rates for six of the twelve classifications” for residential construction⁸¹ and to “establish wage rates for at least 50% of the key classifications for the construction type.” In so stating, the ARB ignores the fact that the challenged wage determinations involved two key classifications, plumber and truck driver, and crane operator, which is included within the key classification of “power equipment operators (operating engineers).” Thus, in *Chesapeake*, the ARB thus conflates “key classification” of power equipment operator and work included within it – operation of a crane.

b. Sub-Classification Number and Name

It is unclear whether the instructions on “sub-classification number” and “sub-classification name” refer to sub-classifications under classifications that are already in the Directory or to sub-classifications in classifications that are not listed in the Directory. For the

⁷⁹ *Coalition for Chesapeake Housing Development*, ARB Case No. 12-010 (Sept. 25, 2013).

⁸⁰ Former Administrator David Weil cites to *Chesapeake* in stating the WHD “only expands data” to the supergroup or state level for “classifications that have been designated as ‘key’ crafts.” See Sept. 5, 2014 opinion letter from former Administrator David Weil concerning an appeal concerning the Indiana residential survey filed by the Indiana Chapter of the Associated Builders & Contractors.

⁸¹ The *Prevailing Wage Resource Book* (2015) includes 12 key classification for residential construction, which are bricklayers, carpenters, cement masons, electricians, iron workers, laborers – common, painters, plumbers, power equipment operators (operating engineers), roofers, sheet metal workers, and truck drivers.

sheet metal trade, SMART and SMACNA urge the WHD to avoid further sub-classification of our trade during the data collection phase. Non-HVAC sheet metal work – both exterior and interior – should be treated as a single sub-classification unless area practices dictate otherwise. Rather than inviting additional sub-classification, it would be more appropriate for the WHD to insert a space under sheet metal worker in the Directory to provide the submitter with the option to include a fuller explanation of the work performed. This explanation may include a description of local terminology that may differ from the language used in the Directory. If, during the data analysis phase, it becomes apparent that area practices necessitate use of a sub-classification that is not listed, we recommend that the WHD confer with local union representatives in localities in which union data governs.

CONCLUSION

SMART and SMACNA congratulate the DOL on its efforts to tackle the complex issues involved in establishing parameters for classifications and sub-classifications. Secretary Walsh’s guidance in the July 15, 2022 decision reiterates the critical role of area practice surveys in wage surveys and consultation with unions when union data predominate and militates against establishing unvarying national classifications and sub-classifications. We believe that the proposed “picklist,” with our recommended modifications, will aid DOL staff in understanding true differences in work function versus differences in local terminology used to describe the same function within the sheet metal trade. It will also provide clear notice to submitters and wage analysts of the types of work that are included in the sheet metal trade.

Submitted on August 15, 2022

Appendix A: Discarded Sheet Metal Data in Knoxville MSA

The counties in the Knoxville MSA form Group 100388 and include Anderson, Blount, Campbell, Grainger, Knox, Loudon, Morgan, Roane, and Union. The information below is derived from the relevant WD-22's and WD-22a's.

County	Project	installer – gutter	sheet metal worker (metal building erection)	sheet metal worker (metal roofs installation)	sheet metal worker (sheeting installation)
Anderson	Buddys BBQ	LU 5: \$22.00/\$11.50 - 2		LU 5: \$22.00/\$11.50 - 2	LU 5: \$22.00/\$11.50 - 2
Anderson	Y-12 DOE-Scarboro Rd		\$26.50/ \$14.20 - 2		
Blount	Black Farms			LU5 - \$22.00/\$11.50 - 2	
Blount	McGhee Tyson Air National Base	LU 5: \$27.94/\$11.76 - 3		LU 5: \$27.94/\$11.76 - 3	
Blount	Arconic		LU 5: \$24.01/ \$11.24 - 3		
Blount	Arconic		LU 5: \$24.01/ \$11.24 - 3		
Blount	Arconic		LU 5: \$24.01/ \$11.24 - 3		
Blount	Arconic		LU 5: \$24.01/ \$11.24 - 3		
Blount	Arconic		LU 5: \$24.01/ \$11.24 - 3		
Knox	Berry Highland Funeral Home	LU 5: \$22.00/\$11.50 - 4			LU 5: \$22.00/\$11.50 - 4
Knox	Boys & Girls Club of TN Valley				\$17.00/\$0.65 – 1 \$17.55/\$0.68 – 1 \$17.55/\$0.85 - 1
Knox	Gastrointestinal Medical Bldg.				\$25.00/\$0.96 - 1 \$25.00/\$0.96 - 1
Knox	Jewelry TV				\$17.55/\$0.68 - 2 \$17.55/\$0.68 - 1
Knox	Knoxville Convention Center	LU 5: \$22.00/ \$11.50 - 6		LU 5: \$22.00/\$11.50 - 6	LU 5: \$22.00/ \$11.50 - 6
Knox	Rembco	LU 5: \$22.00/\$11.50 - 3		LU 5: \$22.00/\$11.50 - 3	LU 5: \$22.00/ \$11.50 - 3
Knox	Tennessee Cancer Specialist Medical Office Bldg - New	\$17.55/ \$0.68 - 1 \$17.55/ \$0.68 - 1			\$17.55/\$0.68 - 1
Knox	UT Knoxville Jesse W Harris Bldg	LU 5: \$22.00/ \$11.50 - 6		LU 5: \$22.00/\$11.50 - 6	
Roane	Buddys BBQ	LU 5: \$22.00/\$11.50 - 2		LU 5: \$22.00/\$11.50 - 2	LU 5: \$22.00/\$11.50 - 2
Roane	Y-12 DOE-Scarboro Rd.		LU 5: \$26.50/\$14.20 - 2		
Total		Union: 26 Open shop: 2	Union: 19 Open shop: 0	Union: 24 Open shop: 0	Union: 17 Open shop: 9

Appendix B

Union Data on Metal Roofs Submitted in Minnesota Metropolitan Building Survey

SMART Local 10 Data on Metal Roofs

Since SMART Local 10 no longer has the data that it submitted in 2015, the information compiled below is based on the descriptions of the projects on the WD-22a's. "Roof" or "roofing" projects on which Local 10 members worked involve sheet metal roofing. This approach likely underestimates the number of sheet metal roofing projects on which Local 10 members were employed. There are many projects on which SMART and the Roofers worked together that are not included below since the description of the project did not include roof or roofing.

County	Project	Rates	Number of Workers
Anoka	Spring Lake Park High School - Reroof Existing Bldgs	\$37.42/\$24.02	2
Benton	Foley City Hall - Roofing	\$33.85/\$20.09	4
Benton	Gold'n Plump Sauk Rapids - Roofing	\$33.85/\$20.09	4
Benton	Virnig Manufacturing Addition - Roofing	\$33.85/\$20.09	4
Chisago	Anderson Corp. - Roofing Repair & MTNC	\$37.42/\$24.02	2
Dakota	Burnhill Shoppers Corner - Reroof Existing Bldg	\$37.42/\$24.02 \$37.42/\$24.02	2 2
Dakota	Burnsville Alternative High School - Reroof	\$37.42/\$24.02	2
Dakota	Sanimax-Reroof Existing Bldg	\$37.42/\$24.02 \$37.42/\$24.02	2 1
Hennepin	Abbott Northwest Hospital MRI Reroof - Reroof Exist	\$37.42/\$24.02	2
Hennepin	Abbott Northwestern Hospital - Reroof Existing Bldg	\$37.42/\$24.02 \$37.42/\$24.02	2 1
Hennepin	Braemar Sports Dome/Outdoor Ice Rink - New	\$37.42/\$24.02	5
Hennepin	Byerlys - New Construction Roofing	\$37.42/\$24.02	3
Hennepin	Calhoun Beach Club - Reroof Existing Bldg	\$37.42/\$24.02	3
Hennepin	Church of Holy Cross - Reroof Existing Bldg	\$37.42/\$24.02	2
Hennepin	Cooper High School - Reroof Existing Roof	\$37.42/\$24.02	4
Hennepin	Dwan Golf Clubhouse - Reroof Existing Bldg	\$37.42/\$24.02 \$40.00/\$22.45	3 1
Hennepin	Fleet Maintenance - Reroof Existing Bldg	\$37.42/\$24.02	2
Hennepin	Greater Mount Vernon Baptist Church - Reroofing	\$37.42/\$24.02 \$37.42/\$24.02	1 2
Hennepin	King Koil - Reroof Existing Bldg	\$37.42/\$24.02	2
Hennepin	Lake Point Condos - Reroof Existing Bldg	\$37.42/\$24.02	1
Hennepin	Main Grocery - Reroof Existing Bldg	\$37.42/\$24.02 \$37.42/\$24.02	2 2
Hennepin	Mayo Building - Partial Roof Replacement	\$37.42/\$24.02	1

		\$37.42/\$24.02	2
Hennepin	Parade Ice Garden - Reroof of Existing Bldg	\$37.42/\$24.02	3
		\$37.42/\$24.02	2
Hennepin	Perishables Building-Reroof Existing Bldg	\$37.42/\$24.02	2
Hennepin	Phillips Eye Institute – Reroof Existing Bldg	\$37.42/\$24.02	1
		\$37.42/\$24.02	1
Hennepin	Rapala USA -Roof Maintenance & Repair	\$37.42/\$24.02	1
		\$37.42/24.02	2
Hennepin	Smith Foundry - Reroof Existing Bldg	\$37.42/\$24.02	1
Hennepin	Thiele Technologies -Reroof Existing Bldg	\$37.42/\$24.02	1
Hennepin	U of M-KE DWAN -Roof Replacement Sections	\$37.42/24.02	2
Hennepin	Waterbury Bldg – Reroof – Existing Bldg	\$37.42/\$24.02	2
Mille Lacs	Zion Lutheran Church 245 Central Ave So-Roofing	\$33.85/\$20.09	2
Polk	Crookston Washington Elementary - Roofing	\$23.00/\$15.49	3
Ramsey	Duluth Street Bldg - Reroof Existing Bldg	\$37.42/\$24.02	2
Ramsey	Midway Hospital - Reroof Existing Bldg	\$37.42/\$24.02	2
Ramsey	SYSCO Asian Foods - Reroof Existing Bldg	\$37.42/\$24.02	2
Ramsey	Thrivent Financial Bldg - Reroof Existing Bldg	\$37.42/\$24.02	2
Ramsey	Vogel Sheet Metal - Reroof Existing Bldg	\$37.42/\$24.02	1
Scott	Braaten Creative Woods - Reroof Existing Bldg	\$37.42/\$24.02	1
		\$37.42/\$24.02	2
Scott	Canterbury Park - Reroof Existing Bldg	\$37.42/\$24.02	2
		\$37.42/\$24.02	3
Sherburne	Becker School Choir /Entry - Roof	\$33.85/\$20.09	2
Sherburne	Great River Energy - Reroof Existing Bldg	\$37.42/\$24.02	2
Sherburne	XCEL Energy Generating Plant - Roofing	\$33.85/\$20.09	1
Stearns	Area Learning Center - Roofing	\$33.85/\$20.09	4
Stearns	Cold Spring Gold'n Plump Addition - Roofing	\$33.85/\$20.09	3
Stearns	Cold Spring Gold'n Plump - Reroof	\$33.85/\$20.09	2
Stearns	District Service Building - Roofing	\$33.85/\$20.09	7
Stearns	Electrolux Receiving Area - Roofing	\$33.85/\$20.09	6
Stearns	Environcon - Roofing	\$33.85/\$20.09	2
Stearns	Grede Foundry Addition - Roofing	\$33.85/\$20.09	2
Stearns	Grede Foundry Trim Press - Roofing	\$33.85/\$20.09	2
Stearns	Kentucky Fried Chicken - Roofing	\$33.85/\$20.09	1
Stearns	Melrose ALC - Roofing	\$33.85/\$20.09	5
Stearns	Melrose School - Roofing	\$33.85/\$20.09	12
Stearns	Paynesville Hospital - Roofing	\$33.85/\$20.09	2
Stearns	Pestys - Roofing	\$33.85/\$20.09	4
Stearns	St Cloud Hospital 1406 6TH Ave N-Reroof	\$33.85/\$20.09	5
Stearns	St Germain Building - Roofing	\$33.85/\$20.09	2
Stearns	TCF Bank 200 25 th Ave So - Roofing	\$33.85/\$20.09	2
Wright	Annandale Middle School - Roofing	\$37.42/\$24.02	5

Carpenter Data on “Metal Roofs”

County	Project	Rates	Number of workers
Carver	Carver County Park & Ride	\$34.11/\$17.27	1
Carver	Chaska Curling Center	\$35.16/\$17.67	2
Carver	Wings Federal Credit Union	\$35.16/\$17.67	2
Dakota	Burnsville High School – Auto Tech Building Remodel	\$35.16/\$17.67	3
Dakota	Grandstay Hotel - Renov	\$34.11/\$17.27	1
Hennepin	71 France A Building	\$34.11/\$17.27	3
Hennepin	71 France Apts-Bldg C /Underground Parking /Retail	\$35.16/\$17.67	4
Hennepin	71 France B Bldg -New	\$35.16/\$17.67	4
Hennepin	Crystal Public Works Facility - New	\$35.16/\$17.67	2
Hennepin	Elan Uptown Apts/Underground Prkg - New	\$34.11/\$17.27	7
Hennepin	Metro Park East Apts/Prkg/Clbuhse/Outdoor Pool - New	\$34.11/\$17.27	9
Hennepin	NW Corporate Ctr on 610 Speculative Office PH 1 - New	\$34.11/\$17.27	2
Hennepin	Palmer Lake Plaza -Showdown Design - 6860 Shingle Cr	\$34.11/\$17.27	2
Hennepin	Southwest High School - Add	\$35.16/\$17.67	2
Hennepin	Wurth Adam Nut & Bolt HQ/Mfg Bldg New	\$34.11/\$17.27	3
Omsted	Associated Bank - New	\$28.12/\$16.03	4
Olmsted	MN/DOT-Maint FAC/Dist 6 HQ Remodel	\$28.12/\$16.03	2
Ramsey	Apple Tree Dental	\$33.21/\$16.77	2
Ramsey	Buerkle Honda – New Building & Sidewalk	\$34.11/\$17.27	1
Ramsey	MN Horton Incorporated -Addn -	\$34.11/\$17.27	4
Ramsey	Vintage on Selby -Whole Foods Grocery	\$35.16/\$17.67	11
Ramsey	White Bear Lake Superstore -Remodel	\$34.11/\$17.27	2
Washington	Eagle Brook Church -New Bldg	\$34.11/\$17.27	3
Washington	Eagle Point Medical Multi Tenant - New	\$34.11/\$17.27	2



U.S. Department of Labor
Wage and Hour Division
Midwest Regional Office
230 S. Dearborn Street, Room 530
Chicago, Illinois 60604

Sent via email to sparks@smw20.com and regular mail

June 20, 2017

Mr. Scott Parks
Sheet Metal Union – Local #20
Post Office Box 20530
Indianapolis, IN 46220-0530

Subject: Area Practice Survey Results for IndyGo-Indianapolis Downtown Transit Center

Dear Mr. Parks:

This letter is to convey results of the local area practice survey conducted by this office. As previously indicated in our May 01, 2017 letter, it is our understanding a jurisdictional dispute exists between the Indiana/Kentucky/Ohio Regional Council of Carpenters (IKORCC) and the International Association of Sheet Metal, Air, Rail and Transportation Workers (SMART) regarding work performed on the above referenced project.

The Davis-Bacon and related Acts require that on covered contracts, contractors and subcontractors must pay the various classes of laborers and mechanics on the site of the work not less than the wages prevailing in the locality, as set forth in the applicable Davis-Bacon wage determination in the contract. The Wage Appeals Board ruled in Fry Brothers Corp. (WAB Case No. 76-6, June 14, 1977) that the proper classification of work performed by laborers and mechanics is that classification used by firms whose wage rates were found to be prevailing in the area and incorporated in the applicable wage determination.

In order to resolve this matter, we contacted the two disputing parties and requested supporting data as to the appropriate classification of the disputed work. Both parties submitted project data in this matter. Projects outside the surveyed time period and outside the local geographic area (Marion County) were out of scope and excluded from the data. As a result, the data indicate the following regarding classification of work:

Type of Work: Installation of Metal Ceiling Hangers/Acoustical Ceiling System
Classification: Carpenter-Drywall Construction/Acoustical Ceiling Installer

Type of Work: Installation of Internal/Exterior Metal Wall Panels
Classification: Sheet Metal Worker

If you have any questions regarding the results of this area practice survey, please contact me at 312-596-7220 or via email at hill.steven@dol.gov.

Sincerely,

Steve Hill
Regional Enforcement Coordinator
Midwest Region



U.S. Department of Labor
WAGE AND HOUR DIVISION
Seattle District Office
300 5th Ave, Suite #1130, Seattle, WA 98104-2397
ATTN; SIA Seward Dinsmore

CERTIFIED MAIL No.

February 25, 2016

Tim Carter, Business Manager,
SMART Local 66,
11831 Beverly Park Rd. B-2, Everett WA 98203

RE: Area Practice Survey

Dear Sir:

The U.S. Department of Labor – Wage & Hour Division is conducting a survey to determine the appropriate classification for employees (laborers and/or mechanics) who perform installation of “the installation of metal siding/metal wall panels/metal composite wall panels, regardless of the fastening method, or what it is fastened to”, on building construction projects within Pierce County, Washington.

In order to determine the appropriate classification for such work performed on federally assisted projects, we are conducting a survey to determine the prevailing practice. The information you submit will assist the Department of Labor in making a determination.

The information requested is for Building Construction projects (including commercial) within Pierce County, Washington, on non-federal government jobs, for the periods from 04/17/2012 to 04/17/2013.

Please provide the attached area practice work sheet to your participating contractors, have them fill it out within the noted parameters, and return to DOL-WHD post-marked no later than, Monday, May 2nd, 2016.

Sincerely,

Rebecca Clark
Regional Enforcement Coordinator for Government Contracts