

**Work Safe Partnership Program II
With the
Sheet Metal and Air Conditioning Contractors' National
Association (Kansas City Chapter)
And the
Occupational Safety and Health Administration's
Kansas City, MO and Wichita, KS Area Offices**



I. Identification of Partners

The primary parties to this agreement are the Kansas City and Wichita Area Offices of the Occupational Safety and Health Administration (OSHA) and the Sheet Metal and Air Conditioning Contractors' National Association-Kansas City Chapter (SMACNA-KC). Organizations supporting this agreement are the International Association of Sheet Metal Workers, Local #2 of Kansas City, Missouri. This represents a new partnership with SMACNA-KC to build upon the successes of the previous Work Safe Partnership Program. Note that the Kansas City OSHA Area Office Alliance with the Sheet Metal Workers, Local #2 is complementary to this partnership agreement. Together, the SMACNA-KC partnership in conjunction with the Sheet Metal Workers Alliance represent a two-pronged approach to changing the “safety culture” of this sector of the construction industry.

II. Purpose/Scope

- A. The construction industry has a relatively high rate of accidents and injuries, with contractors in the Sheet Metal industry being among the highest. Improving safety and health performance in the construction industry is no

small undertaking. Because of the industry's demographics, a large number of small jobs, generally of very short duration, are performed every day. These jobs are often dangerous and workers may be exposed to unsafe conditions and injured. Because it is impossible for OSHA to inspect all of these jobs, it makes sense to have a partnership program that encourages and rewards voluntary compliance efforts.

- B. The goal of the Work Safe Partnership Program II (WSPPII) is to improve the safety and health record of Contractor members of the Sheet Metal and Air Conditioning Contractors' National Association's, Kansas City Chapter (SMACNA-KC). To accomplish this goal, a cooperative partnership has been established between the SMACNA-KC, labor, and government that will encourage SMACNA members and their employees to improve their safety and health performance. The Partnership will qualify, monitor, and assist them in their efforts, and will recognize members who demonstrate exemplary safety and health performance as "the best of the best" in worker safety in western Missouri and Kansas. The Partnership is to be conducted within the jurisdictional area of both the Kansas City and Wichita OSHA Area Offices.
- C. Expected outcomes of the Partnership include: allowing OSHA to focus resources toward employers who have little or no regard for the safety and health of their employees; developing criteria for a model contractor safety and health program; mentoring of others in the western Missouri and Kansas construction industry by the Partnership member contractors; and making new safety and health materials available to all contractors who are members of SMACNA-KC.
- D. The Partnership provides incentives to participating members who voluntarily improve their safety and health performance. Incentives include special recognition from OSHA, e.g., limited-scope inspections and reductions in penalties; and recognition from the organizations forming the Partnership.
- E. This Partnership is consistent with OSHA's long-range efforts to develop a business, labor, and government cooperative partnership approach to safety management. The Partnership allows for better use of OSHA resources, fosters innovation in safety management, and encourages more participation in the safety process by the labor unions, and the western Missouri and Kansas contractor community.
- F. Perhaps most importantly, the Partnership will help to create private sector incentives for improved safety. Building owners may request that their projects be done by contractors who are members in the Partnership and who demonstrate their commitment to safety.

III. Goals/Strategies and Performance Measures

- A. It will be the responsibility of the Committee (See Section VII. A. 1.) to establish criteria to evaluate the overall success of the program. The success of the Partnership is measured in several ways:
 - 1. The Committee will consider, among other things, periodic analysis of

accident statistics of Partnership participating members; analysis of insurance industry loss ratios; and feedback from the different groups.

2. Evaluation of the Injury/Illness Incidence rates of participants. The primary incident rates used for evaluating the performance of contractors participating in this partnership will be both the Fatality Incidence Rate (FIR) and Days Away Case Rate (DACR). Each participating member's injury/illness and employee work hour data will be provided to OSHA on an annual basis for use in OSHA's required internal evaluation. OSHA will also compute the Days Away, Restricted and Transferred rate (DART) and the Total Case Injury and Illness Rates (TCIIR) as part of the annual evaluation, but will not be used as a primary partnership measure as they can be elevated due to the presence of aggressive early return to work programs and medical reporting programs, which are designed to lower the costs of injuries and illnesses for both workers and the partner companies.
3. A copy of the Annual evaluation will be jointly drafted by the Committee and OSHA on the anniversary date of the signing of this partnership.

B. The program will be deemed successful if:

1. Participants and their employees believe the program has been effective in improving the safety and health conditions at their job sites.
2. The Committee provides DACR rates on an annual basis and the data shows there is either a downward trend or better than average DACR rates compared to the most recent published Bureau of Labor Statistics (BLS) injury and illness data for employers in the same industry. Zero Fatalities is also an indicator of success.

IV. Annual Evaluation

The partners will prepare a joint evaluation of the partnership annually. The evaluation will review the success of the partnership, lessons learned, and changes that will be made to meet the goals of the partnership. The annual performance evaluation report format from Appendix C of the OSHA Strategic Partnership Program (OSPP) Directive CSP 03-02-002 will be used. Performance measures listed in the goals and objectives section of this agreement will be collected and analyzed to determine the partnership's progress toward meeting its goals.

V. OSP Benefits

- A. Members participating in the Partnership will not be subject to OSHA inspections for one year following a successful enforcement verification inspection except as follows:
 1. OSHA receives a report of an imminent danger situation or a referral. Complaints will be handled in accordance with OSHA Instruction CPL 02-00-140.
 2. Fatalities and Catastrophes shall be investigated in accordance with the OSHA Field Operations Manual (FOM) CPL 02-00-148.

3. During OSHA verification inspections set forth in Section VI, the inspector observes exposure to hazards listed in Section VI (B), or hazards covered by one of OSHA's Local or National Emphasis Programs.
- B. Participants will not be included in OSHA inspections of non-partnership employers unless the inspector observes that, as a result of partnership member actions, employees are exposed to the hazards listed in Section VI (B) or other serious hazards.
- C. Participants will not receive citations for other-than-serious violations from OSHA, provided that the violation is abated within one day (the member reserves the right to request an informal conference and formally contest any alleged OSHA violation/citation);
- D. Participants will receive maximum reductions allowed by the FOM for good faith, size and history for penalties assessed for serious OSHA violations;
- E. Participants may receive incentives from OSHA in the form of increased cooperation, collaboration, and interaction from the Kansas City and Wichita Area Offices Compliance Assistance Specialists (CAS). Such opportunities may include but are not limited to participation as Steering Committee members, attendance at SMACNA Safety Committee meetings, SMACNA "Lunch and Learns" SMACNA Supervisory Accountability training, etc..
- F. In addition to all of its other benefits, the Partnership Program will enable the industry to work more closely with its members and OSHA. Immediate opportunities include:
 1. Creating a coalition to work on falls in the construction industry;
 2. Working on safety engineering for the construction industry (e.g., in the area of fall protection);
 3. Working with OSHA for a possible targeted training grant; and
 4. Sharing information on effective safety and health programs.

VI. OSHA Verification

- A. An on-site enforcement verification inspection of the participating members will be performed when a jobsite of the respective construction company receives an OSHA enforcement inspection for any reason, programmed or unprogrammed. Note that OSHA will not implement any scheduling of a participating contractor partner for an on-site enforcement verification inspection over and above that which would be experienced by a non-partnership site. If the member passes the on-site enforcement verification inspection they will benefit from the incentives outlined in Section V of this Agreement.
- B. The scope of the on-site enforcement verification inspection will be in accordance with the Field Operations Manual (FOM) and the focused inspection policy covering the focus four construction hazards of falls, struck by, crushed by and electrocutions.
- C. The Compliance Officer performing the on-site enforcement verification

inspection shall make a pass or fail recommendation to the Area Director based upon their professional judgment of the number and severity of hazardous conditions observed at the time of the verification inspection. If the member fails the on-site enforcement verification inspection, they may be recommended for reconciliation, or terminated from the Partnership at the sole discretion of OSHA, in consultation with the Steering Committee, and would not be eligible to reapply to the Partnership for twelve (12) months from the date of notification.

- D. All participants are subject to, at a minimum, one annual non-enforcement verification inspection of both the fabrication shop and one active construction site (describe further in VII.B.3.).

VII. OSP Management and Operation

A. Overall administration and responsibility of the Partnership is by SMACNA-KC, however the Partnership requires the efforts the Partnership Steering Committee (Committee) and the OSHA Kansas City and Wichita Area Offices to function. The roles, duties, and authorities of these entities are described as follows:

- 1. The Committee:
 - a. The composition of the Steering Committee consists of representatives from labor, management, government, and other stakeholder organizations, but shall at a minimum be composed of:
 - i. One representative from OSHA, Kansas City Area Office (The Compliance Assistance Specialist)
 - ii. The SMACNA-KC Safety Director
 - iii. The SMACNA-KC Safety Committee
 - b. The Committee will be responsible for developing the criteria for recognizing members with exemplary safety performance, with developing performance measurements, with evaluating program processes, and with interacting with other affected parties.
- 2. The CAS for the Kansas City OSHA Area Office will coordinate OSHA's role in participating in Committee meetings and will provide advice and assistance to the Committee on the following items:
 - a. Partnership member performance criteria, including the safety and health program criteria for participating members.
 - b. Performance measurements established to measure the effectiveness of the Partnership.
 - c. Criteria used to qualify individuals to perform on-site visits for the purpose of internal program verification by the Committee.
 - d. Partnership oversight procedures, which will include discussions relating to a member passing or failing an OSHA verification inspection; and
 - e. Criteria for removal of a member from the Partnership.

- B. The Partnership Program will operate in the following way:
1. Contractors who are members of SMACNA-KC may apply for membership in the Partnership provided they meet certain established criteria listed later in this agreement. Contractors shall complete the Partnership Application form developed by SMACNA-KC.
 2. The Committee will review and evaluate the applications using criteria developed by the Committee.
 3. The criteria for participation in the Partnership will also include a Non-enforcement verification visit to the applicant's fixed place of business (sheet metal shop(s)) and an on-site non-enforcement verification inspection of at least one active construction job site. These visits will be jointly conducted by an OSHA CAS and the SMACNA-KC Safety Director, with participation of the SMANA-KC Safety Committee members being at their option.
 4. Members who participate in the Partnership can reapply annually by providing evidence of continued superior safety and health performance.
 - a. Members who reapply will provide documentation that they still meet established criteria. Employers will be subject to an annual non-enforcement verification visit in conjunction with the annual renewal. The Committee will establish criteria for termination of participating members, and the criteria will include an appeals process.
 5. The Committee will have the authority to grant extensions to the participating members, to grant probationary periods with mentoring/ review by other members (reconciliation), or to terminate active status.
 6. The Committee will establish its own operating procedures, which may include rules for changing the composition of the Committee.
 7. The Committee will monitor the Partnership program against the established program performance criteria. The committee will prepare an annual report for SMACNA-KC and OSHA, evaluating the merits of the program and making recommendations for continuous improvement. Copies of the report will be provided upon request to all of the members participating in the Partnership and to the OSHA Kansas City and Wichita Area Offices.
 8. The SMACNA Safety Director engaged by the Committee will:
 - a. Conduct reviews to ensure that the participating members meet program requirements. Reviews will include random on-site visits of at least one job site of each participating members per year.
 - b. Provide recommendations/advisories to terminate a participating member's status if such findings indicate unacceptable performance.
 - c. Provide recommendations to the Committee for appropriate program improvement.
 9. It is understood by all parties that information submitted by applicants as part of the application or renewal process, as well as information obtained by virtue of the member's application or participation in the program, will be held in strict confidence within the confines of the partnership program. However, in event of an unprogrammed inspection based on Section VI of this document,

such information, which is relevant to any elements of the investigation, will be provided when requested by OSHA, and will be subject to use in any enforcement proceeding under the OSH Act. Any document provided to OSHA or generated because of any OSHA inspection will be handled in accordance with the Freedom of Information Act.

C. Contractor Eligibility: To apply for participation in the Work Safe Partnership Program II, a construction company must meet the following criteria:

1. Be engaged in the construction business and be a member of SMACNA-KC. At least 50 percent of the company's annual sales must come from these contracting activities.
2. Have no fatalities or catastrophes that result in accident-related serious, willful or repeat violations that become a Final Order of the OSHA Review Commission within the three years prior to application to the partnership.
3. Have no willful or repeat violations that have become a Final Order of the OSHA Review Commission in the last three (3) years.
4. Agree to provide injury and accident records to the Work Safe Partnership Program II Steering Committee on request.
5. Has established a written safety and health program meeting the criteria set forth below in Section VII (D).
6. Has provided clear evidence of implementation of the program throughout the company.
7. Is in compliance with all applicable OSHA regulations and requirements.
8. Has made safety and health an integral part of the company's training and employee awareness programs.
9. Has had the effectiveness of the safety and health program confirmed by a site visit. The applicant and its employees are not only operating safely but can serve as a model for other contractors and their employees.
10. Has a DACR Rate which is less than the average rate for its NAICS code published by the Bureau of Labor Statistics for the most recent year available.
11. Has a company-wide 6-foot fall protection rule.
12. Have read this partnership agreement in full and signify agreement to all of the requirements herein by signing a copy of the "Work Safe Partnership Program II Application Form."

D. Safety and Health Program Criteria: The complete criteria for an effective company safety and health program will be determined by the Committee, but will include the following:

1. Documentation of Management Commitment and Employee Participation.
2. A written safety and health program that addresses recognized hazards and is consistent with the guidelines in ANSI A10.38-2000(R2007).
3. Management training that includes safety and health awareness.
4. Employee participation in company safety and health programs.

5. Annual safety and health program review.
6. Compliance with the occupational safety and health standards promulgated by OSHA.
7. Designation of an individual by top management to implement and monitor the applicant/ member's safety and health program:
 - a. Regardless of employer size, the individual selected shall have completed, as a minimum, the OSHA 30-Hour Construction Safety and Health Training Course or equivalent training within three (3) years immediately prior to appointment.
 - b. The individual appointed by the applicant/ member shall have at least five (5) years of construction experience, or a combination of five (5) years of experience and formal education as deemed appropriate for the size and job hazards encountered by the applicant/ member.
 - c. The individual appointed shall have line authority from the employer's top management to order or otherwise direct field supervisory personnel/field employees to take prompt corrective measures to eliminate recognized safety and health hazards.
 - d. The individual selected shall periodically conduct safety and health audits, depending on the hazards involved that address at a minimum the following areas: fall hazards, electrical hazards, caught in between hazards, struck by hazards, and crushed by trenching and excavation operations. More comprehensive safety and health audits will be conducted in areas of high hazards when appropriate (confined space, excavation, etc.) that are deemed appropriate by the employer or the Committee.
 - e. In conducting his/her duties, the individual selected shall use the ANSI A10.38-2000(R2007) "Basic Element of an Employer Program to Provide a Safe and Healthful Work Environment" as a guideline to determine the scope of protection needed for such high hazards exposures.
8. Each contractor is responsible for implementing and enforcing its own safety and health program.
 - a. Each contractor shall establish disciplinary rules that include discharge for willful or repeated safety violations, and may include lesser forms of discipline for less serious types of violations.
 - b. A contractor who is party to a collective bargaining agreement containing an established grievance procedure may utilize such procedure for enforcement of its disciplinary rules.
 - c. Members have an obligation to ensure that site supervisors are complying with OSHA standards and enforcing their own company's safety and health programs.
 - d. Each member and subcontractor shall ensure that the safety and health program includes all project-specific hazards.
9. Participation in a substance abuse program recognized by the Committee.
10. Job-Site Analysis:

- a. Job site hazard analysis systems to recognize and abate hazards in a timely manner, with particular attention to the four key industry hazards (falls, electrocutions, caught between injuries, and struck by hazards).
 - b. Regular job site safety inspections by Competent Persons.
 - c. Job site accountability for safety and health program enforcement.
11. Hazard Prevention and Control:
- a. Regular investigation of accidents and serious “near miss” events to determine their causes.
 - b. Control of hazards through engineering controls, administrative and work practice controls or the use of PPE as required.
12. Training:
- a. Job site supervisors and foreman shall have attended the OSHA 30-Hour Construction Safety and Health Training Course, or equivalent training. In addition, each job site supervisor and foremen shall attend the “SMACNA Site Safety Supervisors Training”.
 - b. Field workers shall have attended the OSHA 10-Hour Construction Safety and Health Training Course or equivalent training.
 - c. Employee safety and health training programs at all levels of the company.
 - d. Training programs to make workers aware of potential health exposures.
 - e. Refresher training of at least 4 hours annually for field workers, foremen, and supervisors.
- E. Site Visits by the SMACNA-KC Safety Director/OSHA CAS
- 1. As part of the initial application process for participation in the Partnership, a visit to the applicant’s place of business will be conducted by the SMACNA-KC Safety Director jointly with the OSHA CAS
 - 2. The visits will include interviews with the company's principals, supervisors and employees, as well as a visit to at least one construction job site and the company’s fabrication shop(s). The purpose of the visits is to confirm that the criteria established by the Committee are being met.
 - 3. Random visits to at least one active site for each participating member annually will be conducted by the SMACNA Safety Director on an on-going basis among firms in the WSPP II. These focused random visits may include:
 - a. An inspection of the member's place of business
 - b. Safety and health program documentation
 - c. Interviews with employees
 - 4. If these visits show that the member fails to meet established program criteria, the member is subject to reconciliation or termination procedures as deemed by the Committee.
- F. Termination of Member Status. A member's participation will be terminated if one or more of the following occurs:
- 1. An inspection reveals a significant deviation from program criteria.
 - 2. The member has falsified information on the application or supporting records.

3. The member takes other such actions that may be determined to be grounds for termination by the Committee.
4. Prior to the final termination of a member's status, the following will occur:
 - a. The member will be notified in writing of the intent to terminate. The notice will include an explanation of the reasons for termination.
 - b. The member will have an opportunity to reply to the written notice within a period of thirty (30) days.
 - c. The member will have the right to make an appearance before the Committee and be represented by counsel.
5. The Committee will have the authority to reinstate the member if it determines that the member's experience was unusual and not necessarily inconsistent with a sound safety and health program.
6. Any member may terminate its participation in the program at any time by written notice to SMACNA-KC. SMACNA-KC will notify the Area Director of OSHA that the member's participation has been terminated and the date thereof.
7. One of the core benefits of the Partnership Program will be to develop contractors who can serve as models for other SMACNA members to emulate. The program will include the development of criteria for a "model" company, and those companies that qualify will be asked to mentor contractors with less effective safety and health programs. Such mentoring services may also be provided by the SMACNA-KC Safety Director. OSHA may provide assistance in this effort as resources allow. This mentoring may take several forms:
 - a. Instruction offered in conjunction with apprentice and journeyman union training programs, and other training programs. This is complementary to the Kansas City OSHA Area Office Alliance with the Sheet Metal Workers, Local #2.
 - b. Instruction/training offered and/or available through SMACNA-KC professionals.
 - c. Instruction/training offered and/or available at the OSHA Training Institute Education Center located at the Metropolitan Community College's Business and Technology Center in Kansas City.
 - d. Instruction and training offered and/or available through the Missouri Safety and Health Consultation Service or the Kansas Department of Labor, Division of Industrial Safety and Health. Services to include consultation with the member, and may include selective audits of jobsites to evaluate the implementation of the company's safety and health program.
 - e. Any other instruction or training programs recognized by the Committee.
 - f. Assisting in offering mentoring programs featuring Partnership members on a company-to-company basis or possibly through multi-company mentoring programs.

- g. Developing a mentoring program to include a sub-classification of members who are presently improving and/or upgrading their respective safety programs. This sub-classification may be designated “Application in Progress”, or a somewhat similar classification as determined by the Committee.

VIII. Employee and Employer Rights and Responsibilities

This partnership does not preclude employees and/or employers from exercising any right provided under the OSH Act (or, for federal employees, 29 CFR 1960), nor does it abrogate any responsibility to comply with the Act.

IX. Term of OSP

- A. This Partnership will continue to operate for three years unless and until either of the primary partners listed in Section I withdraw by providing 60 days written notice to the other party. Any of the other signatory partners listed below may withdraw from this Partnership by providing 30 days written notice to SMACNA-KC.
- B. The date of this Partnership Agreement is _____, and is effective immediately.

X. Signatures

The program is supported and agreed to by the following organizations.

1. Area Director, Occupational Safety & Health Administration – Kansas City Area Office

2. Area Director, Occupational Safety & Health Administration – Wichita Area Office

3. Executive Director, SMACNA-KC
