

**PROPOSED REGULATION OF
THE LABOR COMMISSIONER**

LCB File No. R018-18

April 24, 2018

EXPLANATION – Matter in *italics* is new; matter in brackets ~~[omitted material]~~ is material to be omitted.

AUTHORITY: §§1, 5, 6, 7, 11 and 14, NRS 338.012; §2, NRS 338.011 and 338.012; §§3, 22 and 24-26, NRS 338.012 and 338.015; §§4, 10, 13, 15, 16 and 21, NRS 338.012, 338.020 and 338.030; §§8 and 12, NRS 338.012 and 338.040; §9, NRS 338.012 and 338.020; §17, NRS 338.012 and 338.013; §§18, 19 and 20, NRS 338.012 and 338.070; §23, NRS 338.012, 338.015 and 338.070.

A REGULATION relating to public works; interpreting certain terms relating to the applicability of the prevailing wage requirement; revising provisions governing complaints, investigations, determinations and hearings related to prevailing wage violations; revising provisions governing the establishment of a prevailing wage; revising provisions governing payroll reports; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law exempts contracts awarded in compliance with the provisions governing state and local government purchasing which are directly related to the normal operation of a public body or the normal maintenance of its property from certain requirements for public works, including, without limitation, the payment of the prevailing wage. (NRS 338.011) **Section 2** of this regulation interprets the phrases “normal operation” and “normal maintenance” for the purposes of this exemption.

Under existing law, workers who are employed at the site of a public work and necessary in the execution of the contract for the public work are deemed to be employed on a public work. (NRS 338.040) Additionally, existing regulations specifically define when a worker who performs the craft of truck driver is deemed to be employed on a public work. (NAC 338.017) **Section 8** of this regulation revises the interpretation of “employed at the site of a public work” and “necessary in the execution of the contract for the public work” to exclude instances where a person provides services at the site of a public work for a limited period of time if the services: (1) do not include work typically performed by a recognized class of workers; and (2) are incidental or ancillary to the construction, repair or reconstruction of the public work. **Section 12** of this regulation provides that a worker who performs the craft of truck driver is not deemed to be employed on a public work when transporting materials or equipment to or from certain locations other than the location of a public work.

Existing regulations require a worker employed on a public work to be paid the applicable prevailing wage for the type of work that the worker actually performs on the public work and in accordance with the recognized class of the worker. (NAC 338.0095) **Section 9** of this regulation states that this requirement does not prevent an employer who is a signatory to a collective bargaining agreement from assigning work in accordance with established practice.

Existing law requires the Labor Commissioner to determine and publish annually the prevailing wage in each county for each craft or type of work, taking into account the rate of wages for work on construction similar to the proposed construction of the public work. (NRS 338.030) **Section 4** of this regulation lists each recognized class of workers for the purposes of establishing the prevailing wage, with the exception of those classes of workers the Labor Commissioner determines to be a distinct craft or type of work either on his or her own accord or after conducting a hearing. **Section 10** of this regulation interprets “construction similar to the proposed construction” as any construction other than certain residential construction projects. **Section 10** also provides for a method to determine the prevailing wage if no construction similar to the proposed construction occurred in the prior year. **Section 13** of this regulation revises the kinds of information which the Labor Commissioner will consider in making determinations of prevailing rates of wages. **Section 16** of this regulation requires the Labor Commissioner to consider the recognized class of workers set forth in a collective bargaining agreement if the prevailing wage for a new class of workers is collectively bargained.

Existing regulations authorize the Labor Commissioner to correct a determination of prevailing wages which contains a clerical error on his or her own initiative or at the request of a public body. (NAC 338.050) **Section 15** of this regulation authorizes the correction of such an error at the request of the crafts affiliated with the State Federation of Labor or other recognized national labor organizations, and the contractors of the locality or their representatives.

Under existing regulations, a person may file a complaint with the Labor Commissioner alleging a violation of certain provisions of existing law which establish requirements relating to wages paid on a public work. (NAC 338.107) **Section 3** of this regulation requires a person who is the subject of such a complaint to file an answer to the complaint with the Labor Commissioner and serve a copy of the answer on the complainant.

Existing regulations authorize a public body which has awarded a contract for a public work to investigate possible violations of the prevailing wage requirements. Upon the conclusion of such an investigation, the awarding body is required to issue a determination in writing and to submit a copy of a determination to the Labor Commissioner. (NAC 338.110) **Section 23** of this regulation provides that the awarding body is not required to submit a copy of such a determination to the Labor Commissioner if the determination solely concerns the late submittal of a certified payroll report, unless an objection to the determination is filed. **Section 23** also requires the awarding body to submit to the Labor Commissioner any information gathered during the awarding body’s investigation. **Section 24** of this regulation requires the Labor Commissioner, within 30 days after receipt of a determination issued by an awarding body, to conduct his or her own investigation into the alleged violation. Existing regulations require a hearing held by the Labor Commissioner on a determination issued by an awarding body or the Labor Commissioner to be conducted in accordance with the procedures in existing regulations governing hearings by the Labor Commissioner to enforce the labor laws. (NAC 338.116)

Section 26 of this regulation requires such a hearing to also be conducted in accordance with the Nevada Administrative Procedure Act.

Existing law requires a contractor or subcontractor to submit a certified payroll report containing certain information to the public body which awarded the contract for the public work. (NRS 338.070; NAC 338.094) Existing regulations require an awarding body to cause an examination of the certified payroll reports to assure compliance with the prevailing wage requirements and authorizes the awarding body to request from a contractor or subcontractor payroll records and any other records deemed necessary to verify the accuracy of information contained in any certified payroll report. (NAC 338.096) **Section 19** of this regulation requires the Labor Commissioner to cause an examination of the certified payroll reports. **Section 19** also requires an awarding body to report certain prevailing wage law violations to the Labor Commissioner. **Section 18** of this regulation authorizes the Labor Commissioner to request payroll records and any other records deemed necessary to verify the accuracy of information contained in any certified payroll report.

Section 20 of this regulation authorizes the Labor Commissioner or an awarding body to require a contractor or subcontractor to submit a final nonperformance payroll report or other documentation demonstrating that the work is completed and no further work will be performed on the public work, if the contractor or subcontractor does not employ any employees for 3 consecutive months.

Existing law requires a contractor or subcontractor to report to the Labor Commissioner and the public body certain information regarding each subcontractor whom the contractor or subcontractor engages for work on a public work. (NRS 338.013) **Section 17** of this regulation makes changes to conform with that requirement.

During the 2017 Session, the Legislature passed Senate Bill No. 516, which amended various provisions regarding apprenticeships in this State. **Sections 5, 9 and 18** of this regulation make changes to conform with that legislation.

Sections 6, 7, 11, 14, 21, 22 and 25 of this regulation make conforming changes.

Section 1. Chapter 338 of NAC is hereby amended by adding thereto the provisions set forth as sections 2, 3 and 4 of this regulation.

Sec. 2. *As used in NRS 338.011, the Labor Commissioner will interpret “normal maintenance” and “normal operation” to include, without limitation:*

- 1. Routine janitorial work and cleaning; or*
- 2. Routine repairs or maintenance which may be performed without requiring a building permit or contractor’s license.*

Sec. 3. 1. *Within 15 days after being served a complaint pursuant to NAC 338.107, the person alleged to have committed the violation which is the subject of the complaint shall file an answer to the complaint with the Labor Commissioner and serve a copy of the answer on the complainant and every other person who is a party to the proceeding.*

2. Matters that are alleged as an affirmative defense must be separately stated and numbered.

3. If, after reviewing the complaint and answer, the Labor Commissioner determines that further investigation is warranted, the Labor Commissioner may order the awarding body to conduct such further investigation pursuant to NAC 338.110 or the Labor Commissioner may conduct his or her own investigation. Complaints filed against the awarding body for which further investigation is warranted must be investigated by the Labor Commissioner.

4. If no answer is timely filed and served pursuant to subsection 1, the Labor Commissioner may determine that the person alleged to have committed the violation is in default and issue a decision and order based solely on the facts as presented in the complaint. A decision issued by the Labor Commissioner pursuant to this section constitutes the final order of the Labor Commissioner on the matter.

Sec. 4. *Except for those classes of workers recognized by the Labor Commissioner pursuant to NAC 338.090, for the purposes of establishing the prevailing rate of wages paid to each recognized class of workers in a county pursuant to NRS 338.030, the recognized classes of workers and the scope of work descriptions for those classes are:*

1. Air balance technician. The duties of an air balance technician include, without limitation, inspecting, testing, programming, documenting, adjusting and balancing heating,

cooling and ventilating systems using specialized tools and testing equipment to attain performance standards specified in the design of the systems.

2. Alarm installer. The duties of an alarm installer include, without limitation:

(a) Installing or testing electrical protective signaling systems used to provide notification of fire, burglary or other irregularities on the premises of the subscriber of the system;

(b) Installing of wiring and signaling units;

(c) Repairing electrical protective signaling systems; and

(d) Starting up, programming and documenting systems.

3. Boilermaker. The duties of a boilermaker include, without limitation:

(a) Constructing, assembling, maintaining and repairing stationary steam boilers and boiler house auxiliaries;

(b) Aligning structures or plate sections to assemble boiler frame tanks or vats;

(c) Assisting in the testing of assembled vessels and directing the cleaning of boilers and boiler furnaces; and

(d) Inspecting and repairing boiler fittings, including, without limitation, safety valves, regulators, automatic-control mechanisms, water columns and auxiliary machines.

4. Bricklayer. The duties of a bricklayer include, without limitation:

(a) Laying materials, including without limitation, brick, structural tile and blocks of concrete, cinder, glass, gypsum and terra cotta, but not including stone, to construct or repair walls, partitions, arches, sewers and other structures;

(b) Laying and aligning bricks, blocks or tiles to build or repair structures for high temperature equipment, including, without limitation, cupolas, kilns, ovens and furnaces;

(c) Fastening or fusing brick or other building materials to structures with wire clamps, anchor holes, torches or cement;

(d) Pointing, cleaning and caulking of all types of masonry;

(e) Caulking of window frames encased in masonry on brick, stone or cement structures, including, without limitation, grinding and cutting out on such work and sand blasting, steam cleaning and guniting work; and

(f) Pointing, cleaning and weatherproofing of buildings, grain elevators and chimneys built of stone, brick or concrete, including, without limitation, grinding and cutting out, sand blasting and guniting work on the same.

5. Carpenter. The duties of a carpenter include, without limitation:

(a) Laying out, constructing, erecting, fabricating, installing and repairing structures and fixtures of wood, plywood or alternative materials, doors and hardware and the fastening of the same, including, without limitation, garage or overhead door openers, cabinets, framework, floors and acoustical ceiling systems using carpenter's hand tools and power tools;

(b) Installing or erecting metal studs, drywall, lathing, wall partitions, prefabricated exterior insulation finishing system (EIFS) panels or any other system of panels that is attached to the interior or exterior of any building or structure, insulation and all types of ceilings;

(c) Pre-casting concrete and concrete form work, including, without limitation, setting of templates, layout, fabrication, constructing, placing, erection, rigging and hoisting, stripping and removing of all forms which are to be reused;

(d) Installing plywood decking, including, without limitation, stacking and installation of the plywood;

(e) Cutting, setting and removing of beam sides and soffits, bracing and pads;

(f) Constructing all wood panel forms and wall frames;

(g) Building, erecting and disassembling self-supporting scaffolds that are more than 14 feet in height;

(h) Laying out, cutting, joining and fitting of foam architectural elements if such foam architectural elements are attached mechanically; and

(i) Shaping, cutting and planing by any means if done by hand or machine.

6. Cement mason. The duties of a cement mason include, without limitation:

(a) Smoothing and finishing surfaces of poured concrete floors, walls, sidewalks and curbs to specified textures;

(b) Patching holes with fresh concrete or an epoxy compound;

(c) Molding expansion joints and edges through the use of edging tools, jointers and straightedges; and

(d) Setting curb and gutter forms one board high.

7. Electrician groundworker. The duties of an electrician groundworker:

(a) Include, without limitation:

(1) Working under the direct supervision of electrician lineworkers, including, without limitation, in the operation of jackhammers and manholes; and

(2) Loading and unloading materials and equipment used by electrician lineworker.

(b) Do not include climbing poles, towers or other structures or working in the proximity of energized lines or equipment.

8. Electrician lineworker. The duties of an electrician lineworker include, without limitation:

(a) Erecting and repairing wood poles and prefabricated light duty metal towers, cable and related equipment to construct overhead transmission and distribution power lines used to conduct electrical energy between generating stations, substations and consumers;

(b) Directing and assisting electrician groundworkers in attaching cross arms, insulators, lightning arresters, switches, wire conductors and auxiliary equipment to poles and towers in preparation of erecting the poles or towers;

(c) Climbing erected poles or towers and installing equipment, including, without limitation, transformers; and

(d) Stringing wire conductors between erected poles with the assistance of groundworkers and adjusting slack in conductors to compensate for contraction and elongation of conductors due to temperature variations, using winch.

9. Electrician-neon sign. The duties of an electrician-neon sign include, without limitation:

(a) Installing, servicing and repairing plastic, neon and illuminated signs;

(b) Ascending ladders or operating hydraulic or electric hoists to install, service or examine such signs to determine the cause of any malfunction;

(c) Wiring, rewiring or removing defective parts and installing new parts using electrician's tools; and

(d) Removing such signs or parts of such signs for repairs, including, without limitation, structural fabrication, scroll repair or transformer repair.

10. Electrician wireman. The duties of an electrician wireman include, without limitation:

(a) Laying out plans and installing, testing and repairing wiring, electrical fixtures, apparatus and control equipment;

(b) Measuring, cutting, bending, threading, assembling and installing electrical conduits using tools, including, without limitation, a hacksaw, pipe threader or conduit bender;

(c) Pulling wiring through conduit;

(d) Splicing wires;

(e) Connecting wiring to lighting fixtures and power equipment;

(f) Installing control and distribution apparatus, including, without limitation, switches, relays and circuit breakers and fastening such apparatus into place;

(g) Connecting power cables to equipment, including, without limitation, electric ranges and motors and installing grounding leads;

(h) Testing the continuity of a circuit to ensure electrical compatibility and safety of components using testing instruments, including, without limitation, an ohmmeter, a battery and buzzer and an oscilloscope; and

(i) As necessary, cutting and welding steel structural members.

11. Electronic communication technician. The duties of an electronic communication technician include, without limitation:

(a) Pulling cable, installing and trimming devices and terminating loops, circuits or other data gathering points;

(b) Terminating main control panels, racks or other head end equipment and testing of all circuits from the field devices to the main control panels and equipment;

(c) Utilizing test equipment for the purpose of troubleshooting and verifying the integrity of the circuits in question;

(d) Using hand tools to assemble and install data communication lines and equipment computer systems, antennas and towers;

(e) Disassembling equipment to adjust, repair or replace parts using hand tools;

(f) Starting up, programming and documenting systems; and

(g) Measuring, cutting, splicing, connecting, soldering and installing wire and cable associated with communication systems.

12. Elevator constructor. The duties of an elevator constructor include, without limitation:

(a) Assembling, installing, repairing and maintaining electric and hydraulic freight and passenger elevators, escalators and dumbwaiters;

(b) Cutting pre-fabricated sections of framework, rails and other elevator components to specified dimensions, using an acetylene torch, a power saw and a disc grinder; and

(c) Installing cables, counterweights, pumps, motor foundations, escalator drives, guide rails, elevator cars and control panels, using hand tools.

13. Fence erector. The duties of a fence erector include, without limitation:

(a) Erecting or repairing chain link, wooden, tortoise, wire, wire mesh or temporary fencing;

(b) Mixing and pouring concrete around bases of posts and tamping soil into a post hole to embed a post;

(c) Digging post holes with a spade, post hole digger or power driven auger;

(d) Aligning posts through the use of lines or by sighting; and

(e) Verifying vertical alignment of posts with a plumb bob or spirit level.

14. Flag person. The duties of a flag person include, without limitation:

(a) Directing movement of vehicular traffic through construction projects;

(b) Distributing traffic control signs and markers along a construction site in a designated pattern; and

(c) Informing drivers of detour routes through construction sites.

15. Floor coverer. The duties of a floor coverer include, without limitation:

(a) Applying blocks, strips or sheets of shock-absorbing, sound-deadening or decorative covering to floors and walls, including, without limitation, carpets or rugs;

(b) Measuring and cutting covering materials, including, without limitation, rubber, linoleum astro-turf or cork tile and foundation material, including, without limitation, felt, using rule, straightedge, linoleum knife and snips;

(c) Spreading adhesive cement over a floor to cement foundation material to the floor for sound-deadening and to prevent covering from wearing at the board joints;

(d) Rolling finished floors to smooth the floor and press cement into the base and covering; and

(e) Fitting of devices for the attachment of carpet, linoleum, rubber and all resilient floor coverings and the fitting of metal edges, corners and caps used in the installation of the foregoing materials and all other preparatory work.

16. Glazier. The duties of a glazier include, without limitation:

(a) Installing, setting, cutting, preparing or removing glass or materials used in lieu thereof, including, without limitation, in windows, doorways, showers, bathtubs, skylights and display cases;

(b) Installing glass on surfaces, including, without limitation, the fronts of buildings, interior walls and ceilings;

(c) Installing pre-assembled framework for windows and doors designed to be fitted with glass panels, including, without limitation, stained glass windows, by using hand tools; and

(d) Loading and arranging glass on trucks.

17. Highway striper. The duties of a highway striper include, without limitation:

(a) Painting highways, streets and parking surfaces by using manually propelled or mechanically propelled machines, brushes, rollers or spray guns; and

(b) Installing any device or applying any material used in lieu of paint for traffic direction, including, without limitation, buttons, tapes, plastics, rumble bars and other similar materials.

18. Hod carrier-brick mason tender. The duties of a hod carrier-brick mason tender include, without limitation:

(a) Tending to or assisting brick masons, bricklayers and stonemasons;

(b) Mixing, packing, wheeling and tempering mortar and fire clay;

(c) Mixing, supplying and holding materials or tools;

(d) Mixing, handling and conveying all other materials used by brick masons, bricklayers and stone masons;

(e) Building scaffolds, trestles, boxes and swinging staging used exclusively by bricklayers and stone masons;

(f) Hanging cables and placing putlogs;

(g) Carrying bricks and mortar in a hod; and

(h) Cleaning the work area and equipment of bricklayers and stone masons.

19. Hod carrier-plasterer tender. The duties of a hod carrier-plasterer tender include, without limitation:

(a) Serving plasterers in any capacity;

(b) Handling materials after the materials are delivered for the use of a plasterer;

(c) Building and handling all necessary trestle, scaffolding and planking of scaffolding for the exclusive use of plasterers; and

(d) Building mortar boxes, mortar boards and stands.

20. Ironworker. The duties of an ironworker include, without limitation:

(a) Performing duties as part of a crew to raise, place and unite girders, columns and other structural steel members to form completed structures or structure frameworks;

(b) Setting up hoisting equipment for raising and placing structural steel members;

(c) Fastening steel members to hoist cables, using chains, cable or rope;

(d) Forcing steel members into final position using turnbuckles, crowbars, jacks and hand tools;

(e) Aligning rivet holes in steel members with corresponding holes in previously placed steel members by driving drift pins to handle of wrench through holes;

(f) Bolting aligned steel members to keep them in position until the steel members can be permanently riveted, bolted or welded into place;

(g) Cutting and welding steel members;

(h) Installing and repairing gates, iron doors, flagpoles, iron fences and roof decking;

(i) Installing corrugated sheets when attached to steel frames;

(j) Stud welding iron, steel and metal to structural steel;

(k) Handling and setting steel and metal joists;

(l) Loading, unloading, hoisting, handling, signaling, placing and erecting pre-stressed and pre-cast materials; and

(m) Handling, racking, sorting, cutting, bending, hoisting, placing, burning, welding and tying all material used to reinforce concrete construction.

21. Laborer. The duties of a laborer include, without limitation:

(a) Performing tasks involving physical labor at building, highway and heavy construction projects, tunnel and shaft excavations and demolition sites;

(b) Operating hand and power tools of all types, including, without limitation, air hammers, earth tampers, cement mixers, small mechanical hoists and other equipment and instruments;

(c) Cleaning and preparing sites, digging trenches, setting braces to support the sides of excavations, erecting scaffolding, cleaning up rubble and debris and removing asbestos, lead, and other hazardous waste materials; and

(d) Assisting other craft workers.

22. Marble mason. The duties of a marble mason include, without limitation:

(a) Cutting, tooling and setting marble slabs in floors and walls of buildings and renovating and polishing marble slabs previously set in buildings;

(b) Trimming, facing and cutting marble to a specific size using a power saw, cutting and facing equipment and hand tools;

(c) Drilling holes in marble slabs and attaching brackets;

(d) Spreading mortar on the bottom and sides of a marble slab and on the side of adjacent marble slabs;

(e) Setting blocks in positions, tamping a marble slab into place and anchoring bracket attachments with wire;

(f) Filling joints between marble slabs with grout and removing excess grout with a sponge;

(g) Cleaning and beveling cracks and chips on marble slabs using hand tools and power tools;

(h) Heating cracked or chipped areas of a marble slab with a blowtorch and filling the defect with a composition mastic that matches the grain of the marble slab; and

(i) Polishing marble slabs and other ornamental stone to a high luster by using hand tools and power tools.

23. Mechanical insulator. The duties of a mechanical insulator include, without limitation:

(a) Covering and lining structures with cork, canvas, tar paper, magnesia and related materials;

(b) Installing blown-on insulation on pipe and machinery;

(c) Lining mechanical room surfaces and air handling shafts;

(d) Filling and damming fire stops and penetrations including, without limitation, electrical and mechanical systems;

(e) Applying foam for thermal, acoustical or fire protective purposes, including, without limitation, room-temperature vulcanizing (RTV) foams or equivalents, applied to mechanical or electrical systems;

(f) Lining and wrapping ducts, applying and installing directly fire protection of grease ducts, exhaust systems or any other ductwork for acoustical or thermal purposes;

(g) Insulating field joints on pre-insulated underground piping and pouring of Gilsulate or its equivalent; and

(h) Applying material, including, without limitation, metal and polyvinyl chloride (PVC) jacketing, on piping, fittings, valves, flanges, boilers, ducts, plenums, flues, tanks, vats, equipment and any other hot or cold surface for the purpose of thermal control.

24. Millwright. The duties of a millwright include, without limitation:

(a) Installing machinery and equipment according to layout plans, blueprints and other drawings in industrial establishments by using hoists, lift trucks, hand tools and power tools;

(b) Dismantling machines by using hammers, wrenches, crowbars and other hand tools;

(c) Assembling and installing equipment, including, without limitation, shafting, conveyors, monorails and tram rails, by using hand tools and power tools;

(d) Constructing foundations for machines by using hand tools and building materials, including, without limitation, wood, cement and steel;

(e) Assembling machines and bolting, welding, riveting or otherwise fastening them to a foundation or other structure by using hand tools and power tools; and

(f) Repairing and lubricating machines and equipment assembled and used by millwrights.

25. Operating engineer. The duties of an operating engineer include, without limitation, operating one or more types of power construction equipment, including, without limitation, motor graders, bulldozers, scrapers, compressors, pumps, derricks, shovels, tractors or front-end loaders to excavate, move, and grade earth, erect structures or pour concrete or other hard surface pavement.

26. Painter. The duties of a painter include, without limitation:

(a) Painting walls, equipment, buildings, bridges and other structural surfaces by using brushes, rollers and spray guns;

(b) Applying wall coverings and wall paper;

(c) Removing old paint to prepare surfaces before painting the surface;

(d) Mixing colors or oils to obtain desired color or consistency;

(e) Sanding surfaces between coats and polishing the final coat to a specified finish;

(f) Cutting stencils and brushing and spraying lettering and decorations on surfaces;

(g) Washing and treating surfaces with oil, turpentine, mildew remover or other preparations; and

(h) Filling cracks, holes and joints with caulk, putty, plaster or other filler by using a caulking gun or putty knife.

27. Piledriver. The duties of a piledriver include, without limitation:

(a) Operating piledrivers mounted on skids, barges, crawlers, treads or locomotive cranes to drive piling as foundations for structures, including, without limitation, buildings, bridges and piers;

(b) Barking, shoeing, splicing, form building, heading, centering, placing, driving, staying, framing, fastening, automatic pile threading, pulling and cutting off piling; and

(c) Fabricating, forming, handling and setting all such pre-cast, pre-stressed and post-stressed shapes that are an integral part of docks, piers, wharves, bulkheads, jetties and similar structures.

28. Pipefitter. The duties of a pipefitter include, without limitation, assembling, installing, modifying and maintaining pipe systems, pipe supports and pneumatic equipment and related

machines and equipment components for steam, hot water, heating, cooling, lubricating, sprinkling and industrial and processing systems which may require:

(a) Cutting, threading and hammering pipe to specifications using tools, including, without limitation, saws, cutting torches and pipe threaders and benders;

(b) Attaching pipes to walls, structures and fixtures, including, without limitation, radiators or tanks, using brackets, clamps, tools or welding equipment; and

(c) Coating non-ferrous piping materials by dipping them in a mixture of molten tin and lead to prevent erosion or galvanic and electrolytic action.

29. Plasterer. The duties of a plasterer include, without limitation:

(a) Applying coats of plaster onto interior or exterior walls, ceilings or partitions of buildings to produce a finished surface according to blueprints, architects' drawings and oral instructions;

(b) Creating decorative textures in finish coat by using sand, pebbles or stones;

(c) Installing guide wires on the exterior surfaces of buildings to indicate the thickness of plaster or stucco;

(d) Applying weatherproof, decorative covering to the exterior surfaces of a building;

(e) Molding and installing ornamental plaster pieces, panels and trim;

(f) Directing workers to mix plaster to a desired consistency;

(g) Assembling exterior insulation finishing system (EIFS) panels;

(h) Laying out, cutting, joining, fitting and installing architectural foam elements which are applied by trowel or adhesive set;

(i) Applying, shaping, cutting and planing in preparation for netting done by hand or machine; and

(j) Moulding and installing all plaster or synthetic finishes applied to foam architectural elements.

30. Plumber. The duties of a plumber include, without limitation, assembling, installing and repairing pipes, fittings and fixtures for heating, water and drainage systems inside of buildings and up to 5 feet outside of buildings which may therein require:

(a) Repairing and maintaining plumbing by replacing defective washers, repairing or mending broken pipes and opening clogged drains;

(b) Assembling pipe sections, tubing and fittings by using screws, bolts, solder, plastic solvent and caulking;

(c) Installing pipe assemblies, fittings, valves and fixtures, including, without limitation, sinks, toilets and tubs, by using hand tools and power tools;

(d) Cutting openings in structures, excluding concrete, to accommodate pipe and pipe fittings by using hand tools and power tools; and

(e) Filling pipes and plumbing fixtures with water or air and observing pressure gauges to detect and locate leaks.

31. Refrigeration mechanic. The duties of a refrigeration mechanic include, without limitation:

(a) Installing and repairing industrial and commercial refrigeration systems;

(b) Mounting compressors, condensers and other refrigeration components to the frame of a refrigerator by using hand tools and acetylene welding equipment;

(c) Assembling structural and functional components needed for refrigeration, including, without limitation, controls, switches, gauges, wiring harnesses, valves, pumps, compressors, condensers, cores and pipes;

(d) Installing expansion and control valves by using hand tools and acetylene welding equipment;

(e) Cutting, bending, threading and connecting pipe from functional components to water, power or refrigeration systems; and

(f) Fabricating and assembling components and structural portions of a refrigeration system.

32. Roofer. The duties of a roofer include, without limitation:

(a) Installing and covering roofs and structures with slate, asphalt, wood and other related materials, other than sheet metal, by using brushes, knives, punches, hammers and other tools;

(b) Spraying roofs, sidings and walls with material to bind, seal, insulate or soundproof sections of a structure;

(c) Installing all plastic, slate, slag, gravel, asphalt and composition roofing and rock asphalt mastic when used for damp and waterproofing;

(d) Installing of all damp-resisting preparations when applied on roofs with mop, three-knot brush, roller, swab or spray system;

(e) Installing all types of preformed panels used in waterproofing;

(f) Handling, hoisting and storing all roofing and damp and waterproofing materials; and

(g) Tearing off and removing roofing and roofing materials.

33. Sheet metal worker. The duties of a sheet metal worker include, without limitation:

(a) Fabricating, assembling, dismantling, installing or repairing:

(1) Sheet metal roofs, including, without limitation, #30 felt roofing paper installed to form a metal roofing system;

(2) Sheet metal parts or equipment, including, without limitation, duct work, metal lockers and kitchen equipment; and

(3) Air conveyance and air-handling systems, regardless of materials used;

(b) Setting up and operating fabrication machines to cut, bend and straighten sheet metal;

(c) Shaping metal over anvils, blocks or forms using a hammer;

(d) Operating soldering and welding equipment to join sheet metal parts;

(e) Inspecting, assembling and smoothing seams and joints of burred surfaces; and

(f) Welding, soldering, bolting, riveting, screwing, clipping, caulking or bonding component parts to assemble products by using hand tools, power tools and devices for lifting and handling.

34. Sprinkler fitter. The duties of a sprinkler fitter include, without limitation, installing, dismantling, maintaining, repairing, adjusting and correcting all fire protection and fire control systems, including, without limitation, the installation of piping or tubing, appurtenances and equipment pertaining thereto, including, without limitation, overhead and underground water mains, fire hydrants and hydrant mains, standpipes and hose connections to sprinkler systems, sprinkler tank heaters, air lines and thermal systems used in connection with sprinkler and alarm systems.

35. Surveyor. The duties of a surveyor include, without limitation:

(a) Planning ground surveys designed to establish base lines, elevation and other geodetic measurements;

(b) Compiling data relevant to the shape, contour, gravitation, location, elevation and dimension of land and land features on or near the surface of the Earth for engineering, map making, mining, land evaluation, construction and other purposes;

(c) Surveying bodies of water to determine navigable channels and to secure data for construction of breakwaters, piers and other marine structures; and

(d) Computing data necessary for driving and connecting underground passages, underground storage and volume of underground deposits.

36. Taper. The duties of a taper include, without limitation:

(a) Sealing joints between plasterboard or other wallboards to prepare a wall surface for painting or papering;

(b) Mixing sealing compound by hand or with a portable electric mixer and spreading the compound over the joints between boards using a trowel, broad knife or spatula;

(c) Filling cracks and holes in walls and ceilings with sealing compound;

(d) Applying texturing compound and primer to walls and ceiling to prepare a surface for a final finish by using brushes, rollers and spray guns; and

(e) Coating joint compound or taping mud.

37. Terrazzo worker. The duties of a terrazzo worker include, without limitation:

(a) Applying cement, sand, pigment and marble chips to floors and stairways to attain durable and decorative surfacing according to specifications or drawings;

(b) Spreading mixtures of sand, cement and water over surface with a trowel to form terrazzo;

(c) Cutting metal division strips and pressing the metal division strips into a terrazzo base so that top edges form a desired design or pattern and define the level of finished floor surface;

(d) Spreading mixtures of marble chips, cement, pigment and water over a terrazzo base to form a finished surface by using a float and trowel; and

(e) Pre-casting terrazzo blocks in wooden forms.

38. Tile setter. The duties of a tile setter include, without limitation:

(a) Applying tile and materials made for tile in tile-like units to walls, floors, ceilings and promenade roof decks following design specifications;

(b) Applying glazed, unglazed, mosaic and other ceramic tiles, which are used as a surface on floors, walls, ceilings and other surfaces and which must be set to specific grade;

(c) Applying and floating all setting beds into which glazed, unglazed, mosaic or other ceramic tiles are set; and

(d) Leveling and plumbing tiles to a specified grade.

39. Tile, terrazzo and marble finisher. The duties of a tile, terrazzo and marble finisher include, without limitation:

(a) Supplying and mixing construction materials for a tile setter, terrazzo worker or marble setter;

(b) Applying grout and finishing the surface of installed tile, terrazzo and marble;

(c) Cleaning installed tile, terrazzo and tile surfaces;

(d) Renovating and filling chipped, cracked and broken pieces of tile, terrazzo and marble;

(e) Grinding and polishing tile, terrazzo and marble; and

(f) Assisting a tile setter, terrazzo worker or marble setter.

40. Traffic barrier erector. The duties of a traffic barrier erector include, without limitation, erecting or placing instruments to provide directional assistance to traffic.

41. Truck driver. The duties of a truck driver include, without limitation, driving a tractor trailer combination or a truck to transport goods or materials.

42. Well driller. The duties of a well driller include, without limitation:

(a) Setting, operating or tending to portable drilling rig machinery and related equipment to drill wells;

(b) Extending stabilizing jackscrews to support and level a drilling rig;

(c) Installing water well pumps;

(d) Drilling wells for:

(1) Industrial water supplies, irrigation water supplies or water supplies for any other purpose;

(2) Dewatering or other similar purposes; and

(3) Exploration;

(e) Hole drilling for geologic and hydrologic information; and

(f) Core drilling for geologic information.

Sec. 5. NAC 338.0052 is hereby amended to read as follows:

338.0052 “Apprentice” ~~means a person employed and individually registered in a bona fide apprenticeship program with:~~

~~—1.— The Bureau of Apprenticeship and Training of the Office of Apprenticeship, Training, Employer and Labor Services of the Employment and Training Administration of the United States Department of Labor or its successor; and~~

~~—2.— The State Apprenticeship Council pursuant to chapter 610 of NRS and any regulations adopted pursuant thereto.~~ *has the meaning ascribed to it in NRS 610.010.*

Sec. 6. NAC 338.007 is hereby amended to read as follows:

338.007 “Recognized class of workers” means a class of workers recognized by the Labor Commissioner as being a distinct craft or type of work for purposes of establishing prevailing rates of wages. The term includes a class of workers ~~for which the Labor Commissioner has~~

~~traditionally established a prevailing rate of wages,]~~ *listed in section 4 of this regulation* and any other class of workers the Labor Commissioner determines to be a distinct craft or type of work either on his or her own accord or after conducting a hearing pursuant to NAC 338.090.

Sec. 7. NAC 338.008 is hereby amended to read as follows:

338.008 The existence *or non-existence* of a contract between an awarding body and a contractor is not a bar to the enforcement by the Labor Commissioner or the awarding body of the provisions of NRS 338.010 to 338.090, inclusive, and NAC 338.005 to 338.125, inclusive ~~H~~ *, and sections 2, 3 and 4 of this regulation.*

Sec. 8. NAC 338.009 is hereby amended to read as follows:

338.009 1. As used in NRS 338.040, the Labor Commissioner will interpret:

(a) “Employed at the site of a public work” to mean the performance of work in the execution of a contract for a public work at the physical place or places at which the work is performed or at which a significant portion of the public work is constructed, altered or repaired if such place is established specifically for the execution of the contract for the public work or dedicated exclusively, or nearly so, to the execution of the contract for the public work.

(b) “Necessary in the execution of the contract for the public work” to mean the performance of duties required to construct, alter or repair the public work and without which the public work could not be completed.

(c) The terms interpreted in paragraphs (a) and (b) to not include instances where a person provides services to the prime contractor or a subcontractor at the site of a public work for a limited period of time if the services provided:

(1) Do not include work typically performed by a recognized class of workers; and

(2) Are incidental or ancillary to the construction, repair or reconstruction of the public work.

2. As used in this section, “site of a public work” includes job headquarters, a tool yard, batch plant, borrow pit or any other location that is established for the purpose of executing the contract for the public work or that is dedicated exclusively, or nearly so, to executing the contract for the public work. The term does not include a permanent home office, branch plant establishment, fabrication plant, tool yard or any other operation of a contractor, subcontractor or supplier if the location or the continued existence of the operation is determined without regard to a particular public work.

Sec. 9. NAC 338.0095 is hereby amended to read as follows:

338.0095 1. For the purposes of NRS 338.010 to 338.090, inclusive, and NAC 338.005 to 338.125, inclusive ~~††~~, *and sections 2, 3 and 4 of this regulation:*

(a) A worker employed on a public work must be paid the applicable prevailing rate of wage for the type of work that the worker actually performs on the public work and in accordance with the recognized class of the worker ~~††~~, *except that an employer who is a signatory to a collective bargaining agreement is not prohibited from assigning such work in accordance with established practice;* and

(b) Each contractor and subcontractor shall be deemed to be the employer of each worker and apprentice who performs work directly for that contractor or subcontractor in the execution of a contract for a public work, whether the worker or apprentice is employed directly by the contractor or subcontractor or is furnished to the contractor or subcontractor by or through another person or entity such as an employee leasing company or equipment rental business.

2. Any person employed on a public work as an apprentice or listed on a certified payroll report as an apprentice who ~~is~~ *does* not ~~[registered with the Bureau of Apprenticeship and Training of the Office of Apprenticeship, Training, Employer and Labor Services of the Employment and Training Administration of the United States Department of Labor or its successor and the State Apprenticeship Council]~~ *meet the definition of an “apprentice” set forth in NAC 338.0052* must be paid not less than the applicable wage rate for the type of work actually performed by the person and in accordance with the applicable recognized class of workers. Any person designated as an apprentice performing work at the site of a public work who exceeds the ratio of apprentices to journeymen authorized under the registered program of apprenticeship must be paid not less than the applicable wage rate for the type of work actually performed by the person and in accordance with the applicable recognized class of workers.

Sec. 10. NAC 338.010 is hereby amended to read as follows:

338.010 1. ~~[Based on the information described in subsection 2 of NAC 338.020, the Labor Commissioner will determine the prevailing rate of wages paid to each recognized class of workers in a locality as follows:~~

~~—(a) Where the rate of wages is the same for the majority of the total hours worked by a recognized class of workers who are employed in the locality on construction similar to the proposed construction, that rate will be determined as the prevailing rate.~~

~~—(b) Where there is no such majority, the prevailing rate for the recognized class of workers will be determined as:~~

~~——(1) The rate of wages paid for the greater number of hours worked by the recognized class of workers if that number constitutes 40 percent or more of the total number of hours worked by the recognized class of workers; or~~

~~— (2) The average rate of wages paid per hour, based on the number of hours worked per rate, to a recognized class of workers who are employed if the number of hours paid at the same rate is less than 40 percent of the total number of hours worked by the recognized class of workers.~~

~~— (c) If~~ *When calculating the prevailing wage in a county in accordance with NRS 338.030, if no construction similar to the proposed construction has been performed within the ~~locality~~ county, including Carson City, in the past year, the Labor Commissioner ~~will consider wage rates~~ may:*

(a) Keep the prevailing rate of wages for that county at the same level as the previous year; or

(b) Consider the prevailing rate of wages paid ~~on~~ in the nearest ~~similar project of construction in this State.~~ neighboring county, with the nearest neighboring county being determined by measuring the distance in a straight line between the county seats of the respective counties.

2. If the Labor Commissioner determines that the prevailing rate of wages for a recognized class of workers is a wage which has been collectively bargained, the Labor Commissioner ~~may consider~~ *will recognize* wage and benefit adjustments and *job* classifications of workers established in the collective bargaining agreement and ~~may~~ adjust the prevailing rate of wages for the recognized class of workers in accordance with wage and benefit adjustments and *job* classifications of workers in the collective bargaining agreement.

3. If the Labor Commissioner adjusts the prevailing rate of wages pursuant to subsection 2, he or she will issue an amendment pursuant to NAC 338.040 and will specify an effective date in the amendment.

4. As used in this section and NRS 338.030, the Labor Commissioner will interpret “construction similar to the proposed construction” to mean any construction other than the construction of:

(a) A single-family residence; or

(b) A multifamily residence that exceeds three stories in height.

Sec. 11. NAC 338.015 is hereby amended to read as follows:

338.015 1. The subclassifications within the recognized classes of workers include, without limitation:

(a) Foreman. A foreman is a person who works with and supervises one or more journeymen performing a craft or type of work.

(b) General foreman. A general foreman is a person who works with and supervises one or more journeymen performing a craft or type of work, including, without limitation, one or more foremen.

(c) Journeyman. A journeyman is a skilled mechanic, skilled worker, semiskilled mechanic, semiskilled worker or unskilled worker performing a craft or type of work.

2. The Labor Commissioner will consider the kind of information described in subsection ~~1~~ **1** of NAC 338.020 to determine the applicable prevailing wage for each craft or type of work among the recognized class of workers.

Sec. 12. NAC 338.017 is hereby amended to read as follows:

338.017 A worker who performs the craft of truck driver shall ~~be~~ :

1. Be deemed to be employed on a public work while:

~~1.1~~ **(a)** Transporting materials at the site of a public work; or

~~1.2~~ **(b)** Transporting materials between the sites of a public work.

2. *Not be deemed to be employed on a public work while transporting materials or equipment from:*

(a) *The site of a public work to any other operation of a contractor, subcontractor or supplier that is not at the site of a public work or a place established specifically for the execution of the contract for the public work or dedicated exclusively, or nearly so, to the execution of the contract for the public work; or*

(b) *A site that is not the site of a public work.*

Sec. 13. NAC 338.020 is hereby amended to read as follows:

338.020 1. ~~{The Labor Commissioner will conduct a continuing program of obtaining and compiling information for use in determining prevailing rates of wages.~~

~~—2.}~~ The kinds of information which the Labor Commissioner will consider in making determinations of prevailing rates of wages *pursuant to NRS 338.030* include:

(a) Statements showing rates of wages paid on public and private projects, where the statements are signed by the contractors or their representatives and contain:

- (1) The names and addresses of the contractors and subcontractors;
 - (2) The locations, ~~{approximate}~~ *project* costs, *project names and approximate* dates of construction ~~{and types of projects;}~~ *within the survey period;*
 - (3) The number of hours each recognized class of workers is employed on each project;
- and
- (4) The respective ~~{rates of}~~ wages , *as defined by NRS 338.010*, paid to each recognized class of workers employed on each project.

(b) Signed collective bargaining agreements that are on file with the Labor Commissioner on or before September 1 of each year preceding the annual determination of the prevailing rates of wages.

(c) Wage rates determined by officials of the Federal Government for public construction .
~~and other information furnished by state and federal agencies.~~

~~—3.1~~ 2. When determining prevailing rates of wages, the Labor Commissioner may exclude from consideration any information submitted to him or her that is untimely filed, duplicative, incomplete or determined by the Labor Commissioner to be unverifiable.

~~14.1~~ 3. As used in this section, “representative” means:

(a) An agent, officer or employee of a contractor or subcontractor who has been authorized to act in such a capacity by the contractor or subcontractor; or

(b) Any other person empowered by a written agreement with the contractor or subcontractor that authorizes the person to act on behalf of the contractor or subcontractor in submitting the information required pursuant to paragraph (a) of subsection ~~12.1~~ 1.

Sec. 14. NAC 338.040 is hereby amended to read as follows:

338.040 1. A determination by the Labor Commissioner of the prevailing rates of wages in a locality becomes effective on October 1 of each year and remains effective for 1 year after that date except as otherwise provided in this section.

2. If the Labor Commissioner issues an amendment to a determination of prevailing rates of wages, the prevailing rates of wages that are set forth in the amendment:

(a) Will be effective:

(1) On the date specified in the amendment; or

(2) If an effective date is not specified in the amendment, 10 days after the issuance of the amendment.

(b) Will be applicable to all projects of a public work bid after the effective date of the amendment.

(c) Will expire upon the effective date of a subsequently issued applicable determination of the prevailing rates of wages.

3. After a contract has been awarded, the prevailing rates of wages in effect at the time of the opening of bids remain in effect for the duration of the project.

4. If a public body believes that a pattern of wages is not clearly established in a locality, it may request the Labor Commissioner to make a new determination of the prevailing wages in the locality. Such a request must be accompanied by the information outlined in paragraph (a) of subsection ~~12~~ **1** of NAC 338.020.

Sec. 15. NAC 338.050 is hereby amended to read as follows:

338.050 ~~At the request of a public body or upon~~ **Upon** his or her own initiative ~~1~~ **or at the request of any person who is required to be heard pursuant to subsection 6 of NRS 338.030**, the Labor Commissioner will correct any determination of prevailing wages which he or she has issued if he or she finds that it contains a clerical error. A correction is applicable to all projects bid after the correction becomes effective.

Sec. 16. NAC 338.090 is hereby amended to read as follows:

338.090 **1.** Upon his or her own initiative or at the request of any person who is required to be heard pursuant to subsection ~~5~~ **6** of NRS 338.030, the Labor Commissioner may conduct a hearing to determine the need for a new recognized class of workers if he or she is in doubt as to the adequacy of an existing recognized class of workers.

2. If a prevailing wage for a new class of workers is a wage which has been collectively bargained, the Labor Commissioner will consider the recognized class of workers set forth in the collective bargaining agreement.

Sec. 17. NAC 338.092 is hereby amended to read as follows:

338.092 1. Except as otherwise provided in subsection 2, a contractor who has been awarded a contract for a public work and all subcontractors hired by the contractor shall report the name and address of each subcontractor whom the contractor or subcontractor engages for work on the public work as required pursuant to subsection 3 of NRS 338.013 on a form prescribed by the Labor Commissioner. The report must include, without limitation:

- (a) The name of the owner or principal of the subcontractor;
- (b) The telephone number and facsimile number, if any, of the subcontractor;
- (c) The scope of work to be performed by the subcontractor in connection with the public work; and
- (d) The number, if any, of the license issued to the subcontractor by the State Contractors' Board pursuant to chapter 624 of NRS.

2. A contractor who has been awarded a contract for a public work and all subcontractors hired by the contractor do not need to report suppliers hired by the contractor or subcontractor to the Labor Commissioner *or the public body that awarded the contract* pursuant to subsection 1.

3. A contractor engaged on a public work has the burden of proof in substantiating that he or she reported any subcontractors whom the contractor has engaged for work on the public work to the Labor Commissioner *and the public body that awarded the contract* pursuant to subsection 3 of NRS 338.013.

4. ~~{A contractor or subcontractor hired by the contractor shall provide a copy of the report to the awarding body.~~

~~—5.}~~ As used in this section, “supplier” has the meaning ascribed to it in NRS 338.010.

Sec. 18. NAC 338.094 is hereby amended to read as follows:

338.094 1. Each certified payroll report:

(a) May be submitted on a form prescribed by the Labor Commissioner or in a format selected by the contractor or subcontractor that provides the information required pursuant to subsection ~~{4}~~ 5 of NRS 338.070;

(b) Must be accompanied by a statement of compliance, on a form prescribed by the Labor Commissioner, which is executed by the contractor or subcontractor and which certifies the truthfulness and accuracy of the payroll report; and

(c) Must include an itemization of all contributions made to a third person pursuant to a fund, plan or program in the name of a worker as authorized by NRS 338.035, if any such contributions were made as part of the wages of that worker.

2. A contractor or subcontractor shall report workers on a certified payroll report for a public work:

(a) Based on the type of work actually performed by the workers;

(b) Based on the number of hours worked per worker per day; and

(c) In accordance with the recognized classes of workers.

↪ Such a report must not include any hours of work performed by the workers on another public work or private project.

3. When a contractor or subcontractor first lists an apprentice on a certified payroll report, the contractor or subcontractor must submit with that certified payroll report documentation to

substantiate that the apprentice ~~is registered with the Bureau of Apprenticeship and Training of the Office of Apprenticeship, Training, Employer and Labor Services of the Employment and Training Administration of the United States Department of Labor or its successor and the State Apprenticeship Council.~~ *meets the definition of apprentice as provided in NAC 338.0052.*

4. Upon the request of the awarding body ~~H~~ *or the Labor Commissioner*, a contractor or subcontractor engaged on a public work shall provide to the ~~awarding body~~ *requesting entity* payroll records and any other records deemed necessary by the ~~awarding body~~ *requesting entity* to verify the accuracy of information contained in any certified payroll report submitted by the contractor or subcontractor.

Sec. 19. NAC 338.096 is hereby amended to read as follows:

338.096 1. An awarding body shall cause *or the Labor Commissioner will cause* such an examination of the certified payroll reports of a contractor or subcontractor to be made at reasonable times to assure compliance with the provisions of NRS 338.010 to 338.090, inclusive, and NAC 338.005 to 338.125, inclusive ~~H~~ *, and sections 2, 3 and 4 of this regulation.* Such an examination may include, without limitation:

(a) Verifications with employees of the contractor or subcontractor of the wages paid to and the type of work actually performed by those employees;

(b) Review of records and other data concerning the payroll of the contractor or subcontractor;

(c) Verification of the registration of apprentices; and

(d) Evidence of payments to fringe benefit plans, if any.

2. In conducting an examination pursuant to this section, an awarding body shall *or the Labor Commissioner will* verify:

- (a) The accuracy of the reporting of workers in the recognized classes of the workers; and
- (b) The ratio of apprentices to journeymen authorized under the registered program of apprenticeship.

3. Except for the late submittal of a certified payroll report pursuant to subsection 6 of NRS 338.070, an awarding body shall report to the Labor Commissioner any potential violation of NRS 338.010 to 338.090, inclusive, or NAC 338.005 to 338.125, inclusive, and sections 2, 3 and 4 of this regulation discovered during the examination of the certified payroll reports.

Sec. 20. NAC 338.098 is hereby amended to read as follows:

338.098 1. If a contractor or subcontractor engaged on a public work does not employ any workers in any calendar month during which he or she is engaged on the public work, the contractor or subcontractor shall, in lieu of submitting a certified payroll report pursuant to subsections 4 and 5 of NRS 338.070 for that month, submit to the awarding body a nonperformance payroll report certifying that the contractor or subcontractor did not employ any workers on the public work during that month. *If a contractor or subcontractor employs any workers on the public work in any calendar month after the submission of a nonperformance payroll report, the contractor or subcontractor shall submit a certified payroll report for that month to the awarding body as required by NRS 338.070 and NAC 338.094.*

2. A nonperformance payroll report must be completed on a form prescribed by the Labor Commissioner and must be submitted to the awarding body not later than 15 days after the end of a month in which the contractor or subcontractor did not employ any workers on the public work.

3. If a contractor or subcontractor engaged in a public work does not employ any workers for 3 consecutive calendar months on the public work, the Labor Commissioner or the awarding body may request that the contractor or subcontractor submit a final nonperformance payroll report or other documentation demonstrating that the contractor or subcontractor has completed all the work on the public work for which the contractor or subcontractor was engaged.

Sec. 21. NAC 338.105 is hereby amended to read as follows:

338.105 As used in NAC 338.105 to 338.116, inclusive, *and section 3 of this regulation*, “determination” means a proposed finding of the Labor Commissioner or an awarding body as to whether a violation of a provision of NRS 338.010 to 338.090, inclusive, or NAC 338.005 to 338.125, inclusive, *and sections 2, 3 and 4 of this regulation* has occurred.

Sec. 22. NAC 338.107 is hereby amended to read as follows:

338.107 ~~††~~ A person filing a complaint with the Labor Commissioner alleging that a violation of a provision of NRS 338.010 to 338.090, inclusive, or NAC 338.005 to 338.125, inclusive, *and sections 2, 3 and 4 of this regulation* has occurred with respect to the person shall ~~follow the procedures for filing a complaint set forth in chapter 607 of NAC.~~

~~—2.— A person filing a complaint with the Labor Commissioner alleging that a violation of a provision of NRS 338.010 to 338.090, inclusive, or NAC 338.005 to 338.125, inclusive, has occurred with respect to a person other than the person filing the complaint shall:~~

~~—(a)† :~~

1. Provide in writing to the Labor Commissioner:

~~†(1)†~~ *(a)* The full name and address of the person filing the complaint;

~~†(2)†~~ *(b)* The full name and address of the person alleged to have committed the violation;

~~{(3)}~~ (c) A clear and concise statement of facts sufficient to establish that an alleged violation of a provision of NRS 338.010 to 338.090, inclusive, or NAC 338.005 to 338.125, inclusive, *and sections 2, 3 and 4 of this regulation* has occurred, including, without limitation, the date, time and place of the alleged violation and the name of each person involved;

~~{(4)}~~ (d) A citation to the specific statute or regulation alleged to have been violated;

~~{(5)}~~ (e) The relief requested by the person filing the complaint;

~~{(6)}~~ (f) A certification by the person filing the complaint that the facts alleged in the complaint are true to the best knowledge and belief of the person filing the complaint; and

~~{(7)}~~ (g) The signature of the person filing the complaint.

~~{(b)}~~ 2. Submit an original and one copy of the complaint to the Labor Commissioner with a certificate of service attached.

~~{(e)}~~ 3. Serve a copy of the complaint upon the person alleged to have committed the violation by:

~~{(1)}~~ (a) Personal service; or

~~{(2)}~~ (b) Regular mail.

Sec. 23. NAC 338.110 is hereby amended to read as follows:

338.110 1. Upon its own initiative or ~~{upon notice from}~~ *at the order of* the Labor Commissioner ~~{of a possible violation,}~~ *pursuant to subsection 3 of section 3 of this regulation*, an awarding body shall cause such an investigation to be made as may be necessary to determine whether a violation of a provision of NRS 338.010 to 338.090, inclusive, or NAC 338.005 to 338.125, inclusive, *and sections 2, 3 and 4 of this regulation* was committed in the course of the execution of a contract for a public work that was awarded by the awarding body. Such an investigation must commence and conclude within a reasonable time, except that the

investigation must not exceed 30 days unless an additional period of time is approved by the Labor Commissioner. Upon commencing an investigation upon its own initiative, an awarding body shall notify the Labor Commissioner in writing as soon as is practicable.

2. If a contractor or subcontractor fails to provide to an awarding body information requested by the awarding body pursuant to subsection 4 of NAC 338.094, the awarding body may request the Labor Commissioner to issue subpoenas ~~{on behalf of the awarding body}~~ to assist the awarding body in its investigation.

3. In making a determination, an awarding body shall consider:

(a) Information contained in any claim or complaint against the contractor or subcontractor that was received by the Labor Commissioner;

(b) Oral or written statements made by employees of the contractor or subcontractor or witnesses during interviews conducted by the awarding body;

(c) Information contained in certified payroll reports applicable to the public work; and

(d) Any other information that could reasonably assist the awarding body in determining whether a violation was committed.

4. Upon the conclusion of its investigation, an awarding body shall issue, in writing, the determination ~~{issued by}~~ *of* the awarding body and shall:

(a) ~~{Submit}~~ *Except as otherwise provided in subsection 9, submit* a copy of the determination issued by the awarding body to the Labor Commissioner;

(b) Serve a copy of the determination issued by the awarding body upon the contractor or subcontractor alleged to have committed the violation;

(c) If the contractor or subcontractor alleged to have committed the violation was not the prime contractor for the public work, serve a copy of the determination issued by the awarding body upon the prime contractor for the public work;

(d) Serve a copy of the determination issued by the awarding body upon the person who filed the complaint; and

(e) Serve a copy of the determination issued by the awarding body upon any other person who filed a claim or a complaint with the Labor Commissioner that related to the investigation.

5. If, after an investigation, an awarding body issues a determination that a contractor or subcontractor has failed to pay the correct wages to workers employed by the contractor or subcontractor in connection with a public work, the awarding body shall withhold and retain the wages due and owing to the workers and any applicable penalties.

6. In addition to submitting a copy of the determination issued by the awarding body to the Labor Commissioner pursuant to subsection 4, the awarding body shall provide to the Labor Commissioner the following information pertaining to the determination issued by the awarding body:

(a) A detailed narrative of the findings of the investigation;

(b) The name and address of the contractor or subcontractor and its responsible officers;

(c) If a subcontractor is alleged to have committed the violation, the name and address of:

(1) The prime contractor for the public work and its responsible officers; and

(2) Any intermediate subcontractor and the respective responsible officers of that

subcontractor;

(d) A copy of the contract for the public work, or an excerpt of the portion of the contract that the Labor Commissioner determines is relevant, which must include, without limitation,

information identifying the deadline by which bids on the contract were accepted, the date on which the contract was awarded and the scope of work performed by the contractor or subcontractor;

(e) Copies of any claims or complaints received by the awarding body from the Labor Commissioner relating to the investigation;

(f) Copies of the applicable certified payroll reports and nonperformance payroll reports submitted by the contractor or subcontractor;

(g) If applicable, signed interview statements of employees of the contractor or subcontractor;

(h) If applicable, computations of penalties and back wages for each worker, including, without limitation, the name, address and social security number of the worker; ~~and~~

(i) The identifying number requested from the Labor Commissioner by the public body pursuant to NRS 338.013 ~~+~~; *and*

(j) Any other information gathered during the investigation.

7. If a person who filed a claim or complaint with the Labor Commissioner relating to the investigation that is the subject of the determination issued by the awarding body submits a request to the awarding body to receive the information submitted by the awarding body to the Labor Commissioner pursuant to subsection 6, the awarding body shall provide to the person that information.

8. A person who has been served a copy of a determination issued by an awarding body pursuant to subsection 4 and who is aggrieved by the determination issued by the awarding body may file a written objection with the Labor Commissioner within 15 days after the date of service of the determination issued by the awarding body. Such an objection must be

accompanied by a short statement of the grounds for the objection and evidence substantiating the objection. The awarding body issuing the determination shall insert a statement to this effect into the determination issued by the awarding body.

9. Unless a written objection is filed with the Labor Commissioner pursuant to subsection 8, an awarding body is not required to submit a copy of a determination to the Labor Commissioner pursuant to subsection 4 if the determination solely concerns the late submittal of a certified payroll report in violation of subsection 6 of NRS 338.070.

Sec. 24. NAC 338.112 is hereby amended to read as follows:

338.112 1. Within 30 days after receipt of a determination issued by an awarding body pursuant to the provisions of NAC 338.110, the Labor Commissioner will:

(a) Return the determination issued by the awarding body to the awarding body with a directive for further investigation;

(b) Modify the determination issued by the awarding body;

(c) Affirm the determination issued by the awarding body and, if any wages or penalties were withheld by the awarding body, direct the awarding body to forward to the Labor Commissioner the sums withheld for disbursement to the workers;

(d) *Conduct his or her own investigation;*

(e) Set the matter that is the subject of the determination issued by the awarding body for an administrative hearing before the Labor Commissioner; or

~~(e)~~ (f) Decline to assert jurisdiction over the matter that is the subject of the determination issued by the awarding body.

2. If, pursuant to subsection 1, the Labor Commissioner:

(a) Modifies a determination issued by an awarding body, the Labor Commissioner will serve a copy of the modified determination by mail on the contractor or subcontractor who was the subject of the investigation and any person who filed a claim or complaint with the Labor Commissioner relating to the investigation.

(b) Affirms a determination issued by an awarding body, the Labor Commissioner will issue an order affirming the determination issued by the awarding body. The order affirming the determination issued by the awarding body is deemed to be the final order of the Labor Commissioner on the matter.

(c) Sets the matter that is the subject of the determination issued by the awarding body for an administrative hearing before the Labor Commissioner, the Labor Commissioner will conduct a hearing on the matter.

(d) Declines to assert jurisdiction over the matter that is the subject of the determination, the Labor Commissioner will issue an order dismissing the determination issued by the awarding body. The order dismissing the determination issued by the awarding body is deemed to be the final order of the Labor Commissioner on the matter.

3. A person who has been served a copy of a modified determination pursuant to paragraph (a) of subsection 2 and who is aggrieved by the modified determination may file a written objection with the Labor Commissioner within 15 days after the date of service of the modified determination. Such an objection must be accompanied by a short statement of the grounds for the objection and evidence substantiating the objection.

4. If an objection to a determination issued by an awarding body and modified by the Labor Commissioner is filed with the Labor Commissioner pursuant to subsection 3, the Labor

Commissioner will, within 15 days after the period for objection has expired, schedule a hearing on the modified determination if:

(a) The modified determination included an assessment of back wages owed to workers, an administrative penalty or fine, or a recommendation of the imposition of a period of disqualification from public works against a contractor or subcontractor pursuant to NRS 338.017; or

(b) The modified determination did not include an assessment of back wages owed to workers, an administrative penalty or fine, or a recommendation of the imposition of a period of disqualification from public works against a contractor or subcontractor pursuant to NRS 338.017, but the Labor Commissioner determines that the objection has merit on other grounds after reviewing the determination and the information submitted to him or her by the awarding body pursuant to subsection 6 of NAC 338.110.

5. If:

(a) An objection is filed with the Labor Commissioner that does not meet the requirements of subsection 3; or

(b) An objection was not filed with the Labor Commissioner,
↳ the determination issued by the awarding body and modified by the Labor Commissioner is deemed to be the final order of the Labor Commissioner on the matter.

6. If, after holding a hearing on a determination issued by an awarding body or a modified determination, the Labor Commissioner finds that a contractor or subcontractor violated a provision of NRS 338.010 to 338.090, inclusive, or NAC 338.005 to 338.125, inclusive, *and sections 2, 3 and 4 of this regulation*, the Labor Commissioner will issue a written decision, which will include, without limitation, the relevant facts and applicable laws on which the

decision was based. The Labor Commissioner will serve a copy of the decision by certified mail on the contractor or subcontractor who was the subject of the investigation and any person who filed a claim or complaint with the Labor Commissioner relating to the investigation. A decision issued by the Labor Commissioner pursuant to this subsection is deemed to be the final order of the Labor Commissioner on the matter.

Sec. 25. NAC 338.114 is hereby amended to read as follows:

338.114 1. If, after an investigation conducted by the Labor Commissioner ~~is~~ *on a complaint filed pursuant to NAC 338.107 or on a complaint filed against an awarding body,* the Labor Commissioner finds that a person, including, without limitation, the officers, agents or employees of a public body, has violated a provision of NRS 338.010 to 338.090, inclusive, or NAC 338.005 to 338.125, inclusive, *and sections 2, 3 and 4 of this regulation,* the Labor Commissioner will issue a written determination, which will include, without limitation, the relevant facts and applicable laws on which the determination was based. The Labor Commissioner will serve a copy of the determination by mail on:

- (a) The person who was alleged to have committed the violation;
- (b) If a subcontractor is alleged to have committed the violation:
 - (1) The prime contractor for the public work; and
 - (2) Any intermediate subcontractors; and
- (c) Any other person who filed a claim or complaint with the Labor Commissioner relating to the investigation.

2. A person who has been served a copy of a determination issued by the Labor Commissioner pursuant to subsection 1 and who is aggrieved by the determination may file a written objection with the Labor Commissioner within 15 days after the date of service of the

determination. Such an objection must be accompanied by a short statement of the grounds for the objection and evidence substantiating the objection. The Labor Commissioner will insert a statement to this effect into the determination issued by the Labor Commissioner.

3. If an objection to a determination issued by the Labor Commissioner pursuant to subsection 1 is filed with the Labor Commissioner that meets the requirements of subsection 2, the Labor Commissioner will, within 15 days after that period for objection has expired, schedule a hearing on the determination if:

(a) The determination issued by the Labor Commissioner included an assessment of back wages owed to workers, an administrative penalty or fine, or an imposition of a period of disqualification from public works against a contractor or subcontractor pursuant to NRS 338.017; or

(b) The determination issued by the Labor Commissioner did not include an assessment of back wages owed to workers, an administrative penalty or fine, or an imposition of a period of disqualification from public works against a contractor or subcontractor pursuant to NRS 338.017, but the Labor Commissioner determines that the objection has merit on other grounds.

4. If:

(a) An objection to a determination issued by the Labor Commissioner is filed with the Labor Commissioner that does not meet the requirements of subsection 2; or

(b) An objection was not filed with the Labor Commissioner,
↳ the Labor Commissioner will issue an order affirming the determination issued by the Labor Commissioner. The order affirming the determination issued by the Labor Commissioner is deemed to be the final order of the Labor Commissioner on the matter.

5. If, after holding a hearing scheduled pursuant to subsection 3 on a determination issued by the Labor Commissioner pursuant to subsection 1, the Labor Commissioner finds that a person, including, without limitation, the officers, agents or employees of a public body, has violated a provision of NRS 338.010 to 338.090, inclusive, or NAC 338.005 to 338.125, inclusive, *and sections 2, 3 and 4 of this regulation*, the Labor Commissioner will issue a written decision, which will include, without limitation, the relevant facts and applicable laws on which the decision was based. The Labor Commissioner will serve a copy of the decision by certified mail on the person who is found to have committed the violation and any other person who filed a claim or complaint with the Labor Commissioner relating to the investigation. A decision issued by the Labor Commissioner pursuant to this subsection is deemed to be the final order of the Labor Commissioner on the matter.

Sec. 26. NAC 338.116 is hereby amended to read as follows:

338.116 At a hearing held by the Labor Commissioner on a determination issued by an awarding body or the Labor Commissioner, the Labor Commissioner will use the procedures provided pursuant to *chapter 233B of NRS and* chapter 607 of NAC to conduct the hearing.