

1 LABOR CABINET

2 Office of Unemployment Insurance

3 (Amendment)

4 787 KAR 1:290. Contract construction rates.

5 RELATES TO: KRS 341.070, 341.272

6 STATUTORY AUTHORITY: KRS 336.015, 336.050, 341.115, 2021 Ky Acts ch. 169 §

7 1(D)(7)

8 NECESSITY, FUNCTION, AND CONFORMITY: KRS 341.272(1) requires entities
9 engaged in the contract construction trades to pay contributions equal to the maximum rate of
10 contributions under KRS 341.270. KRS 341.115(1) authorizes the secretary to promulgate
11 administrative regulations to implement KRS Chapter 341. This administrative regulation
12 establishes requirements for contract construction for the purposes of rate assignment under KRS
13 341.272.

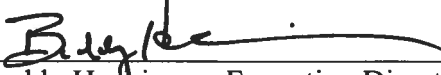
14 Section 1. For the purpose of rate assignment, a service shall be considered as contract
15 construction if the service is listed in the United States North American Industry Classification
16 System Manual, Part I Sector 23 subsections 236, 237 and 238, 2017 [~~United States North~~
17 ~~American Industry Classification System Manual, 2012, under Major Section 23, Subsections 236,~~
18 ~~237, and 238~~].

1 Section 2. To be considered a contract construction employer, one-half (1/2) or more of the
2 service upon which liability is established under KRS 341.070 shall be in contract construction.

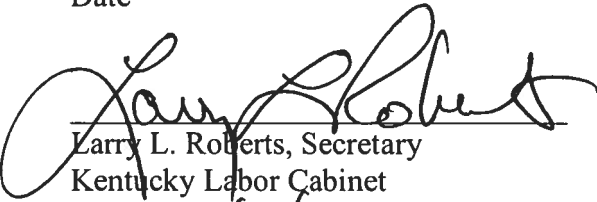
3 Section 3. Incorporation by Reference. (1) “United States North American Industry
4 Classification System Manual”, Part 1 Sector 23 subsections 236, 237 and 238, 2017[“United
5 States North American Industry Classification System Manual”, 2012, Major Section 23,
6 Subsections 236, 237 and 238], is incorporated by reference.

7 (2) This material may be inspected, copied, or obtained, subject to applicable copyright
8 law, at the Labor[Education and Workforce Development] Cabinet, Tax Enforcement
9 Branch[Tax Status and Accounting Branch], Mayo-Underwood Building, 500 Mero Street,
10 Frankfort, KY 40601[275 East Main Street, Frankfort, Kentucky 40621], Monday through Friday,
11 8 a.m. to 4:30 p.m.

As approved by


Buddy Hoskinson, Executive Director
Office of Unemployment Insurance

6/21/2021
Date


Larry L. Roberts, Secretary
Kentucky Labor Cabinet

6/21/2021
Date

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 27, 2021 at 2:00 (ET). This hearing will be conducted by live videoconference (ZOOM) pursuant to Senate Bill 150, Section 1, subparagraph 8(b) (R.S. 2020) and the continuing state of emergency due to the novel coronavirus pandemic. Public access to the meeting will be available at <https://us02web.zoom.us/j/88991458931?pwd=eTZYMEo0V3Qydnk0alB3MFFyYmZVUT09>, password 358248 or by telephone at 713-353-0212 or 888-822-7517 (toll free), conference code 278497.

Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 30, 2021. Send notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Buddy Hoskinson, Labor Cabinet, Mayo-Underwood Building, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601, Telephone: (502) 564-2199, Facsimile: (502) 564-7850, Email: buddy.hoskinson@ky.gov.

REGULATORY IMPACT AND TIERING STATEMENT

Regulation Number 787 KAR 1:290

Contact Person: Buddy Hoskinson, Telephone: (502) 564-2199, Facsimile: (502) 564-7850,
Email: buddy.hoskinson@ky.gov.

(1) Provide a brief summary of:

- (a) What this administrative regulation does: This administrative regulation establishes the requirement that entities engaged in contract construction trades pay contributions equal to the maximum rate of contributions under KRS 341.270. The regulation further sets forth the method by which an entity is determined to be engaged in the contract construction trade.
- (b) The necessity of this administrative regulation: This administrative regulation uses the NAICS Manual to determine whether service is considered a “contract construction trade.” The 2012 NAICS Manual has been incorporated by reference into the regulation. In order to receive federal funds to administrate portions of its research and statistics programs, the state must use the NAICS manual for assigning classifications.
- (c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 341.115(1) authorizes the secretary to adopt administrative regulations deemed necessary or suitable for the proper administration of KRS Chapter 341. This administrative regulation establishes requirements pursuant to KRS 341.272.
- (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the method for determining entities engaged on contract construction. The regulation identifies the entities that will be required to pay contribution rates for contract construction trades as required by statute.

(2) If this is an amendment to an existing regulation, provide a brief summary of:

- (a) How this amendment will change this existing administrative regulation: This amendment updates the material incorporated by reference, the current name and address of the office and branches within the office. Further, this amendment updates the statutory authority to reflect the office is now within the Labor Cabinet pursuant to 2021 Ky Acts ch. 169 Part 1(I)(7).
- (b) The necessity of the amendment to this administrative regulation: This amendment is necessary to accurately reflect updated statutory authority, office address and to update the material incorporated by reference.
- (c) How the amendment conforms to the content of the authorizing statutes: KRS 341.115(1) authorizes the secretary to amend administrative regulations deemed necessary or suitable for the proper administration of KRS Chapter 341. This administrative regulation establishes requirements pursuant to KRS 341.272.

- (d) How the amendment will assist in the effective administration of the statutes: This amendment will ensure that entities are classified correctly for purposes of rate assignment pursuant to KRS 341.270.
- (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Entities engaged in contract construction trades will be affected by this administrative regulation.
- (4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
- (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: If an entity is classified as a contract construction trade, its contribution rate will be set by KRS 341.270. The entity will be required to pay its contributions at that rate.
 - (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost will be the amount of the contributions based on the maximum contribution rate.
 - (c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The contributions will be included in the entity's unemployment insurance reserve account for use in paying unemployment insurance claims charged against the entity.
- (5) Provide an estimate of how much it will cost to implement this administrative regulation:
- (a) Initially: This administrative regulation, as amended, is not anticipated to generate any new or additional costs.
 - (b) On a continuing basis: This administrative regulation, as amended, is not anticipated to generate any new or additional costs.
- (6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: KRS 341.240 establishes the unemployment compensation administration fund, the funds in which are available to the secretary for administration of the UI program and are deposited to defray the cost of the administration of this chapter.
- (7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: This administrative regulation, as amended, is not anticipated to generate any increase in fees or funding.
- (8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are no fees associated with this administrative regulation.
- (9) TIERING: Is tiering applied? Tiering is not applied. All taxpayers identified by this administrative regulation are treated equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation Number 787 KAR 1:290

Contact Person: Buddy Hoskinson, Telephone: (502) 564-2199, Facsimile: (502) 564-7850,
Email: buddy.hoskinson@ky.gov.

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Only those employers who are engaged in contract construction trades will be impacted by this administrative regulation.
2. Identify each state or federal statute or regulation that requires or authorizes the action taken by the administrative regulation. KRS 336.015, 336.050, 341.115, KRS 341.272, 2021 Ky Acts ch. 169 § 1(I)(7).
3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
 - a. How much revenue will the administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate revenue.
 - b. How much revenue will the administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate revenue.
 - c. How much will it cost to administer this program for the first year? There is no cost to this amendment.
 - d. How much will it cost to administer this program for subsequent years? There is no cost to this amendment.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): None.

Expenditures (+/-): None.

Other explanations:

SUMMARY OF MATERIAL INCORPORATED BY REFERENCE

The United States North American Industry Classification System Manual, Part 1, Subsector 23, Subsections 236, 237 and 238, 2017 is the North American Industry Classification System utilized to classify entities engaged in contract construction trades for the purpose of determining rate assignment under KRS 341.272. It is published by The Office of Management and Budget's Economic Classification Policy Committee every five (5) years. The Manual is 963 pages in length, with the material incorporated by reference being 19 pages in length.

SUMMARY OF CHANGES TO MATERIAL INCORPORATED BY REFERENCE

For classification 237120, Oil and Gas Pipeline and Related Structures Construction, additional cross-references were added to include, "Oil well rig building, repairing, and dismantling, on a contract basis--are classified in U.S. Industry 213112, Support Activities for Oil and Gas Operations; Inspecting pipelines--are classified in Industry 541990, All Other Professional, Scientific, and Technical Services; and Mining machinery and equipment repair and maintenance--are classified in Industry 811310, Commercial and Industrial Machinery and Equipment [except Automotive and Electronic] Repair and Maintenance."

For classification 237210, Land Subdivision, an additional cross-reference was added to include, "Subdivision and servicing land for cemetery development--are classified in Industry 812220, Cemeteries and Crematories."

For classification 237310, Highway, Street and Bridge Construction, an additional cross-reference was added to include, "Road decommissioning or removing culverts or bridge--are classified in Industry 238910, Site Preparation Contractors."

For classification 237990, Other Heavy and Civil Engineering Construction, an additional cross-reference was added to include, "Inspecting pipelines—are classified in Industry 541990, All Other Professional, Scientific, and Technical Services."