

803 KAR 2:127. Failure to correct violation, additional penalty.

RELATES TO: KRS 338.141(1), 338.991(4)

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY, FUNCTION, AND CONFORMITY: The Commissioner of the Department of Workplace Standards is empowered by KRS 338.141(1) to issue a citation to an employer who has violated any requirement of KRS Chapter 338. KRS 338.991(4) empowers the Commissioner of the Department of Workplace Standards to propose penalties for any employer who fails to correct a violation for which a citation has been issued. This administrative regulation is necessary as it prescribes the procedure to be followed by the Division of Occupational Safety and Health Compliance and by cited employers who have been notified of a failure to correct a violation and permits the commissioner to propose penalties according to KRS 338.991(4) for failure to correct a violation. This administrative regulation spells out the procedures to be used by the Division of Occupational Safety and Health Compliance in notifying the employer of a failure to correct an alleged violation stating the time limits within which the employer has to contest the notification of failure to correct.

Section 1. If an inspection discloses that an employer has failed to correct an alleged violation for which a citation has been issued within the period permitted for its correction, the district supervisor shall consult with the Director of Compliance who may consult with the general counsel, if appropriate, and he shall notify the employer by certified mail or by personal service by the compliance safety and health officer of such failure and of the additional penalty proposed under KRS 338.991(4) by reason of such failure. The period for the correction of a violation for which a citation has been issued shall not begin to run until the entry of a final order of the review commission in the case of any review proceedings initiated by the employer in good faith and not solely for delay or avoidance of penalties.

Section 2. Any employer receiving a notification of failure to correct a violation and of proposed additional penalty authorized by KRS 338.991(4) may notify the Director of Compliance in writing that he intends to contest such notification or proposed additional penalty before the review commission. Such notice of intention to contest shall be postmarked within fifteen (15) working days of the receipt by the employer of the notification of failure to correct a violation and of proposed additional penalty. The Director of Compliance shall immediately transmit such notice to the review commission in accordance with the rules of procedure prescribed by the commission.

Section 3. Each notification of failure to correct a violation and of proposed additional penalty shall state that it shall be deemed to be the final order of the review commission and not subject to review by any court or agency unless, within fifteen (15) working days from the date of receipt of such notification, the employer notifies the Director of Compliance in writing that he intends to contest the notification or the proposed additional penalty before the review commission. (5 Ky.R. 834; eff. 6-6-79; TAm eff. 8-9-2007; TAm eff. 9-8-2011.)