

LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education and Training
(As Amended at ARRS, August 10, 2021)

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

RELATES TO: KRS 338.071, 338.141~~[(1)]~~, 338.991(4)

STATUTORY AUTHORITY: KRS 338.051, 338.061 [~~KRS Chapter 13A~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations and authorizes the chairman to reference federal standards without board approval if necessary to meet federal time requirements. KRS 338.061 authorizes the board to establish, modify, or repeal standards and reference federal standards [~~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 establishes failure to correct violation procedures followed by the Department of Workplace Standards and employers[~~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. Definitions. (1) "Commissioner" is defined by KRS 338.015.

(2) "Employer" is defined in KRS 338.015(1).

(3) "Review commission" is defined in KRS 338.015(8).

(4) "Working day" means Monday through Friday and does not include Saturday, Sunday, federal, or state holidays, ~~and~~**as well as** the day of receipt of notice.

Section 2. (1) If an inspection discloses that an employer [~~has~~] failed to correct an alleged violation for which a citation was [~~has been~~] issued within the period permitted for its correction, the commissioner [~~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 the [~~such~~] failure and [~~of~~] the additional penalty proposed pursuant to [~~under~~] KRS 338.991(4) [~~by reason of such failure~~].

(2) 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 [~~re-~~view] proceedings initiated by the employer in good faith and not solely for delay or avoidance of penalties.

Section 3 [2]. (1) Any employer receiving a notification of failure to correct a violation and [~~of~~] proposed additional penalty pursuant to [~~authorized by~~] KRS 338.991(4) may notify the

commissioner or designee [~~Director of Compliance~~] in writing that she or he contests [~~intends to contest such notification or proposed additional penalty before the review commission~~].

(2)(a) The [~~Such~~] notice of [~~intention to~~] contest shall be transmitted [~~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~~].

(b) The commissioner shall [~~Director of Compliance shall immediately~~] transmit the [~~such~~] notice to the review commission in accordance with the rules of procedure prescribed by the commission **in accordance with KRS 338.071**.

Section 4[3]. Each notification of failure to correct a violation and [~~of~~] proposed additional penalty shall state that it shall be a [~~deemed to be the~~] final order of the review commission and not subject to review by any court or agency, **as established by KRS 338.141**, unless, within fifteen (15) working days from the date of receipt of the [~~such~~] notification, the employer notifies the commissioner or designee [~~Director of Compliance~~] in writing that she or he contests [~~he intends to contest~~] the notification of [~~or the~~] proposed additional penalty before the review commission.

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