

NOTICE

Amendment to 803 KAR 2:127, Failure to correct violation, was filed with the Legislative Research Commission on April 27, 2021.

The amendment is posted at <https://legislature.ky.gov>. Select the Kentucky Law Tab, Kentucky Administrative Regulations, KAR List by Title, then Title 803 Labor Cabinet and scroll down to the regulation under Chapter 2 Occupational Safety and Health.

Changes to the regulation and public hearing information is available at the aforementioned website or in the pages below following this notice.

FILED WITH LRC
TIME: 9:34 am
APR 27 2021
Emily B Caudill
REGULATIONS COMPILER

1 LABOR CABINET
2 Department of Workplace Standards
3 Division of Occupational Safety and Health Compliance
4 Division of Occupational Safety and Health Education and Training
5 (Amendment)
6 803 KAR 2:127. Failure to correct violation [~~additional penalty~~].
7 RELATES TO: KRS 338.141(1), 338.991(4)
8 STATUTORY AUTHORITY: KRS 338.051, 338.061 [~~KRS Chapter 13A~~]
9 NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky
10 Occupational Safety and Health Standards Board to promulgate occupational safety and health
11 administrative regulations and authorizes the chairman to reference federal standards without
12 board approval if necessary to meet federal time requirements. KRS 338.061 authorizes the
13 board to establish, modify, or repeal standards and reference federal standards [The
14 Commissioner of the Department of Workplace Standards is empowered by KRS 338.141(1) to
15 issue a citation to an employer who has violated any requirement of KRS Chapter 338. KRS
16 338.991(4) empowers the Commissioner of the Department of Workplace Standards to propose
17 penalties for any employer who fails to correct a violation for which a citation has been issued].
18 This administrative regulation establishes failure to correct violation procedures followed by the
19 Department of Workplace Standards and employers [is necessary as it prescribes the procedure
20 to be followed by the Division of Occupational Safety and Health Compliance and by cited
21 employers who have been notified of a failure to correct a violation and permits the

1 commissioner to propose penalties according to KRS 338.991(4) for failure to correct a
2 violation. This administrative regulation spells out the procedures to be used by the Division of
3 Occupational Safety and Health Compliance in notifying the employer of a failure to correct an
4 alleged violation stating the time limits within which the employer has to contest the notification
5 of failure to correct].

6 Section 1. Definitions. (1) “Commissioner” is defined by KRS 338.015.

7 (2) “Employer” is defined in KRS 338.015(1).

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

9 (4) “Working day” means Monday through Friday and does not include Saturday, Sunday,
10 federal or state holidays, and the day of receipt of notice.

11 Section 2. (1) If an inspection discloses that an employer [has] failed to correct an alleged
12 violation for which a citation was [has been] issued within the period permitted for its correction,
13 the commissioner [district supervisor shall consult with the Director of Compliance who may
14 consult with the general counsel, if appropriate, and he] shall notify the employer [by certified
15 mail or by personal service by the compliance safety and health officer] of the [such] failure and
16 [of] the additional penalty proposed pursuant to [under] KRS 338.991(4) [by reason of such
17 failure].

18 (2) The period for the correction of a violation [for which a citation has been issued] shall not
19 begin [to run] until the entry of a final order of the review commission in the case of any
20 [review] proceedings initiated by the employer in good faith and not solely for delay or
21 avoidance of penalties.

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

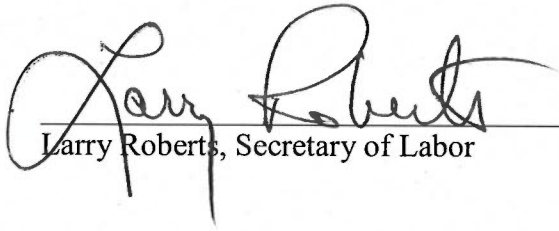
1 commissioner or designee [~~Director of Compliance~~] in writing that she or he contests [~~intends to~~
2 ~~contest such notification or proposed additional penalty before the review commission~~].

3 (2)(a) The [~~Such~~] notice of [~~intention to~~] contest shall be transmitted [~~postmarked~~] within fifteen
4 (15) working days of [~~the~~] receipt [~~by the employer of the notification of failure to correct a~~
5 ~~violation and of proposed additional penalty~~].

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

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

As approved by


Larry Roberts, Secretary of Labor

Date April 26, 2021

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 21, 2021 at 10:00 am (ET). The meeting will be conducted by live videoconference (ZOOM) pursuant to Senate Bill 150, Section 1, subparagraph (8) b (2020) and the continuing state of emergency. Public access to the meeting will be available at

<https://us02web.zoom.us/j/86731399141?pwd=Q2VOcDQ3ZkVBaUtoNERCMDNIKzZJZz09>, password 446261; or by telephone at (713) 353-0212, (888) 822-7517 toll free, conference code 194378.

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 July 31, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Robin Maples, OSH Standards Specialist, Labor Cabinet, Mayo-Underwood Building, 500 Mero Street, 3rd Floor, Frankfort, Kentucky 40601, Telephone: (502) 564-4107, Facsimile: (502) 564-4769, Email: Robin.Maples@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Regulation Number: 803 KAR 2:127

Contact person: Robin Maples (502) 564-4107, Robin.Maples@ky.gov, Facsimile: (502) 564-4769

(1) Provide a brief summary of:

(a) What this administrative regulation does: Section 1 of this administrative regulation, effective since June 6, 1979, defines terms. Section 2 establishes the procedure regarding failure to correct a violation pursuant to 29 CFR 1903.18. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations and was reviewed in accordance with House Bill (HB) 50 from the Regular Session of the 2017 General Assembly.

(b) The necessity of this administrative regulation: This administrative regulation was reviewed in accordance with HB 50 from the Regular Session of the 2017 General Assembly. This regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 CFR 1902.3(c), 29 CFR 1902.3(d), 29 CFR 1953.1(a), 29 CFR 1953.1(b), and 29 CFR 1956.2(a), which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation is equivalent.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 338.051(3) requires the Kentucky Occupational Safety and Health (OSH) Standards Board to promulgate OSH administrative regulations. This regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 CFR 1902.3(c), 29 CFR 1902.3(d), 29 CFR 1953.1(a), 29 CFR 1953.1(b), and 29 CFR 1956.2(a), which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation complies and conforms with the authorizing statutes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation promotes worker safety and health throughout Kentucky and ensures the state is as effective as the federal requirement. This regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 CFR 1902.3(c), 29 CFR 1902.3(d), 29 CFR 1953.1(a), 29 CFR 1953.1(b), and 29 CFR 1956.2(a), which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation is equivalent.

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

(a) How the amendment will change this existing administrative regulation: Section 1 of this administrative regulation, effective since June 6, 1979, defines terms. Section 2 establishes the procedure regarding failure to correct a violation pursuant to 29 CFR 1903.18. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations and was reviewed in accordance with HB 50 from the Regular Session of the 2017 General Assembly.

(b) The necessity of the amendment to this administrative regulation: This administrative