

902 KAR 47:200. Public health methamphetamine contamination.

RELATES TO: KRS 211.180, 212.210, 218A.1431, 224.01-410, 224.99-010(14), (15)

STATUTORY AUTHORITY: KRS 211.180, 212.210, 224.01-410(9), (10)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.01-410(9) requires the Department for Public Health to promulgate administrative regulations to establish requirements for notices, notice posting, and notice removal for an inhabitable property contaminated with methamphetamine. KRS 224.01-410(10) requires the Department for Public Health to promulgate administrative regulations to establish disclosure requirements for a methamphetamine property if the property is to be leased, rented, or sold. This administrative regulation establishes standards for the posting and removal of warning signs for a methamphetamine-contaminated property and establishes disclosure and appeal procedures for the owner of a methamphetamine-contaminated property if the property is to be leased, rented, or sold.

Section 1. Definitions. (1) "Cabinet" means the Kentucky Cabinet for Health and Family Services.

(2) "Commissioner" means the commissioner of the Kentucky Department for Public Health.

(3) "Clandestine Drug Lab Preliminary Assessment Tier Selection Criteria Form (TASS), DEP 1016 means the evaluation tool incorporated by reference in 401 KAR 101:030 and used by law enforcement to determine the tiered level of methamphetamine contamination within the inhabitable property.

(4) "Decontaminated" means the removal of methamphetamine contamination from an inhabitable property in a manner in accordance with 401 KAR 101:040.

(5) "Disclosure" means the notification made by the owner of a methamphetamine contaminated property to a potential buyer, lessee, or renter of that property advising them that the property is contaminated.

(6) "Methamphetamine Disclosure Statement" means the documentation provided by the property owner to the potential buyer, lessee, or renter that conforms to the requirements established in Section 4(2) of this administrative regulation.

(7) "Notice of Methamphetamine Contamination" means the form DFS 407 used to denote methamphetamine contamination within an inhabitable property.

(8) "Posted" or "posting" means the physical affixing of the Notice of Methamphetamine Contamination to the entrances of an inhabitable property with one (1) or more rooms with living, sanitary, and sleeping facilities arranged for the use of one (1) family or individual.

(9) "Released" means the authorization by the cabinet for the removal of the posted Notice of Methamphetamine Contamination and an authorization to the property owner that all disclosure requirements established in this administrative regulation are no longer applicable.

Section 2. Posting of Property. (1) Upon written notification received from law enforcement that an inhabitable property has been found to contain evidence of methamphetamine contamination and has had posted a Notice of Methamphetamine Contamination on all exterior entrances to the inhabitable property, the local health department shall request from the responding law enforcement agency a copy of the Clandestine Drug Lab Preliminary Assessment Tier Selection Criteria Form (TASS), DEP 1016, incorporated by reference in 401 KAR 101:030.

(2) Upon receipt of the issuance of a Notice of Methamphetamine Contamination by law enforcement, the local health department shall within ten (10) business days:

(a) Notify by certified mail the property owner listed on the deed of the inhabitable property that the property has been posted with a Notice of Methamphetamine Contamination;

(b) Notify the cabinet in writing that a Notice of Methamphetamine Contamination has been

posted upon the property;

(c) Provide the cabinet with a copy of the Clandestine Drug Lab Preliminary Assessment Tier Selection Criteria Form (TASS), DEP 1016;

(d) Notify the Kentucky State Police Methamphetamine Coordinator; and

(e) Notify the Energy and Environment Cabinet Superfund Branch.

(3) The Notice of Methamphetamine Contamination shall remain posted at the property entrances until the property owner receives notification from the local health department as established in Section 5(2) of this administrative regulation that the posting may be removed.

Section 3. Appeals Process. (1) A homeowner listed on the deed of the property who has received a Notice of Methamphetamine Contamination and who believes that the notice has been issued improperly may make a written request of appeal to the Commissioner of Public Health, Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621, within thirty (30) days of the date the notice was posted on the property.

(2) Upon receipt of an appeal, the commissioner shall forward the request to the Administrative Hearings Branch, which shall set the date, time, and place for the hearing requested within sixty (60) days of the date postmarked on the appeal envelope.

(3) The notice of appeal hearing shall conform to KRS 13B.050;

(4) The appeal hearing shall be conducted by a hearing officer appointed by the commissioner and in accordance with KRS 13B.080, 13B.090, and 13B.110.

(5) The hearing officer shall make a recommended order in accordance with KRS 13B.110.

(6) The secretary shall:

(a) Issue a final order in accordance with KRS 13B.120 after receipt of the hearing officer's recommended order; and

(b) Forward a copy of the final order to the Department of Public Health.

(7) An official record of the appeal hearing complying with KRS 13B.130 shall be retained by the Cabinet for Health and Family Services' Administrative Hearings Branch.

Section 4. Disclosure Requirements. (1) A property owner who chooses not to decontaminate a posted property contaminated by the production of methamphetamine shall disclose, in writing, the presence of contamination including the following information to all prospective buyers, tenants, and lessees of the property:

(a) The physical address of the property;

(b) The location within the posted property that was used in the production of methamphetamine; and

(c) A copy of the Notice of Methamphetamine Contamination.

(2) The property owner shall sign and date the Methamphetamine Disclosure Statement and maintain a copy of the Methamphetamine Disclosure Statement and documents attached thereto for the duration of their ownership.

(3) If a posted inhabitable property is sold or ownership is otherwise transferred, the new owner shall assume all responsibility for disclosure as established in this section.

(4) Upon request by the prospective buyer, tenant, or lessee, the property owner shall provide a copy of any documentation related to the methamphetamine contamination provided to the owner by law enforcement, the Energy and Environment Cabinet, the Department for Public Health, or the local health department.

(5) In cases if the posted inhabitable property is a mobile home, the owner shall assume all responsibilities for disclosure if the property is relocated to a new physical address.

(6) Failure by the property owner to disclose methamphetamine contamination as outlined in this section shall constitute a Class D Felony as required under KRS 224.99-010.

Section 5. Removal of the Posting. (1) The local health department shall authorize the removal of the Notice of Methamphetamine Contamination if:

(a) The property has been decontaminated and written approval for release by the Energy and Environment Cabinet has been received; or

(b) A properly submitted appeal as established in Section 3 of this administrative regulation has resulted in the secretary determining the property was issued a Notice of Methamphetamine Contamination improperly and a copy of such determination has been received by the local health department.

(2) The local health department shall notify, in writing within ten (10) business days of notification established in subsection (1) of this section the property owner listed on the deed of the property that:

(a) The Notice of Methamphetamine Contamination has been authorized to be removed from the entrances of the inhabitable property; and

(b) Disclosure requirements no longer apply.

(3) The local health department shall notify within ten (10) business days the cabinet, the Division of Waste Management, and the Kentucky State Police Methamphetamine Coordinator that the inhabitable property has been released.

(4) The local health department shall retain copies of notifications of release from Energy and Environmental Cabinet for at least seven (7) years.

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "DFS 407, Notice of Methamphetamine Contamination", July 2009; and

(b) "DFS 407, Notice of Methamphetamine Contamination", 2009.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. (35 Ky.R. 2843; Am. 36 Ky.R. 328; eff. 8-12-2009.)