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**IDAPA 16
TITLE 02
CHAPTER 24**

16.02.24 - CLANDESTINE DRUG LABORATORY CLEANUP

000. LEGAL AUTHORITY.

The Department is authorized to adopt rules under the “Clandestine Drug Laboratory Cleanup Act,” Section 6-2604, Idaho Code. (4-11-06)

001. TITLE AND SCOPE.

01. Title. The title of these rules is IDAPA 16.02.24, “Clandestine Drug Laboratory Cleanup.” (4-11-06)

02. Scope. (4-11-06)

a. These rules establish the acceptable processes and technology-based standards for the cleanup of clandestine drug laboratories in Idaho. (4-11-06)

b. The rules also establish a program to add and remove residential properties that housed a clandestine drug laboratory from a list maintained by the Department. (4-11-06)

002. WRITTEN INTERPRETATIONS.

There are no written interpretations for this chapter of rules. (4-11-06)

003. ADMINISTRATIVE APPEALS AND THE RIGHT TO APPEAL PROPERTY LISTING.

01. Administrative Appeals. Administrative appeals are governed by provisions of IDAPA 16.05.03, “Rules Governing Contested Case Proceedings and Declaratory Rulings.” (4-11-06)

02. Appeal of Property Listing. The certification by the reporting law enforcement agency that it is more likely than not that the property has been contaminated through use as a clandestine drug laboratory is prima facie evidence for listing the property on the Clandestine Drug Laboratory Site Property List. (4-11-06)

a. Property Owner's Right to Appeal. The property owner listed on the Clandestine Drug Laboratory Site Property List may appeal the listing by filing a written request for hearing with the Administrative Procedures Section, 10th Floor, 450 West State Street, P.O. Box 83720, Boise, ID 83720-0036, within twenty-eight (28) days of the mailing of the notification by the law enforcement agency. (4-11-06)

b. Burden of Proof. The burden is on the property owner to show, by a preponderance of evidence, that the property has not been contaminated through use as a clandestine drug laboratory. (4-11-06)

004. INCORPORATION BY REFERENCE.

There are no documents that have been incorporated by reference into this chapter of rules. (4-11-06)

005. OFFICE HOURS -- MAILING ADDRESS -- STREET ADDRESS -- TELEPHONE -- WEBSITE.

01. Office Hours. Office hours are 8 a.m. to 5 p.m., Mountain Time, Monday through Friday, except holidays designated by the state of Idaho. (4-11-06)

02. Mailing Address. The mailing address for the business office is Idaho Department of Health and Welfare, P.O. Box 83720, Boise, Idaho 83720-0036. (4-11-06)

03. Street Address. The business office of the Idaho Department of Health and Welfare is located at 450 West State Street, Boise, Idaho 83702. (4-11-06)

04. Telephone. The telephone number for the Idaho Department of Health and Welfare is (208) 334-

5500. (4-11-06)

05. **Internet Website.** The Department's internet website is <http://www.healthandwelfare.idaho.gov>. (4-11-06)

006. CONFIDENTIALITY OF RECORDS AND PUBLIC RECORDS REQUESTS.

01. **Confidential Records.** Any information about an individual covered by these rules and contained in the Department's records must comply with IDAPA 16.05.01, "Use and Disclosure of Department Records." (4-11-06)

02. **Public Records.** The Department will comply with Sections 9-337 through 9-350, Idaho Code, when requests for the examination and copying of public records are made. Unless otherwise exempted, all public records in the custody of the Department are subject to disclosure. (4-11-06)

007. -- 009. (RESERVED)

010. DEFINITIONS.

For the purposes of these rules, the following terms are used as defined below: (4-11-06)

01. **Certificate of Delisting.** A document issued by the Department certifying that a property has met the cleanup standard. (4-11-06)

02. **Certify.** To guarantee as meeting a standard. (4-11-06)

03. **Chain of Custody.** A procedure used to document each person that has had custody or control of an environmental sample from its source to the analytical laboratory, and the date and length of time of possession by each person. (4-11-06)

04. **Clandestine Drug Laboratory.** The area(s) where controlled substances or their immediate precursors, as those terms are defined in Section 37-2701, Idaho Code, have been, or were attempted to be, manufactured, processed, cooked, disposed of, or stored, and all proximate areas that are likely to be contaminated as a result of such manufacturing, processing, cooking, disposing or storing. (4-11-06)

05. **Clandestine Drug Laboratory Site Property List.** The list, maintained by the Department, of properties that have been identified as clandestine drug laboratories. (4-11-06)

06. **Cleanup Contractor.** One (1) or more individuals or commercial entities hired to conduct cleanup in accordance with the requirements of this rule. (4-11-06)

07. **Cleanup Standard.** The technology-based numerical value, established in Section 500 of these rules. (4-11-06)

08. **Clearance Sampling.** Testing conducted by a qualified industrial hygienist to verify that cleanup standards have been met. (4-11-06)

09. **Contamination or Contaminated.** The presence of chemical residues that exceed the cleanup standard established in Section 500 of these rules. (4-11-06)

10. **Delisted.** Removal of a property from the Clandestine Drug Laboratory Site Property List. (4-11-06)

11. **Demolish.** To completely tear down and dispose of a structure in compliance with local, state, and federal laws and regulations. (4-11-06)

12. **Department.** The Idaho Department of Health and Welfare. (4-11-06)

13. **Discrete Sample.** A single sample taken. (4-11-06)
14. **Documentation.** Preserving a record of an observation through writings, drawings, photographs, or other appropriate means. (4-11-06)
15. **Listed.** Addition of a property to the Clandestine Drug Laboratory Site Property List. (4-11-06)
16. **Methamphetamine.** Dextro-methamphetamine, levo-methamphetamine, and any racemic mixture of dextro/levo methamphetamine. (4-11-06)
17. **Non-Porous.** Resistant to penetration or saturation of chemical substances. (5-8-09)
18. **Porous.** Subject to penetration or saturation by chemical substances. (5-8-09)
19. **Qualified Industrial Hygienist.** Must be one (1) of the following: (4-11-06)
- a. **Certified Industrial Hygienist.** An individual who is certified in comprehensive practice by the American Board of Industrial Hygiene. (4-11-06)
- b. **Registered Professional Industrial Hygienist™.** An individual who is a registered member of the Association of Professional Industrial Hygienists and possesses a baccalaureate degree, issued by an accredited college or university, in industrial hygiene, engineering, chemistry, physics, biology, medicine, or related physical and biological sciences who has a minimum of three (3) years full-time industrial hygiene experience. A completed master's degree in a related physical or biological science, or in a related engineering discipline, may be substituted for one (1) year of the experience requirement; and a similar doctoral degree may be substituted for an additional year of the experience requirement. (4-11-06)
20. **Sampling.** A surface sample collected by wiping a sample media on the surface being sampled. (5-8-09)
21. **Technology-Based Standard.** A cleanup level based on what is believed to be conservative and protective, while at the same time achievable by currently available technologies. (4-11-06)
22. **Vacant.** Being without an occupant for the purposes of habitation or occupancy. (4-11-06)
- 011. -- 099. (RESERVED)**
- 100. POSTING THE CLANDESTINE DRUG LABORATORY SITE.**
In accordance with Section 6-2605, Idaho Code, the law enforcement agency having jurisdiction is responsible for posting a property with a sign stating that it has been identified as a clandestine drug laboratory. (4-11-06)
- 101. -- 109. (RESERVED)**
- 110. NOTIFICATION PROCESS.**
Once a property has been identified as a clandestine drug laboratory, the law enforcement agency having jurisdiction is responsible for initiating notification to the property owner and the Department within seventy-two (72) hours using the Department-approved form available to law enforcement. (5-8-09)
- 111. -- 119. (RESERVED)**
- 120. RECORD-KEEPING, LISTING, AND DELISTING A PROPERTY.**
01. **Listing a Property.** Upon notification by a law enforcement agency, using the Department approved form, the Department will place the property on a Clandestine Drug Laboratory Site Property List. No property may be listed unless the reporting law enforcement agency certifies, on the approved form, that it is more likely than not that the property has been contaminated through use as a clandestine drug laboratory. The list will be publicly available online at: <http://www.healthy.idaho.gov>. (4-11-06)

02. Delisting a Property. When a property is determined by a qualified industrial hygienist to meet the cleanup standard set forth by the Department in these rules, or the property owner submits documentation establishing that the property has been fully and lawfully demolished, the Department will issue the property owner a certificate of delisting. The certificate will include the date the property was listed as a clandestine drug laboratory site and the date the property was delisted. (4-11-06)

03. Voluntary Compliance. When a property owner voluntarily reports his property as a clandestine drug laboratory, the property will be placed on the Clandestine Drug Laboratory Site Property List and will be delisted when the requirements of these rules are met. This action will afford the property owner immunity from civil actions as provided in Section 6-2608, Idaho Code. (4-11-06)

121. -- 199. (RESERVED)

200. RESPONSIBILITIES OF THE PROPERTY OWNER.

The owner of a listed property must: (4-11-06)

01. Ensure the Vacancy of the Listed Property. Ensure the property remains vacant until the property is delisted in accordance with Section 120 of these rules; and (4-11-06)

02. Ensure That Cleanup Standards Are Met. (4-11-06)

a. Ensure that the property is cleaned up to meet the cleanup standards in Section 500 of these rules and have the analytical results certified by a qualified industrial hygienist; or (4-11-06)

b. Ensure that the property is demolished, in lieu of clean up, as provided for in Section 6-2606, Idaho Code. Demolition and removal of materials must be conducted in compliance with applicable local, state, and federal laws and regulations; and (4-11-06)

03. Provide the Department With a Written Report. Provide the Department with a written report in accordance with Section 600 of these rules. (4-11-06)

201. RESPONSIBILITIES OF THE QUALIFIED INDUSTRIAL HYGIENIST.

01. Qualified Industrial Hygienist Must Conduct Sampling. A qualified industrial hygienist must conduct sampling in accordance with Section 400 of these rules and meet the reporting requirements under Section 600 of these rules. (4-11-06)

02. Qualified Industrial Hygienist Must Be Independent. To prevent any real or potential conflicts of interest, qualified industrial hygienists conducting the sampling must be independent of the company or entity conducting the cleanup or analysis or both. (4-11-06)

202. DEPARTMENT LIST OF QUALIFIED INDUSTRIAL HYGIENISTS.

The Department will maintain a list of qualified industrial hygienists on their website is <http://www.healthy.idaho.gov>. (4-11-06)

203. -- 299. (RESERVED)

300. CLEANUP PROCESS.

01. Cleanup Options for the Property Owner. The property owner may choose to hire a cleanup contractor or conduct the cleanup himself in accordance with all applicable local, state, and federal laws and regulations. Cleanup must be conducted to reduce the concentration of methamphetamine to the standard specified in Section 500 of these rules. (5-8-09)

02. Porous Materials Must Be Removed from the Property. Porous materials must be removed from the property unless a qualified industrial hygienist certifies that the porous materials may remain on the property. An

adequate coating or sealant can be applied to a porous surface as an acceptable cleanup method, if it meets the requirements under Subsection 500.02 of these rules. (5-8-09)

301. DISPOSAL OF CLEANUP WASTE.

Waste disposal must be conducted in compliance with applicable local, state, and federal laws and regulations. (4-11-06)

302. -- 399. (RESERVED)

400. CLEARANCE SAMPLING REQUIREMENTS.

01. Qualified Industrial Hygienist Required. Sampling must be conducted by a qualified industrial hygienist to verify that cleanup standards have been met. (4-11-06)

02. General Sampling Procedures. Sample collection must be conducted according to the following minimum requirements: (4-11-06)

a. All sample locations must be photographed, and the photographs must be included in the final report required under Section 600 of these rules. (4-11-06)

b. All sample locations must be shown on a floor plan of the property, and the floor plan must be included in the final report required under Section 600 of these rules. (4-11-06)

c. All samples must be obtained, preserved, and handled in accordance with professional standards for the types of samples and analytical testing to be conducted under the chain of custody protocol. (4-11-06)

d. Samples must be analyzed by a laboratory certified by the U.S. Environmental Protection Agency or accredited by the American Industrial Hygiene Association laboratory accreditation program for the analyte being analyzed. (5-8-09)

e. All sampling locations must be numerically identified and the numbered sampling locations must be delineated on the floor plan, visible in photographs, and linked to samples. (4-11-06)

f. Standard three inch by three (3x3) inch gauze must be used for all sampling. The gauze must be wetted with analytical grade methanol or isopropanol. Each surface being sampled must be wiped at least five (5) times in two (2) perpendicular directions and the gauze turned onto itself throughout the wiping process. (5-8-09)

g. After sampling, the sample must be placed in a new, clean sample container and sealed with a Teflon-lined lid. The sample container must be properly labeled with at least the site or project identification number, date, time, and actual sample location. The sample container must be handled according to professional standards and conducted under the chain of custody protocol. (5-8-09)

h. Discrete sampling must be used in areas expected to have the highest levels of contamination, as identified on the Department approved form. A ten (10) centimeter by ten (10) centimeter area (one hundred square centimeters (100 cm²), or approximately sixteen (16) square inches) must be sampled from non-porous surfaces such as floors, walls, appliances, sinks, or countertops in each room. The sample area must be composed of no fewer than three (3) discrete samples. (4-11-06)

i. All other rooms of the property with lowest levels of contamination must be sampled using one (1) discrete sample per room. (4-11-06)

j. A ten (10) centimeter by ten (10) centimeter area (one hundred square centimeters (100 cm²), or approximately sixteen (16) square inches) must be sampled from the ventilation system in a location to be determined by the qualified industrial hygienist. (4-11-06)

401. -- 499. (RESERVED)

500. CLEANUP STANDARDS.

01. Cleanup Standard for Methamphetamine. A level of methamphetamine that does not exceed a concentration of point one (0.1) micrograms per one hundred (100) square centimeters (0.1 µg/100 cm²) as demonstrated by clearance sampling conducted by a qualified industrial hygienist. (4-11-06)

02. Cleanup Standard for a Porous Surface. If a porous surface has a level of methamphetamine that does not exceed a concentration of point five (0.5) micrograms per one hundred (100) square centimeters (0.5 µg/100 cm²) as demonstrated by clearance sampling conducted by a qualified industrial hygienist, an adequate coating or sealant appropriate to the material can be used as a method to meet the cleanup standard under Subsection 500.01 of this rule. (5-8-09)

03. Other Cleanup Standards. Standards may be established for the cleanup of other controlled substances found in clandestine drug laboratories on a case by case basis, based on an inventory of chemicals found, and after consultation with the Department, the property owner, law enforcement, and a qualified industrial hygienist. (4-11-06)

501. -- 599. (RESERVED)

600. REPORTING REQUIREMENTS.

In order for the property to be delisted, the property owner must provide the Department with an original or certified copy of the final report from the qualified industrial hygienist. The final report must include at least the following information: (4-11-06)

01. Property Description. The property description including physical street address (apartment or motel number, if applicable), city, zip code, legal description, ownership, and number and type of structures present. (4-11-06)

02. Documentation of Clearance Sampling Procedures. Documentation of sampling procedures in accordance with the requirements under Section 400 of these rules. (4-11-06)

03. Laboratory Results. Analytical results from a laboratory as specified in Section 400 of these rules. (4-11-06)

04. Qualifications of the Qualified Industrial Hygienist. Qualified industrial hygienist statement of qualifications, including professional certification or documentation. (4-11-06)

05. Signed Certification Statement. A signed certification statement as stating: "I certify that the cleanup standard established by the Idaho Department of Health and Welfare has been met as evidenced by testing I conducted." (4-11-06)

06. Demolition Documentation. If the property owner chooses to demolish the property, documentation must be provided to the Department showing that the structure was completely and lawfully demolished and disposed of in compliance with local, state, and federal laws and regulations. (4-11-06)

601. -- 999. (RESERVED)

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