

IDAPA 16 – IDAHO DEPARTMENT OF HEALTH AND WELFARE

Division of Public Health – Bureau of Environmental Health and Communicable Disease

16.02.24 – Clandestine Drug Laboratory Cleanup

Who does this rule apply to?

Realtors, landlords, property owners, property buyers, property sellers, disaster cleanup contractors, local governmental municipalities, qualified industrial hygienists, law enforcement, hazardous waste removal experts, and laboratories.

What is the purpose of this rule?

These rules establish the acceptable processes and technology-based standards for the cleanup of clandestine drug laboratories in Idaho. 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.

What is the legal authority for the agency to promulgate this rule?

This rule implements the following statute passed by the Idaho Legislature:

Actions in Particular Cases -

- [Section 6-2604, Idaho Code](#) – Clandestine Drug Laboratory Cleanup Act: Rules

Where can I find information on Administrative Appeals?

Administrative appeals and contested cases are governed by the provisions of IDAPA 16.05.03, “Contested Case Proceedings and Declaratory Rulings.” Regarding the Right to Appeal a 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.

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.*

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.*

How do I request public records?

Unless exempted, all public records are subject to disclosure by the Department that will comply with Title 74, Chapter 1, Idaho Code, upon requests. Confidential information may be restricted by state or federal law, federal regulation, and IDAPA 16.05.01, “Use and Disclosure of Department Records.”

Who do I contact for more information on this rule?

Idaho Department of Health and Welfare
Bureau of Community & Environmental Health –
Idaho Indoor Environment Program
450 West State Street
Boise, ID 83702

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P.O. Box 83720
Boise, ID 83720-0036
Phone: (208) 445-8647
Fax: (208) 334-6573
Email: eh@dhw.idaho.gov

Webpages:

Clandestine Labs – <https://healthandwelfare.idaho.gov/Health/EnvironmentalHealth/HealthyHomes/Methamphetamine-ClandestineLabCleanup/tabid/183/Default.aspx>

Environmental Health – <https://healthandwelfare.idaho.gov/health-wellness/environmental-health>

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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. (7-1-24)

001. (RESERVED)

002. RIGHT TO APPEAL PROPERTY LISTING.

The certification by the reporting law enforcement agency that the property has been contaminated through use as a clandestine drug laboratory (CDL) is prima facie evidence for listing the property on the Clandestine Drug Laboratory Site Property List (CDLSPL). (7-1-24)

01. Property Owner's Right to Appeal. The property owner 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. (7-1-24)

02. Burden of Proof. The burden is on the property owner to show, by a preponderance of evidence, the property has not been contaminated through use as a CDL. (7-1-24)

003. – 009. (RESERVED)

010. DEFINITIONS.

Definitions relevant to these rules but not found below may be under Section 6-2603, Idaho Code. (7-1-24)

01. Certificate of Delisting. A document issued by the Department certifying a property has met the cleanup standard. (7-1-24)

02. Certify. To guarantee as meeting a standard. (7-1-24)

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, including date and length of time of possession by each person. (7-1-24)

04. Clandestine Drug Laboratory (CDL). Defined under Section 6-2603(1), Idaho Code. (7-1-24)

05. Clandestine Drug Laboratory Site Property List (CDLSPL). The Department list of properties that have been identified as clandestine drug laboratories. See Department website at <https://healthandwelfare.idaho.gov/health-wellness/environmental-health/clandestine-labs> (7-1-24)

06. Cleanup Contractor. One (1) or more individuals or commercial entities hired to conduct cleanup under these rules. (7-1-24)

07. Cleanup Standard. The technology-based numerical value, under Section 500 of these rules. (7-1-24)

08. Clearance Sampling. Testing conducted by a qualified industrial hygienist to verify cleanup standards have been met. (7-1-24)

09. Contamination or Contaminated. The presence of chemical residues that exceed the cleanup standard under Section 500 of these rules. (7-1-24)

10. Delisted. Removal of a property from the CDLSPL. (7-1-24)

11. Demolish. To tear down and dispose of a structure under local, state, and federal laws and regulations. (7-1-24)

12. Department. The Idaho Department of Health and Welfare. (7-1-24)

13. Discrete Sample. A single sample taken. (7-1-24)

- 14. Documentation.** Preserving a record of an observation through writings, drawings, photographs, or other appropriate means. (7-1-24)
- 15. Listed.** Addition of a property to the CDLSPL. (7-1-24)
- 16. Methamphetamine.** Dextro-methamphetamine, levo-methamphetamine, and any racemic mixture of dextro/levo methamphetamine. (7-1-24)
- 17. Non-Porous.** Resistant to penetration or saturation of chemical substances. (7-1-24)
- 18. Porous.** Subject to penetration or saturation by chemical substances. (7-1-24)
- 19. Qualified Industrial Hygienist.** Must be one (1) of the following: (7-1-24)
- a.** Certified Industrial Hygienist. An individual who is certified in comprehensive practice by the American Board of Industrial Hygiene. (7-1-24)
- b.** Registered Professional Industrial Hygienist™. An individual who is a registered member of the Association of Professional Industrial Hygienists. (7-1-24)
- 20. Sampling.** A surface sample collected by wiping a sample media on the surface being sampled. (7-1-24)
- 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. (7-1-24)
- 22. Vacant.** Being without an occupant for the purposes of habitation or occupancy. (7-1-24)
- 011. -- 099. (RESERVED)**
- 100. POSTING THE CLANDESTINE DRUG LABORATORY (CDL) SITE.**
Under Section 6-2605, Idaho Code, the law enforcement agency having jurisdiction is responsible for posting a sign on the property identified as a CDL. (7-1-24)
- 101. -- 109. (RESERVED)**
- 110. NOTIFICATION PROCESS.**
Once a property has been identified as a CDL, 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. (7-1-24)
- 111. -- 119. (RESERVED)**
- 120. RECORD-KEEPING, LISTING, AND DELISTING A PROPERTY.**
- 01. Listing a Property.** Upon notification by a law enforcement agency, the Department will place the property on the CDLSPL. 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 CDL. The list is available online at: <https://healthandwelfare.idaho.gov/health-wellness/environmental-health/ clandestine-labs> (7-1-24)
- 02. Delisting a Property.** When a property is determined by a qualified industrial hygienist to meet the cleanup standard in these rules, or the property owner submits documentation establishing 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 CDL site and the date the property was delisted. (7-1-24)
- 03. Voluntary Compliance.** When a property owner voluntarily reports their property as a CDL, the

property will be placed on the CDLSPL and will be delisted under Subsection 120.02 of this rule. This action will afford the property owner immunity from civil actions under Section 6-2608, Idaho Code. (7-1-24)

121. -- 199. (RESERVED)

200. RESPONSIBILITIES OF THE PROPERTY OWNER.

The owner of a listed property must meet the requirements under Section 6-2606(2), Idaho Code, and the following: (7-1-24)

01. Ensure the Vacancy of the Listed Property. Ensure the property remains vacant until the property is delisted under Subsection 120.02 of these rules; and (7-1-24)

02. Ensure Cleanup Standards Are Met. (7-1-24)

a. Ensure property meets the standards in Section 500 of these rules and have the analytical results certified by a qualified industrial hygienist; or (7-1-24)

b. Ensure the property is demolished, in lieu of clean up, under Section 6-2606, Idaho Code. Demolition and removal of materials must comply with applicable local, state, and federal laws and regulations; and (7-1-24)

03. Provide Department With a Written Report Under Section 600 of these Rules. (7-1-24)

201. RESPONSIBILITIES OF THE QUALIFIED INDUSTRIAL HYGIENIST.

01. Conduct Sampling by Qualified Industrial Hygienist. A qualified industrial hygienist must conduct sampling under Section 400 of these rules and meet reporting requirements under Section 600 of these rules. (7-1-24)

02. Independent Qualified Industrial Hygienist. To prevent any real or potential conflicts of interest, qualified industrial hygienists conducting sampling must be independent of the company or entity conducting the cleanup or analysis, or both. (7-1-24)

202. -- 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 themselves under all applicable local, state, and federal laws and regulations. Cleanup must be conducted to reduce the concentration of methamphetamine to standards listed under Section 500 of these rules. (7-1-24)

02. Removal of Porous Materials from Property. Porous materials must be removed from the property unless a qualified industrial hygienist certifies the porous materials may remain. 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. (7-1-24)

301. DISPOSAL OF CLEANUP WASTE.

Waste disposal must comply with applicable local, state, and federal laws and regulations. (7-1-24)

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. (7-1-24)

02. General Sampling Procedures. All sample collection must be conducted with the following requirements: (7-1-24)

a. Sample locations are photographed and show the floor plan of the property, all of which are included in the final report required under Section 600 of these rules. (7-1-24)

b. Samples are obtained, preserved, and handled under professional standards for the types of samples and analytical testing to be conducted under the chain of custody protocol. (7-1-24)

c. Samples are 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. (7-1-24)

d. Sampling locations are numerically identified and the numbered sampling locations delineated on the floor plan, visible in photographs, and linked to samples. (7-1-24)

e. Standard three inch by three (3x3) inch gauze are used for all sampling. The gauze must be wetted with analytical grade methanol or isopropanol and each surface sampled wiped at least five (5) times in two (2) perpendicular directions and the gauze turned onto itself throughout the wiping process. (7-1-24)

f. After sampling, the sample is placed in a new, clean sample container and sealed with a Teflon-lined lid. The sample container must be labeled with the site or project identification number, date, time, and sample location, and be handled by professional standards and conducted under the chain of custody protocol. (7-1-24)

g. Discrete sampling is 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. (7-1-24)

h. All other rooms of the property with lowest levels of contamination are sampled using one (1) discrete sample per room. (7-1-24)

i. A ten (10) centimeter by ten (10) centimeter area (one hundred square centimeters (100 cm²), or approximately sixteen (16) square inches) is sampled from the ventilation system in a location to be determined by the qualified industrial hygienist. (7-1-24)

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. (7-1-24)

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. (7-1-24)

03. Other Cleanup Standards. Standards may be established for the cleanup of other controlled substances found in clandestine drug laboratories on an individual basis, based on an inventory of chemicals found, and after consultation with the Department, the property owner, law enforcement, and a qualified industrial hygienist. (7-1-24)

501. -- 599. (RESERVED)

600. REPORTING REQUIREMENTS.

For the property to be delisted, the property owner must provide the Department with an original or certified copy of the final report that includes the following from a qualified industrial hygienist. (7-1-24)

01. Property Description. The property description including physical street address (apartment or motel number), city, zip code, legal description, ownership, and number and type of structures present. (7-1-24)

02. Documentation of Clearance Sampling Procedures. Documentation of sampling procedures as required under Section 400 of these rules. (7-1-24)

03. Laboratory Results. Analytical results from a laboratory as specified in Section 400 of these rules. (7-1-24)

04. Qualifications of the Qualified Industrial Hygienist. Qualified industrial hygienist statement of qualifications, including professional certification or documentation. (7-1-24)

05. Signed Certification Statement. A signed certification statement 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." (7-1-24)

06. Demolition Documentation. If the property owner chooses to demolish the property, documentation must be provided to the Department showing the structure was completely and lawfully demolished and disposed of complying with local, state, and federal laws and regulations. (7-1-24)

601. -- 999. (RESERVED)