

Dear Senators VANORDEN, Zuiderveld, Wintrow, and
Representatives VANDER WOUDE, Erickson, Chew:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of
the Department of Health and Welfare:

IDAPA 16.02.24 - Clandestine Drug Laboratory Cleanup (ZBR Chapter Rewrite) - Proposed Rule
(Docket No. 16-0224-2301).

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by the
cochairmen or by two (2) or more members of the subcommittee giving oral or written notice to Research
and Legislation no later than fourteen (14) days after receipt of the rules' analysis from Legislative
Services. The final date to call a meeting on the enclosed rules is no later than 09/28/2023. If a meeting is
called, the subcommittee must hold the meeting within forty-two (42) days of receipt of the rules' analysis
from Legislative Services. The final date to hold a meeting on the enclosed rules is 10/26/2023.

The germane joint subcommittee may request a statement of economic impact with respect to a
proposed rule by notifying Research and Legislation. There is no time limit on requesting this statement,
and it may be requested whether or not a meeting on the proposed rule is called or after a meeting has
been held.

To notify Research and Legislation, call 334-4854, or send a written request to the address on the
memorandum attached below.



Terri Kondeff
Director

Legislative Services Office

Idaho State Legislature

Serving Idaho's Citizen Legislature

MEMORANDUM

TO: Rules Review Subcommittee of the Senate Health & Welfare Committee and the House Health & Welfare Committee
FROM: Principal Legislative Drafting Attorney - Elizabeth Bowen
DATE: August 4, 2023
SUBJECT: Department of Health and Welfare

IDAPA 16.02.24 - Clandestine Drug Laboratory Cleanup (ZBR Chapter Rewrite) - Proposed Rule (Docket No. 16-0224-2301)

Summary and Stated Reasons for the Rule

This proposed rule rewrites a chapter of rules concerning clandestine drug laboratory cleanup in order to simplify the language pursuant to Executive Order 2020-01.

Negotiated Rulemaking / Fiscal Impact

Negotiated rulemaking was conducted. There is no anticipated negative fiscal impact on the state general fund.

Statutory Authority

This rulemaking appears to be authorized pursuant to Section 6-2604, Idaho Code.

cc: Department of Health and Welfare
Frank Powell and Trinette Middlebrook

***** PLEASE NOTE *****

Per the Idaho Constitution, all administrative rules may be reviewed by the Legislature during the next legislative session. The Legislature has 3 options with this rulemaking docket: **1)** Approve the docket in its entirety; **2)** Reject the docket in its entirety; or **3)** Reject the docket in part.

Paul Headlee, Deputy Director Legislative Services Office	Kristin Ford, Manager Research & Legislation	Keith Bybee, Manager Budget & Policy Analysis	April Renfro, Manager Legislative Audits	Norma Clark, Manager Information Technology
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Statehouse, P.O. Box 83720
Boise, Idaho 83720-0054

Tel: 208-334-2475
legislature.idaho.gov

IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE

16.02.24 – CLANDESTINE DRUG LABORATORY CLEANUP

DOCKET NO. 16-0224-2301 (ZBR CHAPTER REWRITE)

NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 6-2604, Idaho Code.

PUBLIC HEARING SCHEDULE: A public hearing concerning this rulemaking will be held as follows:

VIRTUAL TELECONFERENCE Via WebEx
Monday, August 21, 2023 1:00 p.m. - 2:00 p.m. (MT)
Join from the meeting link https://idhw.webex.com/idhw/j.php?MTID=m7eada4d76a60f753bd9cbcb3f052c2ef
Join by meeting number Meeting number (access code): 2764 132 7544 Meeting password: wiSwXMmD252 (94799663 from phones and video systems)
Join by phone +1-415-527-5035 United States Toll +1-303-498-7536 United States Toll (Denver)

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below. Each meeting will conclude after 30 minutes if no participants sign in or wish to comment in the meeting.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Under [Executive Order 2020-01](#): Zero-Based Regulation, the Department is striving to prevent the accumulation of costly, ineffective, and outdated regulations and reduce regulatory burden to achieve a more efficient operation of government. The rule changes are intended to perform a comprehensive review of this chapter by collaborating with the public to streamline or simplify this rule language.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased:

This chapter contains no fees or charges.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the State General Fund greater than ten thousand dollars (\$10,000) during the fiscal year as a result of this rulemaking:

This rulemaking is not anticipated to have any fiscal impact on the State General Fund, or any other known funds.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the April 5, 2023, Idaho Administrative Bulletin, [Vol. 23-4, pages 29 through 30](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule:

There are no incorporations by reference in this chapter rewrite.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Brigitta Gruenberg at 208-334-5929.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 23, 2023.

DATED this 6th day of July, 2023.

Trinette Middlebrook and Frank Powell
DHW – Administrative Rules Unit
450 W. State Street – 10th Floor
P.O. Box 83720
Boise, ID 83720-0036
phone: (208) 334-5500
fax: (208) 334-6558
e-mail: dhwrules@dhw.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0224-2301
(ZBR Chapter Rewrite)

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. ()

001. ~~TITLE AND SCOPE.~~ (RESERVED)

~~01. Title.~~ The title of these rules is IDAPA 16.02.24, “Clandestine Drug Laboratory Cleanup.” (3-17-22)

~~02. Scope.~~ (3-17-22)

~~a. These rules establish the acceptable processes and technology based standards for the cleanup of clandestine drug laboratories in Idaho.~~ (3-17-22)

~~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.~~ (3-17-22)

002. RIGHT TO APPEAL PROPERTY LISTING.

~~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 (CDL) is prima facie evidence

for listing the property on the Clandestine Drug Laboratory Site Property List (CDLSPL). (3-17-22)()

01. 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. (3-17-22)()

02. 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~~ CDL. (3-17-22)()

003. – 009. (RESERVED)

010. DEFINITIONS.

~~For the purposes of these rules, the following terms are used as defined below:~~ Definitions relevant to these rules but not found below may be under Section 6-2603, Idaho Code. (3-17-22)()

01. Certificate of Delisting. A document issued by the Department certifying ~~that~~ a property has met the cleanup standard. (3-17-22)()

02. Certify. To guarantee as meeting a standard. ()

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~~ including date and length of time of possession by each person. (3-17-22)()

04. Clandestine Drug Laboratory (CDL). ~~The area(s) where controlled substances or their immediate precursors, as those terms are defined in under Section 37-2701 6-2603(1), 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.~~ (3-17-22)()

05. Clandestine Drug Laboratory Site Property List (CDLSPL). The Department list, ~~maintained by the Department,~~ of properties that have been identified as clandestine drug laboratories. See Department website at <https://healthandwelfare.idaho.gov/health-wellness/environmental-health/clandestine-labs>. (3-17-22)()

06. Cleanup Contractor. One (1) or more individuals or commercial entities hired to conduct cleanup ~~in accordance with the requirements of this~~ under these rules. (3-17-22)()

07. Cleanup Standard. The technology-based numerical value, ~~established in~~ under Section 500 of these rules. (3-17-22)()

08. Clearance Sampling. Testing conducted by a qualified industrial hygienist to verify ~~that~~ cleanup standards have been met. (3-17-22)()

09. Contamination or Contaminated. The presence of chemical residues that exceed the cleanup standard ~~established in~~ under Section 500 of these rules. (3-17-22)()

10. Delisted. Removal of a property from the ~~Clandestine Drug Laboratory Site Property List~~ CDLSPL. (3-17-22)()

11. Demolish. To ~~completely~~ tear down and dispose of a structure ~~in compliance with~~ under local, state, and federal laws and regulations. (3-17-22)()

12. Department. The Idaho Department of Health and Welfare. ()

13. Discrete Sample. A single sample taken. ()

14. Documentation. Preserving a record of an observation through writings, drawings, photographs, or

other appropriate means. ()

15. **Listed.** Addition of a property to the ~~Clandestine Drug Laboratory Site Property List~~ **CDLSPL**. (3-17-22)()

16. **Methamphetamine.** Dextro-methamphetamine, levo-methamphetamine, and any racemic mixture of dextro/levo methamphetamine. ()

17. **Non-Porous.** Resistant to penetration or saturation of chemical substances. ()

18. **Porous.** Subject to penetration or saturation by chemical substances. ()

19. **Qualified Industrial Hygienist.** Must be one (1) of the following: ()

a. **Certified Industrial Hygienist.** An individual who is certified in comprehensive practice by the American Board of Industrial Hygiene. ()

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.~~ (3-17-22)()

20. **Sampling.** A surface sample collected by wiping a sample media on the surface being sampled. ()

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. ()

22. **Vacant.** Being without an occupant for the purposes of habitation or occupancy. ()

011. -- 099. (RESERVED)

100. POSTING THE CLANDESTINE DRUG LABORATORY (CDL) SITE.

~~In accordance with~~ **Under** 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 on the property~~ identified as ~~a clandestine drug laboratory~~ **CDL**. (3-17-22)()

101. -- 109. (RESERVED)

110. NOTIFICATION PROCESS.

Once a property has been identified as a ~~clandestine drug laboratory~~ **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 ~~available to law enforcement~~. (3-17-22)()

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~~ **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 ~~clandestine drug laboratory~~ **CDL**. The list ~~will be publicly~~ **is** available online at: <https://publicdocuments.dhw.idaho.gov/WebLink/DocView.aspx?id=1432&dbid=0&repo=PUBLIC-DOCUMENTS&cr=1>. (3-17-22)()

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~~ CDL site and the date the property was delisted. (3-17-22)()

03. **Voluntary Compliance.** When a property owner voluntarily reports their property as a ~~clandestine drug laboratory~~ CDL, the property will be placed on the ~~Clandestine Drug Laboratory Site Property List~~ CDLSPL and will be delisted ~~when the requirements of these rules are met~~ under Subsection 120.02 of this rule. This action will afford the property owner immunity from civil actions ~~as provided in~~ under Section 6-2608, Idaho Code. (3-17-22)()

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: (3-17-22)()

01. **Ensure the Vacancy of the Listed Property.** Ensure the property remains vacant until the property is delisted ~~in accordance with~~ under Subsection 120.02 of these rules; and (3-17-22)()

02. **Ensure ~~That~~ Cleanup Standards Are Met.** (3-17-22)()

a. Ensure ~~that the~~ property ~~is cleaned up to~~ meets the ~~cleanup~~ standards in Section 500 of these rules and have the analytical results certified by a qualified industrial hygienist; or (3-17-22)()

b. Ensure ~~that~~ the property is demolished, in lieu of clean up, ~~as provided for in~~ under Section 6-2606, Idaho Code. Demolition and removal of materials must ~~be conducted in compliance~~ comply with applicable local, state, and federal laws and regulations; and (3-17-22)()

03. **Provide ~~the~~ Department With a Written Report Under Section 600 of these Rules.** ~~Provide the Department with a written report in accordance with Section 600 of these rules.~~ (3-17-22)()

201. **RESPONSIBILITIES OF THE QUALIFIED INDUSTRIAL HYGIENIST.**

01. **Conduct Sampling by Qualified Industrial Hygienist.** A qualified industrial hygienist must conduct sampling ~~in accordance with~~ under Section 400 of these rules and meet ~~the~~ reporting requirements under Section 600 of these rules. (3-17-22)()

02. **Independent Qualified Industrial Hygienist.** 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. (3-17-22)()

~~202. DEPARTMENT LIST OF QUALIFIED INDUSTRIAL HYGIENISTS.~~

~~The Department will maintain a list of qualified industrial hygienists on their website is <https://healthandwelfare.idaho.gov/health-wellness/environmental-health/clandestine-labs>.~~ (3-17-22)

~~203~~2. -- 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 ~~him~~ them ~~self~~ in accordance with under all applicable local, state, and federal laws and regulations. Cleanup must be conducted to reduce the concentration of methamphetamine to ~~the~~ standards ~~specified in~~ listed under Section 500 of these rules. (3-17-22)()

02. Removal of Porous Materials from 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. (3-17-22)()

301. DISPOSAL OF CLEANUP WASTE.

Waste disposal must ~~be conducted in compliance~~ comply with applicable local, state, and federal laws and regulations. (3-17-22)()

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. ()

02. General Sampling Procedures. All Ssample collection must be conducted ~~according to~~ with the following ~~minimum~~ requirements: (3-17-22)()

a. All sSample locations ~~must be~~ are photographed, and ~~the photographs show the floor plan of the property, all of which are~~ included in the final report required under Section 600 of these rules. (3-17-22)()

b. ~~All sample locations must be shown on a floor plan of the property, and the floor plan included in the final report required under Section 600 of these rules.~~ (3-17-22)

c. All sSamples ~~must be~~ are obtained, preserved, and handled ~~in accordance with~~ under professional standards for the types of samples and analytical testing to be conducted under the chain of custody protocol. (3-17-22)()

d. Samples ~~must be~~ 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. (3-17-22)()

e. All sSampling locations ~~must be~~ are numerically identified and the numbered sampling locations delineated on the floor plan, visible in photographs, and linked to samples. (3-17-22)()

f. Standard three inch by three (3x3) inch gauze ~~must be~~ are used for all sampling. The gauze must be wetted with analytical grade methanol or isopropanol, and ~~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. (3-17-22)()

g. After sampling, the sample ~~must be~~ is 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, and~~ be handled ~~according to~~ by professional standards and conducted under the chain of custody protocol. (3-17-22)()

h. Discrete sampling ~~must be~~ 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. (3-17-22)()

i. All other rooms of the property with lowest levels of contamination ~~must be~~ are sampled using one (1) discrete sample per room. (3-17-22)()

j. A ten (10) centimeter by ten (10) centimeter area (one hundred square centimeters (100 cm²), or approximately sixteen (16) square inches) ~~must be~~ is sampled from the ventilation system in a location to be

determined by the qualified industrial hygienist.

(3-17-22)()

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 $\mu\text{g}/100\text{ cm}^2$) as demonstrated by clearance sampling conducted by a qualified industrial hygienist. ()

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 $\mu\text{g}/100\text{ cm}^2$) 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. ()

03. Other Cleanup Standards. Standards may be established for the cleanup of other controlled substances found in clandestine drug laboratories on an ~~an~~ ease-by-ease 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. (3-17-22)()

501. -- 599. (RESERVED)

600. REPORTING REQUIREMENTS.

~~In order for~~ 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 ~~the~~ a qualified industrial hygienist. ~~The final report must include at least the following information:~~ (3-17-22)()

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. (3-17-22)()

02. Documentation of Clearance Sampling Procedures. Documentation of sampling procedures ~~in accordance with the~~ as requirements ~~d~~ under Section 400 of these rules. (3-17-22)()

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

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

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." (3-17-22)()

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~~ complying with local, state, and federal laws and regulations. (3-17-22)()

601. -- 999. (RESERVED)