

Dear Senators LODGE, Broadsword & Werk, and
Representatives BLOCK, Nielsen & Henbest:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of the Health & Welfare: 16.02.24 Clandestine Drug Laboratory Cleanup.

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 10-08-08. 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 11-05-08.

_____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 334-2475, or send a written request to the address or FAX number indicated on the memorandum enclosed.

MEMORANDUM

TO: Rules Review Subcommittee of the Senate Health & Welfare Committee and the House Health & Welfare Committee

FROM: Research & Legislation Staff - Paige Alan Parker

DATE: September 19, 2008

SUBJECT: Department of Health and Welfare - IDAPA 16.02.24 - Clandestine Drug Laboratory Cleanup (Docket No. 16-0224-0801 (Proposed))

By this rule docket, the Department of Health and Welfare proposes to amend chapter 02.24 of title 16, Idaho Administrative Code (Docket No. 16-0224-0801)(hereinafter, "proposed rule"). According to the Department, the proposed rule is authorized pursuant to section 6-2604, Idaho Code. Chapter 26, title 6, Idaho Code, is the Clandestine Drug Laboratory Cleanup Act, adopted by the Idaho Legislature in 2005. Section 6-2604, Idaho Code, requires the Department to establish the acceptable process and standards for the cleanup of clandestine drug laboratories and to establish a program for addition to and removal from a list of residential properties that housed a clandestine drug laboratory.

The Department states that the purpose of the proposed rule is to clarify cleanup requirements to ensure more consistency in clandestine drug lab cleanup and clearance processes. In addition, the Department states that the proposed rule clarifies the reporting process for law enforcement to provide for notification of both the property owner and the Department in order to make the online Clandestine Drug Laboratory Site Property List maintained by the Department more accurate, up-to-date and comprehensive.

According to the Department, no fee or charge is imposed by the proposed rule and there is no anticipated fiscal impact to the state General Fund as a result of this rulemaking. The Department states that negotiated rulemaking was not conducted. However, the Department notes that it held an informal meeting with members of the ad hoc stakeholder workgroup (including cleanup contractors, realtor associations, district health departments, industrial hygienists, Department staff, United State Department of Agriculture representatives, Environmental Protection Agency representatives, Homeland Security representatives, law enforcement representatives, legal counsel and legislators) on July 7, 2008. The Department states that public hearings will be scheduled if requested in writing by 25 persons, a political subdivision or an agency not later than Wednesday, October 15, 2008. All written comments must be delivered to the Department on or before Wednesday, October 22, 2008.

ANALYSIS

Three definition changes are made by the proposed rule. The definitions of “non-porous” and “porous” now include the property of being resistant or subject to “saturation” and excluded the term “materials.” “Sampling” no longer allows for “blotting” a sample media on the surface being sampled. Section 010.

Under Section 110, the Department must be notified of a property that has been identified as a clandestine drug laboratory by the jurisdictional law enforcement agency within seventy-two hours on a Department approved form.

The proposed rule requires a property owner who conducts cleanup himself to do so in accordance with all applicable local, state and federal laws and regulations. Also, the proposed rule provides that an adequate coating or sealant applied to a porous surface is an acceptable cleanup method if certain requirements are met. Section 300.01. The requirements are a porous surface with a level of methamphetamine less than 0.5 micrograms per 100 square centimeters, as demonstrated by clearance sampling conducted by a qualified industrial hygienist. Section 500.02.

A sample may be analyzed by a laboratory certified by the American Hygiene Association laboratory accreditation program for the analyte being analyzed. Section 400.02.d. The proposed rule replaces “Whatman 40 ashless filter paper or equivalent” with “standard three inch-by-three (3x3) inch gauze” for sampling, permits the wetting the gauze with isopropanol (rather than ethanol or distilled/deionized water) and requires that the gauze be turned onto itself throughout the wiping process. Section 400.02.f. The sample must be placed in a “container” (rather than a “jar”) and be handled and “conducted under chain of custody protocol.” Section 400.02.g.

SUMMARY

The Department’s proposed rule is authorized under section 6-2604, Idaho Code.

cc: Tamara Prisock, Department of Health and Welfare - Administrative Procedures Section
Kara Stevens, Division of Health, Department of Health and Welfare

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.02.24 - CLANDESTINE DRUG LABORATORY CLEANUP

DOCKET NO. 16-0224-0801

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 the "Clandestine Drug Laboratory Cleanup Act," Section 6-2604, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than Wednesday, October 15, 2008.

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.

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

These rules are being modified to clarify cleanup requirements and thereby ensure more consistency in clandestine drug lab cleanup and clearance processes. Specifically, several technical points are being clarified, including:

1. Removal of water from the list of acceptable wipe sample wetting agents,
2. Proper technique for wipe sampling, and
3. Whether painting over contaminated materials such as sheetrock is acceptable.

In addition, the reporting process for law enforcement is being amended to clearly state that law enforcement must notify both the property owner and the Department (as required in the statute). Improved reporting of contaminated properties by law enforcement will help make the online Clandestine Drug Laboratory Site Property List maintained by the Department more accurate, up-to-date, and comprehensive.

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

FISCAL IMPACT: The following is a specific description, if applicable, of any fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year. N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, formal negotiated rulemaking was not conducted.

However, on Monday, July 7, 2008, an informal meeting was held with the members of the *ad hoc* stakeholder workgroup originally formed to develop the chapter. This stakeholder group has broad representation including providers of services (cleanup contractors), realtor associations, District Health Departments, industrial hygienists, Department staff, federal agencies (i.e., USDA, EPA, Agriculture, Homeland Security), legal counsel, law enforcement, and legislators.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Kara Stevens at (208) 332-7319.

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 Wednesday, October 22, 2008.

DATED this 1st day of August, 2008.

Tamara Prisock
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THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0224-0801

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 ~~or materials~~. (4-11-06)(____)
- 18. Porous.** ~~Easily~~ Subject to penetratedion or permeated saturation by chemical substances ~~or materials~~. (4-11-06)(____)
- 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 ~~or blotting~~ a sample media on the surface being sampled. (4-11-06)(____)
- 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)

(BREAK IN CONTINUITY OF SECTIONS)

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. (4-11-06)(____)

(BREAK IN CONTINUITY OF SECTIONS)

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. (4-11-06)(____)

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. (4-11-06)(____)

(BREAK IN CONTINUITY OF SECTIONS)

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. (4-11-06)(____)

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. ~~Whatman 40 ashless filter paper or equivalent~~ Standard three inch by three (3x3) inch gauze must be used for all sampling. The ~~filter paper~~ gauze must be wetted with analytical grade methanol, ~~ethanol or distilled/deionized water~~ or isopropanol. ~~The filter paper must be blotted or~~ Each surface being sampled must be wiped at least five (5) times in two (2) perpendicular directions ~~within each sampling area~~ and the gauze turned onto itself throughout the wiping process. (4-11-06)(____)

g. After sampling, the sample must be placed in a new, clean sample ~~jar~~ container and sealed with a Teflon-lined lid. The sample ~~jar~~ container must be properly labeled with at least the site or project identification number, date, time, and actual sample location. The sample ~~jar~~ container must be handled according to professional standards and conducted under the chain of custody protocol. (4-11-06)(____)

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 ($0.1 \mu\text{g}/100 \text{ cm}^2$) 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 ($0.5 \mu\text{g}/100 \text{ cm}^2$) 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. ()

023. 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)