



**WEST VIRGINIA
SECRETARY OF STATE**

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ADMINISTRATIVE LAW DIVISION

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WEST VIRGINIA SECRETARY OF STATE

FORM 4 -- NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY **Health**
RULE TYPE **Legislative** AMENDMENT TO EXISTING RULE **Yes** TITLE-SERIES **64-92**
RULE NAME **Clandestine Drug Laboratory Remediation**

CITE AUTHORITY **§§16-1-4 and 60A-11-3**

THE ABOVE PROPOSED LEGISLATIVE RULES, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE, IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Melanie A Pagliaro -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.



Title-Series: 64-92



Rule Id: 10221



Document: 32046

TITLE 64
LEGISLATIVE RULE
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
BUREAU FOR PUBLIC HEALTH

SERIES 92
CLANDESTINE DRUG LABORATORY REMEDIATION

§64-92-1. General.

1.1. Scope. -- This legislative rule establishes procedures and standards for the licensure and training of persons who engage in activities related to the remediation of clandestine drug laboratories; it also identifies the responsibilities of residential property owners and law enforcement with regard to the identification and remediation of clandestine drug laboratories.

1.2. Authority. -- *W. Va. Code* §§~~16-1-4, 16-1-10, 16-1-11, 16-1-12~~ and 60A-11-3.

1.3. Filing Date. -- ~~April 2, 2008.~~

1.4. Effective Date. -- ~~April 2, 2008.~~

1.5 Sunset Provision: This rule shall terminate and have no further force or effect upon the expiration of 5 years from its effective date.

1.6. Application. -- This rule applies to all owners of residential properties which have been used as clandestine drug laboratories; all persons who perform the work of clandestine drug laboratory remediation; including technicians, contractors, training providers; and law enforcement investigating clandestine drug laboratories

~~1.6.~~ 1.7. Enforcement. -- This rule is enforced by the commissioner.

§64-92-2. Definitions.

2.1. "AIHA" means the American Industrial Hygiene Association.

2.2. "Applicant" means any person who is applying for a license to perform the work of clandestine drug laboratory remediation, including technicians, contractors, training providers.

2.3. "Clandestine drug laboratory" means the area or areas where controlled substances, or their immediate precursors, 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.

~~2.3.~~ 2.4. "Clandestine drug laboratory remediation contractor" means a person who enters into a contract for a clandestine drug laboratory remediation project.

~~2.4.~~ 2.5. "Clandestine drug laboratory remediation technician" means a person who works on clandestine drug laboratory remediation projects, specifies work practices to be used, conducts sampling and is certified and licensed.

~~2.5.~~ 2.6. "Commissioner" means the commissioner of the West Virginia Bureau for Public Health or his or her designee.

~~2.6.~~ 2.7. "Composite Sample" means the use of multiple discrete or individual samples as a single sample, results are calculated by dividing the laboratory result by the total area sampled.

2.8. "Controlled substance" means the same as the term defined in W. Va. Code §60A-1-101, as a drug, substance or immediate precursor in Schedules I through V of W. Va. Code §60A-2-201, et seq.

~~2.7.~~ 2.9. "Department" means the West Virginia Department of Health and Human Resources.

2.10 "Discrete Sample" means the use of individual samples taken at discrete locations.

~~2.8.~~ 2.11. "EPA" means the United States Environmental Protection Agency.

~~2.9.~~ 2.12. "Immediate precursor" means a substance which the "West Virginia Board of Pharmacy" has ~~found finds~~ to be, and by rule designates as being, the principal compound commonly used or produced primarily for use and which is an immediate chemical intermediary used or likely to be used in manufacture of a controlled substance, the control of which is necessary to prevent, curtail or limit manufacture.

~~2.10.~~ 2.13. "Law-enforcement agency" means the West Virginia State Police or any other policing agency of the state or of any political subdivision of the state.

~~2.11.~~ 2.14. "OSHA" means the United States Department of Labor Occupational Safety and Health Administration.

~~2.12.~~ 2.15. "Person" means a corporation, partnership, sole proprietorship, firm, enterprise, franchise, association or any individual or entity.

~~2.13.~~ 2.16. "Plan Review" means the Clandestine Drug Laboratory Preliminary Remediation Plan Review form.

2.17. "Remediation" means the act of rendering safe and usable for the purposes for which it is intended, "residential property", as defined in subsection ~~2.14~~ 2.18 of this section, or any structure appurtenant to the residential property, or other structure on the residential property that has been used for the manufacture or consumption of methamphetamines or other illicit drug products.

~~2.14.~~ 2.18. "Residential property" means any building or structure to be primarily occupied by people, either as a dwelling or as a business, including, but not limited to, a storage facility, a mobile home, manufactured home or recreational vehicle, hotel or motel that may be sold, leased or rented for any length of time.

~~2.15.~~ 2.19. "Residential property owner" means the person holding record title to residential property as the term is defined in subsection ~~2.14~~ 2.18 of this section.

~~2.16.~~ 2.20. "Wipe sample" means a sample collected by wiping a one hundred square centimeter area in accordance with accredited laboratory standard operating procedures.

§64-92-3. License Required, Procedures, Application, and Qualifications.

3.1. No person shall perform the work of a clandestine drug laboratory remediation technician or contractor without possessing a valid license issued under this rule.

3.2. Individual persons applying for a license shall be at least eighteen years of age to be licensed under this rule.

3.3. A license expires either one year or two years from the last day of the month in which it is issued at the option of the applicant.

3.4. The commissioner may refuse to issue a license and retain the license fee if the applicant fails to satisfy the requirements of this rule.

3.5. The commissioner may refuse to issue a contractor's license if he or she finds that the applicant has knowingly falsified or attempted to falsify documents related to any project or license within the purview of the department.

3.6. The commissioner shall provide a written notice of denial and an opportunity for reapplication to all applicants.

3.7. Applicable licensure fees, set forth in Table 64-92A of this rule, shall be enclosed with each license application. If the applicant chooses to apply for a two year license, the amount of the fee to be enclosed with the license application must two times the amount set forth in in Table 64-92A of this rule.

3.8. The applicant, contractor, or an authorized agent or officer of the applicant or contractor shall sign the application.

3.9. License applications shall include the following:

3.9. a. For an individual person, the applicant's date of birth;

3.9.b. For licensure as a contractor, the license number of a current certified clandestine drug laboratory remediation technician employed by the contractor;

3.9.c. For licensure of an individual person as a clandestine drug laboratory remediation technician, a current certificate of training from a West Virginia licensed clandestine drug laboratory remediation training provider and proof of current OSHA 40 hour hazardous material training; ~~and~~

3.9.d. An applicant for a clandestine drug laboratory remediation technician license is subject to a criminal background check; and

3.9.e. Any other information relevant to clandestine drug laboratory remediation licensure requested by the Commissioner.

§64-92-4. Licensed Contractor Duties.

4.1. Licensed clandestine drug laboratory remediation contractors shall:

4.1.a. Ensure that each of the contractor's employees or agents who will be involved with a

clandestine drug laboratory remediation project is properly licensed;

4.1.b. Not begin a clandestine drug laboratory remediation project until all required testing of residential property is complete and a preliminary remediation plan and Plan Review is submitted to and a notice to proceed is issued by the department;

4.1.c. Ensure that all work practices are in compliance with this rule, applicable OSHA requirements and all other applicable local, state, and federal requirements;

4.1.d. Use waste-disposal dumpsters, disposal sites and methods which are in conformance with applicable federal, state and local laws, rules, and regulations;

4.1.e. Have third-party final clearance sampling performed upon completion of remediation project;

4.1.f. Submit a final remediation report for each remediation project to the department within ten days of completion of remediation as documented on the Plan Review; and

4.1.g. Supervise demolition of residential properties.

§64-92-4A. Licensed Technician Duties.

4A.1. Perform on-site wipe sampling and initial assessment in accordance with this rule;

4A.2. Submit preliminary report to include pre-remediation sampling results to the Clandestine Drug Laboratory Remediation Program; and

4A.3. Perform final clearance sampling for remediation projects.

4A.3.a. Discrete sampling shall be used for final clearance, and should include individual samples within each decontaminated room from a wall, ceiling, and floor, respectively and labeled accordingly.

4A.3.b. Any furniture and other personal items that were decontaminated are to be left inside residential property and discretely sampled separately.

4A.4. With regard to vehicles, perform testing of vehicle interior and ventilation system.

§64-92-5. Responsibilities of Law Enforcement Agencies.

5.1. The law enforcement agency responsible for the seizure of a clandestine drug laboratory shall:

5.1.a. Notify the residential property owner within twenty four hours of the seizure;

5.1.a.1 Notify occupants of regulations pertaining to securing and vacating property; and

5.1.a.2. Impound vehicles that are found to contain clandestine drug laboratories and/or equipment, precursors, etc. as defined under § 2. and maintain vehicle secured and unoccupied until testing is completed by licensed Clandestine Drug Laboratory Remediation Technician;

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5.1.b. Notify the department within twenty four hours of the seizure providing name and mailing address of property owner and physical location of the seized property; ~~and~~

5.1.c. Provide the department with a legible manifest of all chemical substances removed from the residential property following the seizure within forty eight hours of the seizure; and

5.1.d. Provide the Commissioner with any requested information.

§64-92-6. Responsibilities of Residential Property Owners.

6.1. A residential property owner who has been notified by a law enforcement agency or becomes aware of a clandestine drug laboratory on his or her property shall:

6.1.a. Ensure the residential property remains unoccupied and secured until a certificate of remediation completion is issued for the property by the department or until the property is properly demolished and/or disposed; ~~and~~

6.1.b. Test or remediate the residential property in accordance with the provisions of this rule, or demolish and/or dispose of the residential property within ~~thirty~~ 60 days of notification by a law enforcement agency;

6.1.c. All areas adjacent to motel/hotel or other rental units must be secured, vacated and tested in accordance with this rule; and

6.1.d. Contract with a licensed Clandestine Drug Lab Remediation Contractor to supervise demolition of residential properties; and

6.1.e. Conduct additional testing in accordance with the provisions of this rule as required by the Commissioner.

6.2. A residential property owner may delegate, in writing, the responsibilities for compliance with this section to a person who is responsible for the operation of the residential property or to the person who contracts for the remediation or demolition and/or disposal of the property.

6.3. A residential property owner, seller or landlord shall disclose the certificate of remediation completion, issued by the department and acquired in accordance with subsection 9.2 of this rule, to any potential occupant of the residential property.

§64-92-7. ~~Minimum~~ Decontamination Levels.

7.1. The ~~minimum~~ post remediation, re-occupancy decontamination level for residential property that has been used as a clandestine drug laboratory is: 0.1 µg of methamphetamine residue per 100 square centimeters (0.1 µg /100 cm²) of area sampled by a licensed clandestine drug laboratory remediation technician.

7.2. The commissioner may request sampling for additional chemicals if the manifest of chemicals removed from the property indicates a need for further sampling.

7.3. All analytical laboratories used to analyze samples taken to comply with this rule shall be AIHA or EPA certified.

§64-92-8. Preliminary Remediation Plan.

8.1. A preliminary remediation plan shall be submitted to and approved by the Commissioner prior to beginning remediation of residential property which has been used as a clandestine drug laboratory, and shall, at a minimum, contain the following:

8.1.a. A preliminary site assessment, conducted by a licensed clandestine drug laboratory remediation technician, containing the following:

8.1.a.1. The name, signature, and license number of person who conducted the site assessment;

8.1.a.2. The date of site assessment;

8.1.a.3. The physical address and legal description of property;

8.1.a.4. The name and address of property owner;

8.1.a.5. A physical description of the property;

8.1.a.6. The age of property;

8.1.a.7. A source of potable water;

8.1.a.8. The status of utility connections;

8.1.a.9. A description of the heating, cooling and ventilation systems; and

8.1.a.10. A copy of an asbestos inspection report, prepared by a licensed asbestos inspector, if any building materials are to be disturbed.

8.1.b. A legible site drawing of the property indicating:

8.1.b.1. A floor plan for each structure to be remediated;

8.1.b.2. The location of areas suggestive of contamination;

8.1.b.3. The location of any septic systems and water wells;

8.1.b.4. The distance to the nearest occupied dwelling;

8.1.b.5. The location of all out buildings;

8.1.b.6. The location of any distressed vegetation or dumping areas; and

8.1.b.7. The distance to the nearest streams and storm sewers.

8.1.c. A work plan describing the remediation project including:

8.1.c.1. A general listing of items to be removed from the property for disposal;

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- 8.1.c.2. The methods to be used to wash hard surfaces;
 - 8.1.c.3. The sequence of work activities;
 - 8.1.c.4. Items requiring special handling for disposal including septic tank contents;
 - 8.1.c.5. An asbestos project design, prepared by a licensed asbestos project designer if asbestos containing materials are to be disturbed;
 - 8.1.c.6. Any obvious safety hazards;
 - 8.1.c.7. The methods to be used to handle cleaning effluents generated during remediation;
 - 8.1.c.8. The beginning and ending dates, subject to change only with the Commissioner's approval, of the remediation project;
 - 8.1.c.9. The names and license numbers of all clandestine remediation contractors and technicians involved with the project;
 - 8.1.c.10. The names of any subcontractors to be used for any part of the remediation project; and
 - 8.1.c.11. The name and location of any waste disposal site to be used.
- 8.1.d. Analytical sample results for all samples taken, including 1 blank per 5 samples taken, cross-referenced to the site drawing and to a photograph of each sample location; and
- 8.1.e. A quality control plan for sample collection including a sampling protocol.

8.2. All applicable fees set forth in Table 64-92A of this rule shall be enclosed with a preliminary remediation plan.

8.3. Preliminary Remediation Plans Applications shall contain any other information requested by the commissioner.

8.4. Following review and approval of the preliminary remediation plan, the Commissioner shall issue a notice to proceed for with the remediation project.

§64-92-9. Final Remediation Report.

9.1. A final remediation report shall be submitted to the Commissioner within ten days of completion of remediation of residential property as documented on the Plan Review, and shall, at a minimum, contain the following:

9.1.a. The name, signature, copies of licenses (for all technicians involved), copies of training certificates (for all technicians involved) and license number of person who prepared the report;

9.1.b. The physical address of the property;

9.1.c. A summary of any work performed which deviated from or was not discussed in the approved preliminary remediation plan;

9.1.d. Document Use waste-disposal dumpsters at all remediation projects. (The willful use of trailers, truck beds and/or box trucks will be considered a violation of this rule);

9.1.e. Copies of waste manifests for all materials removed from the property, including a complete list with serial numbers (when applicable) of all items removed and disposed of from residential property;

9.1.f. Copies of clearance air monitoring sample results from a licensed asbestos clearance air monitor if asbestos containing materials were disturbed;

9.1.g. Submission of final clearance analytical sample results by a third-party licensed technician, including the following:

9.1.g.1. Approved laboratory sample results with analysis for all samples collected, analysis of laboratory results by an approved laboratory in accordance with subsection 7.3. of this rule quality control plan for sampling of site, description of analytical methods used, and laboratory quality assurance and quality control plan;

9.1.g.2. A legible site drawing showing the location of all samples taken;

9.1.g.3. A photograph of each sample location cross-referenced to the laboratory results as identified on the site drawing, including a description of exact sample location with written and graphic description of sample locations;

9.1.g.3.A. A photograph of each room post decontamination;

9.1.g.3.B. A photograph of each item destroyed or rendered unusable on site; and

9.1.g.4. Chain of custody forms with signatures for all samples collected;

9.1.h. A signed statement stating that all remediation work was performed in accordance with the provisions of this rule; and

9.1.i. Any other information requested by the Commissioner.

9.2. If the submitted final remediation report is acceptable upon review, the Commissioner shall issue a certificate of remediation completion within forty-five business days of receipt of the report.

§64-92-10. Training Accreditation.

10.1. The commissioner may accredit clandestine drug laboratory remediation courses provided to persons applying for licensure as a remediation technician in West Virginia.

10.2. Persons wishing clandestine drug laboratory remediation training course accreditation shall submit an application on forms approved by the commissioner together with the fee set forth in Table 64-92A of this rule.

10.3. West Virginia accredited clandestine drug laboratory remediation initial training courses shall be a minimum of sixteen hours in duration and shall include, at a minimum, the following:

- 10.3.a. Clandestine drug manufacturing methods;
- 10.3.b. The health effects and routes of chemical exposure;
- 10.3.c. Recognition of safety hazards;
- 10.3.d. Review of applicable OSHA requirements including:
 - 10.3.d.1. The Hazard Communication Program;
 - 10.3.d.2. Blood borne pathogens;
 - 10.3.d.3. Personal protective equipment; and
 - 10.3.d.4. Confined space entry.
- 10.3.e. Sample collection and sampling protocol;
- 10.3.f. Hazardous and non-hazardous waste disposal;
- 10.3.g. Preliminary remediation plan preparation;
- 10.3.h. Final remediation report preparation;
- 10.3.i. Items requiring disposal;
- 10.3.j. Cleaning procedures for ~~hard~~ all surfaces;
- 10.3.k. Prevention of mold growth during and following remediation;
- 10.3.l. A review of this rule;
- 10.3.m. A review of the West Virginia Asbestos Abatement Licensing Rule, 64CSR63;
- 10.3.n. Evaluation of heating, venting and air conditioning systems;
- 10.3.o. Legal liabilities; and
- 10.3.p. Types of insurance.

10.4. West Virginia accredited clandestine drug laboratory remediation refresher training courses shall be a minimum of four hours in duration and shall include, at a minimum, the following:

- 10.4.a. An overview of the initial training course curriculum;
- 10.4.b. A review of any recent changes in clandestine drug manufacturing procedures and in remediation technology; and
- 10.4.c. A review of any recent changes in state and federal regulatory requirements.

10.5. Training providers shall verify that each training class participant has successfully completed an initial training course within the three previous years or has completed a refresher training course in the previous three years and has had no lapse in certification since completing the initial training course.

10.6. All training course participants shall be provided with a manual of course materials.

10.7. All training course participants must take a fifty multiple choice questions examination and receive a minimum score of eighty percent for passage.

10.8. All training course participants who pass the examination shall be given a certificate containing the following:

10.8.a. The name of the person being certified;

10.8.b. A statement indicating that the person is certified as a clandestine drug laboratory remediation technician;

10.8.c. The name of the training provider business;

10.8.d. The dates of the training course;

10.8.e. The issue date of the certificate;

10.8.f. The expiration date of the certificate. All certificates expire three years from the date of issue; and

10.8.g. The typed name and signature of the course instructors.

10.9. Training providers accepted under this rule, shall notify the Commissioner in writing fifteen days prior to commencement of any training course.

10.10. The commissioner may audit any training courses conducted by any training provider accredited under this rule.

10.11 An accreditation expires one year from the last day of the month in which it was issued.

§64-92-11. Inspections.

The commissioner has the right to enter any clandestine drug laboratory remediation project and to conduct inspections to determine compliance with this rule.

§64-92-12. Penalties and enforcement.

12.1. The Commissioner may, depending upon the severity of the violation and upon the degree of health hazard created, suspend or revoke the license of a clandestine drug laboratory remediation technician or contractor if the licensee:

12.1.a. Fraudulently or deceptively obtains or attempts to obtain a license;

12.1.b. Fails at any time to meet the qualifications for a license or to comply with the

requirements of *W. Va. Code* §60A-11-1, et seq. or this rule;

12.1.c. Knowingly falsifies or attempts to falsify documents related to a clandestine drug laboratory remediation project or license; or

12.1.d. Fails to meet the applicable federal or state standard for remediation.

12.2. The Commissioner may investigate all alleged violations of this rule or of *W. Va. Code* §§60A-10-1 and 60A-11-1, et seq. reported to the department. All property owners of reported clandestine drug laboratories may be issued a compliance order. Upon the finding of a violation in connection with a clandestine drug laboratory property or remediation project the commissioner shall, depending upon the severity of the violation and upon the degree of health hazard created, initiate an appropriate enforcement action which may include the issuance of a cease and desist order directing that all work on the project be halted immediately. Posting of the cease and desist order on the project site constitutes notice of its contents to the property owner and all individuals working on the remediation project. Where practical, the commissioner shall deliver a copy of the order by certified mail, return receipt requested, to the property owner and to the contactor.

12.3. The Commissioner may request the assistance of a law enforcement agency, county prosecutor office, and/or local health department in order to maintain the public health and safety and to ensure that people are not exposed to dangerous conditions in any residential property where a clandestine drug laboratory has existed and prior to ~~its~~ being properly remediated and certified as habitable by the Commissioner.

~~12.4. The commissioner may pursue civil penalties in the manner provided in *W. Va. Code* §16-1-18.~~
The Commissioner or his/her designee may post approved hazard signage on properties upon notification to the State by law enforcement as being former clandestine drug lab sites; and the signage must remain adhered to property until such a time that the property is tested, remediated and certificate issued.

§64-92-13. Receipt and disbursement of license fees.

Fees collected pursuant to this rule shall be deposited in accordance with the provisions of *W. Va. Code* §§16-1-10, 16-1-11 and 16-1-12, to be used by the commissioner for purposes related to the implementation of this rule.

§64-92-14. Administrative Due Process.

Those individuals adversely affected by the enforcement of this rule desiring a contested case hearing to determine any rights, duties, interests or privileges shall do so in the manner prescribed by the Bureau for Public Health's rule, Rules and Procedures for Contested Case Hearings and Declaratory Rulings, 64CSR1.

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Table 64-92A

Fee Schedule

Clandestine Drug Laboratory Remediation Technician License	\$ 50.00
Clandestine Drug Laboratory Remediation Contractor License	\$ 300.00
Clandestine Drug Laboratory Preliminary Remediation Plan Review	\$ 100.00
Clandestine Drug Laboratory Remediation Training Provider Initial Accreditation	\$ 1,000.00
Clandestine Drug Laboratory Remediation Training Provider Annual Reaccreditation	\$ 500.00