



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

eFILED

4/4/2022 12:33:09 PM

Office of West Virginia
Secretary Of State

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE**

AGENCY: Health

TITLE-SERIES: 64-92

RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No

RULE NAME: CLANDESTINE DRUG LABORATORY
REMEDICATION

CITE STATUTORY AUTHORITY: 16-1-4 and 60A-11-3

The above rule has been authorized by the West Virginia Legislature.

Authorization is cited in (house or senate bill number) 4126

Section 64-5-1(h) Passed On 3/3/2022 12:00:00 AM

This rule is filed with the Secretary of State. This rule becomes effective on the following date:

May 1, 2022

This rule shall terminate and have no further force or effect from the following date:

August 01, 2027

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

Yes

April L Robertson -- 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 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 and §60A-11-3.

1.3. Filing Date. -- April 4, 2022.

1.4. Effective Date. -- May 1, 2022.

1.5. Sunset Provision. -- This rule shall terminate and have no further force or effect upon August 1, 2027.

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.

1.7. 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, and 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.

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

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.

2.6. "Commissioner" means the commissioner of the West Virginia bureau for public health or his or her designee.

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.*

2.9. "Department" means the West Virginia department of health and human resources.

2.10. "Discrete Sample" means the use of individual 100 square centimeters (cm²) samples taken at individual, specific and discrete locations.

2.11. "EPA" means the United States environmental protection agency.

2.12. "Immediate precursor" means a substance which the West Virginia board of pharmacy has found 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.

2.13. "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.

2.14. "OSHA" means the United States department of labor occupational safety and health administration.

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

2.16. "Plan Review" means the clandestine drug laboratory preliminary remediation plan review form available online at [https://www.wvdhhr.org/rtia/pdf/Preliminary%20Remediation%20Plan%20Checklist%20\(1\).pdf](https://www.wvdhhr.org/rtia/pdf/Preliminary%20Remediation%20Plan%20Checklist%20(1).pdf).

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 2.18 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.

2.18. "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.

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

2.20. "Wipe sample" means a sample collected by wiping a 100 square centimeter (cm²) 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. Persons applying for a license shall be at least 18 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 be two times the amount set forth 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:

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

3.9.2. For licensure of a clandestine drug laboratory remediation technician, applicant's date of birth, 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;

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

3.9.4. 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:

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

clandestine drug laboratory remediation project is properly licensed;

4.1.2. Not begin a clandestine drug laboratory remediation project until a preliminary remediation plan is submitted to and a notice to proceed is issued by the department;

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

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

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

4.1.6. Submit a final remediation report for each remediation project to the department within 10 days of receipt of final third-party analytical test results;

4.1.7. Supervise demolition of residential properties by licensed and certified contractors; and

4.1.8. Submit all analytical test results to the commissioner.

§64-92-5. Licensed Technician Duties.

5.1. Licensed technicians shall:

5.1.1. Perform wipe sampling and initial assessment in accordance with this rule;

5.1.2. Submit initial assessment report to the clandestine drug laboratory remediation program; and

5.1.3. Perform final clearance sampling for remediation projects, which shall be by composite sampling, per room remediated and include a total of at least a discrete sample from each of a floor, wall, ceiling, and HVAC unit, vent, and return and be of an area at least 300 cm², but not more than a total area of 400 cm².

5.2. Any personal property not able to be effectively remediated due to porous surfaces such as carpeting, mattresses, clothing, or furniture, shall be disposed of in accordance with applicable federal, state, and local law. Any furniture and other personal items that were decontaminated shall be left inside residential property and discretely sampled separately.

5.3. Perform testing of the interior of vehicles suspected of contamination from a clandestine drug laboratory. Vehicle interior testing shall be a composite of four discrete samples, at least two of which shall be taken as close as possible to the ventilation system. Any vehicle remediation shall include the ventilation system.

§64-92-6. Responsibilities of Law Enforcement Agencies.

6.1. The law enforcement agency responsible for the identification of a clandestine drug laboratory shall:

- 6.1.1. Notify the residential property owner within 24 hours of the identification;
- 6.1.2. Notify real property occupants of regulations pertaining to securing and vacating property;
- 6.1.3. Secure from public access the clandestine drug laboratory, any controlled substances, and immediate precursors;
- 6.1.4. If probable cause exists, impound vehicles that contain clandestine drug laboratories and, or equipment, precursors, etc. as defined under section 2 and to the extent practical, maintain vehicle secured and unoccupied until testing is completed by licensed Clandestine Drug Laboratory Remediation Technician and either the initial or post-remediation analytical test results are at or below 1.0 µg of methamphetamine residue per 100 square centimeters (1.0 µg /100 cm²) or the vehicle is demolished;
- 6.1.5. Notify the department within 24 hours of the identification of a clandestine drug laboratory, and provide name and mailing address of property owner and physical location of the clandestine drug laboratory;
- 6.1.6. Within 48 hours, provide the department with a legible manifest of all chemical substances removed from the identified clandestine drug laboratory on a form prescribed by the department for that purpose available online at <https://www.wvdhhr.org/rtia/pdf/Law%20Enforcement%20Notification%20Form.pdf>; and
- 6.1.7. Provide the commissioner with any other requested information.

§64-92-7. Responsibilities of Residential Property Owners.

7.1. 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:

7.1.1. Ensure the residential property remains unoccupied and secured until analytical test results indicate a level of contamination at or below 1.0 µg /100 cm², a certificate of remediation completion is issued for the property by the department, or the property is properly demolished in compliance with 64CSR63 if applicable;

7.1.2. Within 60 days of notice of the existence of a clandestine drug laboratory, test, commence remediation, or demolish the residential property in accordance with this rule and any other applicable law;

7.1.3. In the case of a hotel, motel, or multi-unit building, all units or areas immediately adjacent to a unit or area within the hotel, motel, or multi-unit building that contained a clandestine drug laboratory and that is under the control of the residential property owner must be secured, vacated and tested in accordance with this rule, unless, however, a fire break wall separates adjoining units in a multi-unit building, the commissioner may determine to allow adjoining units to remain occupied pending testing and remediation;

7.1.4. When analytical testing shows a level of contamination of greater than 1.0 µg /100 cm², contract within 60 days a licensed clandestine drug lab remediation contractor to either remediate or demolish the residential property in accordance with this rule; and

7.1.5. Conduct additional testing in accordance with the provisions of this rule as required by the commissioner.

7.2. 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.

7.3. A residential property owner and any agent thereof shall disclose information regarding the identification of a clandestine drug laboratory on the residential property to any potential purchaser or occupant, including the location of the clandestine drug laboratory, remediation plans, related enforcement actions, and the issuance of any certificate of remediation completion by the department.

§64-92-8. Decontamination Levels.

8.1. The post remediation, re-occupancy decontamination level for residential property where a clandestine drug laboratory has been identified is: 1.0 µg /100 cm² of area sampled by a licensed clandestine drug laboratory remediation technician.

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

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

§64-92-9. Initial Assessment Report.

9.1. An initial assessment report shall be submitted to the commissioner within 10 days of receipt of the initial analytical results and shall, at a minimum, contain the following:

9.1.1. An initial assessment, conducted by a licensed clandestine drug laboratory remediation technician, containing the following:

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

9.1.2.b. The date of initial assessment;

9.1.2.c. The physical address and legal description of property;

9.1.2.d. The name and address of property owner;

9.1.2.e. A physical description of the property, including GPS coordinates when practicable;

9.1.2.f. The age of property;

9.1.2.g. A source of potable water;

9.1.2.h. The status of utility connections;

9.1.2.i. A description of the heating, cooling, and ventilation systems;

9.1.2.j. If suspected asbestos containing materials are present, the absence or presence of asbestos verified by a licensed and certified asbestos inspector prior to any remediation, demolition, or disposal activities, and a copy of the asbestos inspection report shall be provided to the commissioner;

9.1.2.k. A general listing of items to be removed from the residential property for disposal;

9.1.2.l. Items requiring special handling for disposal; and

9.1.2.m. Any obvious safety hazards.

9.1.3. A legible site drawing of the property indicating:

9.1.3.a. A floor plan for each structure to be remediated;

9.1.3.b. The location of areas suggestive of contamination;

9.1.3.c. The location of any septic systems and water wells;

9.1.3.d. The distance to the nearest occupied dwelling;

9.1.3.e. The location of all out buildings;

9.1.3.f. The location of any distressed vegetation or dumping areas; and

9.1.4. Analytical sample results for all samples taken, including one blank per 10 samples taken, cross-referenced to the site drawing and to a photograph of each sample location; and

9.1.5. A quality control plan for sample collection including a sampling protocol.

9.2. Initial assessment reports shall contain any other information requested by the commissioner.

§64-92-10. Preliminary Remediation Plan.

10.1. The preliminary remediation plan shall be submitted to the commissioner and include the following:

10.1.1. A general listing of items to be removed from the residential property for disposal;

10.1.2. The methods used to wash hard surfaces;

10.1.3. The sequence of work activities;

10.1.4. Items requiring special handling for disposal;

10.1.5. An asbestos project design, prepared by a licensed asbestos project designer if asbestos containing materials are to be disturbed;

10.1.6. Any obvious safety hazards;

10.1.7. The methods used to handle cleaning effluents generated during remediation;

10.1.8. The beginning and ending dates of the remediation project, which may be modified only upon approval by the commissioner;

10.1.9. The identification of all methamphetamine remediation contractors and technicians engaged for the project;

10.1.10. The identification of any subcontractors to be used for any part of the remediation project; and

10.1.11. The identification of any waste disposal sites to be used.

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

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

§64-92-11. Final Remediation Report.

11.1. A final remediation report shall be submitted to the commissioner within 10 business days of completion of remediation of residential property as documented on the Plan Review, and shall, at a minimum, contain the following:

11.1.1. 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;

11.1.2. The physical address of the property;

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

11.1.4. Documented use of waste-disposal dumpsters at all remediation projects; the use of trailers, truck beds and/or box trucks will be considered a violation of this rule;

11.1.5. 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;

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

11.1.7. Copies of asbestos certificates for all asbestos contractors, workers, supervisors, and designers that performed any asbestos remediation;

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

11.1.8.a. Approved laboratory sample results with analysis for all samples collected, quality

control plan for sampling of site, description of analytical methods used, and laboratory quality assurance and quality control plan;

11.1.8.b. A legible site drawing showing the location of all samples taken;

11.1.8.c. 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;

11.1.9. A photograph of each room post decontamination;

11.1.10. A photograph of each item destroyed or rendered unusable on site;

11.1.11. Chain of custody forms with signatures for all samples collected;

11.1.12. A copy of the final remediation report checklist (available online at [https://www.wvdhhr.org/rtia/pdf/Final%20Remediation%20Report%20Checklist\(1\).pdf](https://www.wvdhhr.org/rtia/pdf/Final%20Remediation%20Report%20Checklist(1).pdf)) identifying the report page location for each required report component, along with a signed statement that all remediation work was performed in accordance with the provisions of this rule; and

11.1.13. Any other information requested by the commissioner.

11.2. If the submitted final remediation report is acceptable upon review, the commissioner shall issue a certificate of remediation completion within 20 business days of receipt of the report.

§64-92-12. Training Accreditation.

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

12.2. Persons seeking clandestine drug laboratory remediation training course accreditation shall submit an application on forms approved by the commissioner (available online at <https://www.wvdhhr.org/rtia/pdf/Training%20Provider%20Application%20Form.pdf>) together with the fee set forth in Table 64-92A of this rule.

12.3. West Virginia accredited clandestine drug laboratory remediation initial training courses shall be a minimum of 16 hours in duration and shall include, at a minimum, the following:

12.3.1. Clandestine drug manufacturing methods;

12.3.2. The health effects and routes of chemical exposure;

12.3.3. Recognition of safety hazards;

12.3.4. Review of applicable OSHA requirements including:

12.3.4.a. The hazard communication program;

12.3.4.b. Blood borne pathogens;

12.3.4.c. Personal protective equipment; and

12.3.4.d. Confined space entry.

12.3.5. Sample collection and sampling protocol;

12.3.6. Hazardous and non-hazardous waste disposal;

12.3.7. Preliminary remediation plan preparation;

12.3.8. Final remediation report preparation;

12.3.9. Items requiring disposal;

12.3.10. Cleaning procedures for all surfaces;

12.3.11. Prevention of mold growth during and following remediation;

12.3.12. A review of this rule;

12.3.13. A review of 64CSR63;

12.3.14. Evaluation of heating, venting and air conditioning systems;

12.3.15. Legal liabilities; and

12.3.16. Types of insurance.

12.4. 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:

12.4.1. An overview of the initial training course curriculum;

12.4.2. A review of any recent changes in clandestine drug manufacturing procedures and in remediation technology; and

12.4.3. A review of any recent changes in state and federal regulatory requirements.

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

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

12.7. All training course participants must take a 50 multiple choice questions examination and receive a minimum score of 80 percent for passage.

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

12.8.1. The name of the person being certified;

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

12.8.3. The name of the training provider business;

12.8.4. The dates of the training course;

12.8.5. The issue date of the certificate;

12.8.6. The expiration date of the certificate. All certificates expire one year from the date of issue; and

12.8.7. The typed name and signature of the lead course instructor.

12.9. Training providers accepted under this rule, shall notify the commissioner in writing 15 days prior to commencement of any training course.

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

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

12.12. Initial training courses and refresher courses must be taught independently of each other.

§64-92-13. Inspections.

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

§64-92-14. Penalties and enforcement.

14.1. 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:

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

14.1.2. 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;

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

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

14.2. The Commissioner may investigate any suspected violations of this rule or of W. Va. Code §60A-11-1, *et seq.* 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.

14.3. The commissioner may request the assistance of a law enforcement agency, county prosecutor office, or local health department in order to protect public health and safety and to prevent exposure to dangerous conditions in any residential property where a potential clandestine drug laboratory has been identified and prior to being properly remediated and certified as habitable by the commissioner.

14.4. The commissioner or his or her designee may post approved hazard signage on properties upon notification of the identification of a potential clandestine drug lab site and shall remain posted until such time as the property tests below levels allowed by this rule.

§64-92-15. 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.

§64-92-16. 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 Rules and Procedures for Contested Case Hearings and Declaratory Rulings, 64CSR1.

Table 64-92A
Fee Schedule

Clandestine Drug Laboratory Remediation Technician License	\$100
Clandestine Drug Laboratory Remediation Contractor License	\$300
Clandestine Drug Laboratory Preliminary Remediation Plan Review	\$100
Clandestine Drug Laboratory Remediation Training Provider Initial Accreditation	\$1,000
Clandestine Drug Laboratory Remediation Training Provider Annual Reaccreditation	\$500