

**WEST VIRGINIA
SECRETARY OF STATE
BETTY IRELAND
ADMINISTRATIVE LAW DIVISION**

Form #4

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WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: DHHR - Bureau for Public Health TITLE NUMBER: 64

CITE AUTHORITY: WV Code §§16-1-4, 16-1-12, and 60A-11-3

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 92

TITLE OF RULE BEING PROPOSED: CLANDESTINE DRUG LABORATORY REMEDIATION

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.


Authorized Signature

#4.20

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Clandestine Drug Laboratory Remediation Rule

Type of Rule: X Legislative Interpretive Procedural

Agency: Health and Human Resources

Address: Building 3, Room 206
Capitol Complex
Charleston, West Virginia 25305

Phone Number: (304)558-2971 Email: annspaner@wvdhhr.org

Fiscal Note Summary

Summarize in a clear and concise manner what effect this measure will have on costs and revenues of state government.

S.B. 175, which passed during the 2007 legislative session, requires that the Department for Health and Human Resources, Bureau for Public Health promulgate a rule to address the remediation (clean up) of clandestine drug laboratories, used for the production of methamphetamine and other illicit drugs. This proposed rule establishes criteria for measuring contamination levels, creates a training, certification, and licensing program for the remediation contractors, requires notification to the Department prior to beginning any remediation program, establishes procedures to certify completion of remediation projects, requires disclosure by property owners to potential occupants and establishes fees to fund the entire program.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

Effect of Proposal	Fiscal Year		
	2008 Increase/Decrease (use "-")	2009 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0	41,000	38,500
Personal Services		23,612	23,612
Current Expenses		17,388	14,888
Repairs and Alterations			
Equipment			
Other			
2. Estimated Total Revenues		41,000	38,500

3. Explanation of above estimates (including long-range effect):

Please include any increase or decrease in fees in your estimated total revenues.

The Department believes that since this is a new program, and assuming the rule becomes effective July 1, 2008, there would be no costs or revenues associated with the program until the beginning of State Fiscal Year 2009. Beginning with State Fiscal Year 2010, both revenue and costs are expected to drop by approximately six percent and then remain constant thereafter. Revenues are from licensing and accreditation fees and from plan review fees. Costs include parts of three personnel for a total of 0.5 FTE's and current expense which includes needed equipment.

The Department believes the revenue generated from the fees will be sufficient to operate the program.

Memorandum

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

[Empty box for memorandum content]

Date

12-7-07

Agency

Department of Health and Human Resources

Authorized Representative

Martha Yeager Walker
Martha Yeager Walker
Secretary

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

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. – WV Code §§16-1-4, 16-1-10, 16-1-11, 16-1-12 and 60A-11-3.

1.3. Filing Date –

1.4. Effective Date –

1.5. 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 and training providers.

1.6. Enforcement – This rule is enforced by the commissioner.

§ 64-92-2. Definitions.

2.1. “AIHA” means the American Industrial Hygiene Association.

2.2. “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. “Clandestine drug laboratory remediation contractor” means a person who enters into a contract for a clandestine drug laboratory remediation project.

2.4. “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. “Commissioner” means the commissioner of the West Virginia Bureau for Public Health or his or her designee.

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

2.7. “Department” means the West Virginia Department of Health and Human Resources.

2.8. “EPA” means the United States Environmental Protection Agency.

2.9. “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.

2.10. "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. "OSHA" means the United States Department of Labor Occupational Safety and Health Administration.

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

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

2.16. "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, 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 shall be at least eighteen years of age to be licensed under this rule.

3.3. A license expires one year from the last day of the month in which it is issued.

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.

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. 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 a preliminary remediation plan 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 disposal sites and methods which are in conformance with applicable federal, state and local laws, rules, and regulations; and

4.1.e. Submit a final remediation report for each remediation project to the department within ten days of completion of remediation.

§ 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.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 manifest of all chemical substances removed

from the residential property following the seizure within forty eight hours of the seizure.

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

6.1. A residential property owner who has been notified by a law enforcement agency 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. Remediate the residential property in accordance with the provisions of this rule or demolish and/or dispose the residential property within thirty days of notification by a law enforcement agency.

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 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;

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 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. 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 with the remediation.

§ 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, and shall, at a minimum, contain the following:

9.1.a. The name, signature, 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. Copies of waste manifests for all materials removed from the property;

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

9.1.f. Submission of analytical sample results, including the following:

9.1.f.1. Approved laboratory sample results for all samples collected, analysis of lab results by an approved laboratory in accordance with subsection 7.3. of this rule;

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

9.1.f.3. A photograph of each sample location cross-referenced to the laboratory results as identified on the site drawing; and

9.1.f.4. Chain of custody forms for all samples collected.

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

9.2. If the submitted final remediation report is acceptable upon review, the Commissioner shall issue a certificate of remediation completion within forty five 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 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 WV 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 WV Code §60A-10-1 and §60A-11-1, et seq. reported to the department. Upon the finding of a violation in connection with a clandestine drug laboratory 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 contractor.

12.3. The commissioner may request the assistance of a law enforcement agency 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 WV Code §16-1-18.

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

Fees collected pursuant to this rule shall be deposited in accordance with the provisions of

WV 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, 64 CSR 1.

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