

RESOLUTION 2022-10
Amending Controlled Substances Sampling and Testing Policy

WHEREAS, the Colville Indian Housing Authority is the duly constituted Housing Authority for the Confederated Tribes of the Colville Reservation, established by the Colville Business Council pursuant to the authority of the Constitution of the Colville Confederated Tribes, and in particular Article V, Section 1(a); and,

WHEREAS, the authorities and responsibilities of the Colville Indian Housing Authority are set out in the Colville Tribal Housing Authority Ordinance, adopted by Resolution 2007-651 of the Business Council; and,

WHEREAS, the purposes for which the Colville Indian Housing Authority was established include: (1) remedying unsafe and unsanitary housing conditions that are injurious to the public health, safety, and morals; (2) alleviating the acute shortage of decent, safe, and sanitary dwellings for persons of low income; and (3) providing employment opportunities through the construction, reconstruction, improvement, extension, alteration or repair and operation of low income dwellings; and,

WHEREAS, the Colville Indian Housing Authority has been designated as the "Tribally Designated Housing Entity" for the Confederated Tribes of the Colville Reservation, as that term is defined at Section 4(21) of the Native American Housing Assistance and Self-Determination Act of 1996, P.L. 104-330 (25 U.S.C. 4101- 4212}, as amended ("NAHASDA"); and,

WHEREAS, the Business Council has appointed a Board of Commissioners to manage the Colville Indian Housing Authority (the "Board"), which Board operates pursuant to a Constitution and By-laws enacted by the Board on August 10, 2004 (as amended); and,

WHEREAS, the Board has enacted and from time-to-time has amended the Controlled Substances Sampling and Testing Policy and as a result of that recommendations made by management, has determined that it is necessary to revise and update the Controlled Substances Sampling and Testing Policy to better meet health, safety and management needs of the housing authority; and

WHEREAS, the Colville Indian Housing Authority management team has conferred with the Housing Authority's legal counsel to amend and update the Controlled Substances Sampling and Testing Policy, which amendments are represented on the strikeout/underline copy of the Controlled Substances Sampling and Testing Policy attached as Exhibit A to this Resolution; and

WHEREAS, the Board has determined that adopting the draft proposed amendments to the Controlled Substances Sampling and Testing Policy is in the best interest of the Colville Indian Housing Authority;

NOW, THEREFORE, BE IT RESOLVED, that the Colville Indian Housing Authority Board hereby approves and adopts the proposed amendments to the Controlled Substances Sampling and Testing Policy, which amendments are represented on the strikeout/underline copy of the Controlled Substances Sampling and Testing Policy attached as Exhibit A to this Resolution; and

NOW, THEREFORE, BE IT FINALLY RESOLVED, the amended version of the Colville Indian Housing Authority's Controlled Substances Sampling and Testing Policy attached as Exhibit A hereby supersedes and replaces any prior versions of said Policy.

CERTIFICATION

This is to certify that the foregoing was duly enacted, pursuant to Article V of the Colville Tribal Ordinance, ratified on January 27, 1977, at a regular meeting of the Colville Indian Housing Authority Board of Commissioners, held on April 28, 2022, a quorum being present, with a vote of 3 FOR; 0 AGAINST, and 0 ABSTAINED.

BY:



Brian Nissen, Chairman
Board of Commissioners

ATTEST:



Storey Jackson, Secretary/Treasurer
Board of Commissioners

CONTROLLED SUBSTANCES SAMPLING AND TESTING POLICY

PURPOSE: To establish standards and procedures that will be used to implement the controlled substances sampling and testing program, which is aimed at enforcing the Colville Indian Housing Authority's zero tolerance policy toward the use of illegal controlled substances in units that it owns and manages.

SCOPE: This policy shall apply to all use of the controlled substances sampling and testing program by the Colville Indian Housing Authority and/or within any units owned or managed by the Colville Indian Housing Authority.

AUTHORITY: The Colville Indian Housing Authority has been designated as the "Trially Designated Housing Entity" for the Confederated Tribes of the Colville Reservation, as that term is defined at Section 4(21) of the Native American Assistance and Self-Determination Act of 1996, P.L. 104-330 (25 U.S.C. 4101-4212), as amended (NAHASDA).

A. **General Information.**

1. The controlled substances sampling and testing program relies upon state-of-the-art technology developed to detect the residue of possession, manufacture, and/or use of illegal controlled substances in residences and commercial buildings.
2. The program operates by having certified persons take swab samples from specified surfaces in a dwelling, and then testing those swab samples for the presence of illegal controlled substances.
3. The Colville Indian Housing Authority has obtained the controlled substances equipment and program (Smiths Detection IMS Ionscan Equipment), and its staff has been trained in its use.
4. The Colville Indian Housing Authority has reviewed the research and information regarding the Smiths Detection IMS ionscan technology and has determined that this controlled substances sampling and testing program is highly reliable as a means of testing for illegal controlled substances. The Smiths Detection IMS ionscan technology false positive rate, for example, is less than 1%.
5. It is the intention of this policy to define the scope of the operation and policies of the controlled substances sampling and testing program.

B. Authorized Use:

1. Only certified Colville Indian Housing Authority staff will be authorized to maintain and operate the controlled substances sampling and testing equipment. The retailer of the Smiths Detection IMS ionscan equipment provides training and certification on use of the equipment, and those who have received such training and certification are also authorized to train and certify other staff. The Colville Indian Housing Authority shall ensure that at all times there is at least one staff member trained and certified in the use of Smiths Detection IMS ionscan equipment.
2. The controlled substances testing equipment and program will be operated according to training and certification only. The Smiths Detection IMS ionscan Equipment will not be used for anything other than its designed intended purpose according to the manufacturer.
3. The Smiths Detection IMS ionscan equipment will be stored and maintained by the certified operator at the Colville Indian Housing Authority Office. It will be stored in a secure safe location with access allowed only by the certified operator and the Executive Director. All daily, weekly and monthly checks will be performed by a certified operator.
4. If the Smiths Detection IMS ionscan equipment is to be loaned to an agency outside the Colville Indian Housing Authority the certified user will be loaned as well to operate the Smiths Detection IMS ionscan equipment. Colville Indian Housing Authority makes no warranty, express or implied, as to the accuracy or validity of results from the Smiths Detection IMS ionscan equipment.
 - a. If the Smiths Detection IMS ionscan equipment is loaned to another agency, that agency will be billed for the use of the Smiths Detection IMS ionscan equipment at a rate of \$200 per day of use, along with the related expenses involved in the loan of the certified user (vehicle, fuel, time, etc.).
 - b. If the agency using the Smiths Detection IMS ionscan equipment, damages the equipment, that agency will be billed the cost of replacement or repair, whichever is applicable.
5. **Any use** of the Smiths Detection IMS ionscan equipment must first be approved by the Colville Indian Housing Authority Executive Director.

C. Sampling and Testing Procedures:

1. The Smiths Detection IMS ionscan equipment and program will be used to collect samples and perform tests for the presence of narcotics and other illegal controlled substances residue in Colville Indian Housing Authority units.

2. The testing performed with the Smiths Detection IMS ionscan equipment will be completed consistent with this policy and accordance to the directed procedures.
3. Use of Smiths Detection IMS ionscan equipment shall be conducted in the following manner:
 - a. Prior to use of the Smiths Detection IMS ionscan equipment in any unit, the certified user will verify the functionality of the device.
 - b. At least one swab will be taken from the living room, dining room, kitchen, laundry room, hallway(s), each bedroom, each bathroom and storage shed(s). However, because the Smiths Detection IMS ionscan equipment is designed to test invisible trace quantities, if the certified user can see the material to be tested with the naked eye, the Smiths Detection IMS ionscan equipment shall **not be used to test that material**. Instead, the certified user will notify the Tribal Police to have them remove the visible material, make a notation of the time and location, and have the material tested by a lab.
 - c. The swab will be taken from the areas with the highest rate of physical contact (the decision to be made on site by the certified user).
 - d. Each swab will be labeled with a number corresponding to an identified location on the drug test worksheet. The drug test worksheet will be labeled with the date, time, unit number and the identity of the person performing the test.
 - e. The person taking the swab shall keep the swab in his or her possession until the swab storage packet is returned to the compliance office testing area so that the test can be performed. .
 - f. Each swab will then be tested as soon as practical and the results recorded on the current drug testing worksheet, with the date, time, and location of the sampling recorded along with the name or initials of the persons performing the sampling and testing.
 - g. The ionscan operator must complete a successful verification prior to processing any sample swabs. If the verification is not successful, the process must be repeated until a successful verification is obtained. The successful verification swab ID number must be recorded on the drug test worksheet in the “Verific”space provided.
 - h. The swabs, the related test results (including the plasmagram and other test data stored by the Smiths Detection IMS ionscan equipment accessible via the IMS software), and the related documentation regarding time, date, and

location will be stored under lock and key by the person performing the sampling and testing.

- i. Access to the swabs and test results shall be restricted to authorized staff and only accessed when necessary. There will be a log for the storage of these swabs and test results, requiring any person who accesses them to sign for them.
 - j. If a positive detection is received more testing will be conducted in the area in which the positive detection was received.
 - k. If called upon by an outside entity the swabs will be taken in the targeted area requested by that agency.
4. All samples and compliance inspection test results used in or generated by the Smiths Detection IMS ionscan equipment and program, whether positive or negative, will be documented and maintained in a locked, fireproof cabinet for a period not less than one calendar year from the date of the test performed. Test samples used for “Baseline Testing” will be destroyed once a “Baseline” has been established. If any litigation is instituted with regard to a unit that has been tested, the samples and test results will be maintained for at least as long as the litigation is still in process and until the end of any applicable period for appeal of a decision. The samples and test results will be disposed of according to protocols for the disposal of hazardous or medical waste.
5. Illegal controlled substances detection samples will be taken and tested from all vacant dwelling units under the management of the Colville Indian Housing Authority under the following protocol in order to establish that upon move in the unit tested negative for controlled substances residue in certain specific locations:
- a. Vacant units will be tested just prior to move in by a new tenant or homebuyer to establish a “Baseline” for the unit.
 - b. At least one swab will be taken from the living room, dining room, kitchen, laundry room, hallway(s), each bedroom, each bathroom, storage shed(s), and garages. The certified user will identify specific test points for the unit, based on the likelihood of high contact with such areas.
 - c. Cleaning and testing of each specified area will continue until each specified area records the lowest possible result for the presence of controlled substances.
 - d. A record of the specific areas tested, the test results (including the plasmagram and other test data stored by the Smiths Detection IMS ionscan equipment accessible via the IMS software), and the date of the

test results will be maintained by the Colville Indian Housing Authority in a safe, secure location, separate from the new tenant/homebuyer file for the unit. This record shall be referred to as the “baseline test results” for that unit.

6. The Smiths Detection IMS ionscan equipment and program will be used to conduct sampling and testing of an occupied unit if and when the Colville Indian Housing Authority has received reports or information regarding drug use in a home. The Smiths Detection IMS ionscan equipment and program can also be used to conduct sampling and testing in a home during any scheduled inspections performed by the Colville Indian Housing Authority.
7. If a baseline test result has been established for that unit, the same specified areas represented in those results will be tested. If the new test indicates the presence of controlled substances at higher than the established baseline level, this will be deemed evidence that illegal controlled substances have been used, possessed, and/or manufactured in the unit, and the Colville Indian Housing Authority will take appropriate action, up to and including termination of the lease, homebuyer agreement, or other agreement under which the occupant possesses the unit.
8. A positive test for an occupied unit indicating a change above the baseline test results will be documented, photographed and forwarded to law enforcement.
9. Controlled substances sampling and tests may also be performed in units at the request of the tenant or homebuyer, but only upon the authorization of the Executive Director. Requests will be made in writing by the authorized tenant to the Colville Indian Housing Authority and will articulate the reason for the request. Any positive detection received during a tenant requested procedure will not be used toward the tenant in negative matter if the home was not tested during vacancy and the results do not indicate an increase over the existing baseline test results for that unit. Every effort will be made by the tenant to clean the home and ask for subsequent tests.
10. All lease, homebuyer, and other agreements for Colville Indian Housing Authority owned or managed units shall contain a provision or an addendum that authorizes the Colville Indian Housing Authority to conduct controlled substances sampling and testing of a unit when carrying out a visit or inspection that is authorized under the agreement.
11. The Smiths Detection IMS ionscan equipment and program can be called upon by Law Enforcement or first responder personnel, including child protective services.
 - a. Colville Indian Housing Authority may authorize the use of the Smiths Detection IMS ionscan equipment and program for such purposes only if official personnel from the relevant agency represents in writing and/or

provides documentary proof that they have the necessary legal authorization to enter the home to conduct such tests and believe the presence of controlled substances exists and the need for documented detection is necessary.

- b. Colville Indian Housing Authority has no responsibility for assuring that Law Enforcement or other first responders have the proper authorization once the relevant agency represents in writing and/or provides documentary proof to the Colville Indian Housing Authority by official personnel that they do have the necessary legal authorization.
- c. Colville Indian Housing Authority does not, by its assistance, represent or warrant that Law Enforcement or first responders do in fact have the necessary legal authorization, but rather may rely upon the written representation of such official personnel that the necessary authorization has been obtained.

12. If there are any questions regarding the legality of any testing, sampling, or other use of the controlled substances sampling and testing program, the Executive Director, at his or her discretion, shall submit such questions to Colville Indian Housing Authority legal counsel.

D Use as Evidence

- 1. The swabs and test results may be used as evidence in an eviction action in Tribal Court or in an internal grievance with the Colville Indian Housing Authority, or in any other legal action involving the Colville Indian Housing Authority where such evidence would be relevant. The swabs shall be maintained in the possession of the Colville Indian Housing Authority at all times, unless admitted and accepted as evidence by the Tribal Court.
- 2. It is critical that Colville Indian Housing Authority staff follow the necessary procedures to ensure chain of custody for the swabs and the results.
- 3. Any testimony needed with regard to the use of the Smiths Detection IMS ionscan equipment should be delivered, to the extent possible, by the certified operator who conducted the sampling and testing in accordance with training and this policy and procedure. However, in certain instances, the person who conducted the sampling and testing might not be available when a hearing is held. It is imperative, therefore, that clear and accurate records be kept of all testing and sampling so that they can be relied upon and presented as evidence by an authorized custodian of Colville Indian Housing Authority records.
- 4. Any technical testimony regarding the Smiths Detection IMS ionscan equipment or program, where practical, should be delivered by a technical level employee or designee of Smiths Detection.

E. Positive Results for Methamphetamine Residue, Decontamination, and Occupancy of

Unit

1. The Colville Indian Housing Authority, after having considered the available studies and data, hereby makes the determination that there are concerns that residual methamphetamine generated during the manufacturing process or during use of the drug may pose a threat to human health, and render the property 'Unsafe for Human Use' until decontamination has occurred.
2. Until there is more definitive information on the health risks associated with methamphetamine residue, the Colville Indian Housing Authority has determined that the most prudent policy would be to require that the residents of any dwelling unit that tests positive on the Smiths Detection IMS ionscan equipment for methamphetamine vacate that unit and that the unit be decontaminated of such residue (i.e., to the point where the Smiths Detection IMS ionscan equipment does not detect any residue) prior to be allowed to move back in.
3. Upon obtaining a positive test result from a dwelling unit, Colville Indian Housing Authority staff will notify the Executive Director, who will have a notice issued to the residents informing them that they must vacate the unit and that the unit must be decontaminated. A copy of the sample notice to be used is attached. Staff will also post a notice on the door of the unit indicating that it is unsafe for human habitation until decontamination is completed. Notice shall be on 8 1/2x11 red cardstock prominently displayed at main entrance to unit, signed by Executive Director.
4. A resident whose dwelling unit has tested positive with the Smiths Detection IMS ionscan equipment will be requested to sign a consent to have his or her personal property tested before being allowed to bring such personal property to another unit managed and/or owned by the Colville Indian Housing Authority. A consent form is attached. If the property tests positive for methamphetamine residue, or if the resident refuses to consent to such testing, the resident will be required to remove such personal property from the unit. The CIHA staff member conducting the swab test will determine what property will be tested. A refusal to consent form is attached. If a resident refuses to consent to the test but refuses to sign the refusal form, the Colville Indian Housing Authority staff shall make a written note of such refusal and place it in the resident's file.
5. The residents will bear the cost of such decontamination if the positive test was performed after an established baseline was previously established for the unit. In such cases, Colville Indian Housing Authority may bring an action in Tribal Court to seek removal of the resident(s) if they refuse to vacate, as well as to seek eviction and compensation for the costs of cleanup.

F. Move-out Procedures

1. After a tenant vacates a unit, a standard drug swab test will be performed to

determine that the unit is safe for the maintenance department to begin repairs.

2. The move-out swab test swabs will be returned to the compliance office for testing prior to maintenance beginning any work in the unit to determine that the unit is safe for the maintenance department to be present in the unit.
3. If the unit tests positive for methamphetamine residue, the unit will be decontaminated before maintenance will be allowed into the unit to begin repairs.

G. **Procedures for Decontamination**

1. Colville Indian Housing Authority staff will receive training in the proper methods of decontamination for methamphetamine residue and other illegal drug residue. Such training shall include learning the methods for effective decontamination as well as the necessary steps to take to protect their own health and safety.
2. Only Colville Indian Housing Authority staff who have received such training are permitted to enter a unit after it has been tested positive with the Smiths Detection IMS ionscan equipment.
3. Colville Indian Housing Authority staff who has received such training must strictly follow the procedures and protocols for decontamination and worker health and safety that they learned in their training, including the use of equipment for the protection of worker health and safety. Equipment will be provided by the Colville Indian Housing Authority.
4. In certain instances the Executive Director may make the determination that decontamination should be conducted by an outside firm or entity specializing in such work. Such decisions are at the sole discretion of the Executive Director.
5. If a resident is evicted or otherwise vacates the unit after a positive test for methamphetamine residue, but leaves personal property behind, the Colville Indian Housing Authority will remove the personal property from the unit and dispose of it in a manner deemed to minimize the risk of contamination, provided that the Colville Indian Housing Authority will first attempt to contact the resident and give them an opportunity to claim and remove the personal property.
6. Following the requirements of this policy is necessary to protect the health and safety of residents as well as staff. The failure of any staff person to strictly abide by the terms and conditions of this policy will result in disciplinary action, up to and including dismissal from employment.

**CONSENT TO HAVE PERSONAL PROPERTY AND BELONGINGS TESTED FOR
PRESENCE OF METHAMPHETAMINE**

I, _____, reside in premises owned and managed by the Colville Indian Housing Authority, located at _____. I understand that the Colville Indian Housing Authority will, as part of its inspection of my premises, conduct testing for the presence of methamphetamine residue. I understand that if the test shows the presence of methamphetamine residue, the Colville Indian Housing Authority will have to decontaminate the premises and that I will be required to vacate the premises during the time it is being decontaminated.

I understand that methamphetamine is a hazardous substance, and that exposure to methamphetamine presents potential health and safety risks. I understand that it is possible that my personal property and belongings are contaminated with methamphetamine.

I hereby give my irrevocable consent to the Colville Indian Housing Authority to conduct testing for methamphetamine on my personal property and belongings located in the premises located at _____ before I remove those items.

Further, if any of my personal property or belongings test positive for the presence of methamphetamines, I will have such items decontaminated or properly disposed of. If I am unable to decontaminate or dispose of the items, I hereby give my irrevocable consent to the Colville Indian Housing Authority to decontaminate such items or, if it is impracticable to decontaminate such items, to dispose of these items. I agree to reimburse the Colville Indian Housing Authority for the cost of decontaminating or disposing of the items.

Dated this ____ day of _____, 20__.

Tenant Signature

Executive Director

Witnessed by:

Date

REFUSAL TO HAVE PERSONAL PROPERTY AND BELONGINGS TESTED FOR PRESENCE OF METHAMPHETAMINE

I, _____, reside in premises owned and managed by the Colville Indian Housing Authority, located at _____. I understand that the Colville Indian Housing Authority has had my premises tested for the presence of methamphetamine, that the test showed that there is methamphetamine residue in my premises, and that my premises will have to be decontaminated. I understand that I will be required to vacate the premises during the time it is being decontaminated.

I understand that methamphetamine is a hazardous substance, and that exposure to methamphetamine presents potential health and safety risks. I understand that it is possible that my personal property and belongings are contaminated with methamphetamine and that if they are contaminated, they may cause contamination to another home if they are brought to that home. I understand that the Colville Indian Housing Authority will not permit me to bring such items to another Colville Indian Housing Authority unit unless they are tested for methamphetamine residue and are deemed not to be contaminated.

I hereby **do not** give my irrevocable consent to the Colville Indian Housing Authority to conduct testing for methamphetamine on my personal property and belongings located in the premises located at _____.

I understand that my refusal to allow Colville Indian Housing Authority to conduct such testing on my personal belongings, prior to removing them from the unit located at _____, means that I will not be permitted to bring my personal belongings to another Colville Indian Housing Authority unit. Further, I also understand that by relocating me to another unit while my unit is being decontaminated, Colville Indian Housing Authority does not waive any right to seek to have me evicted from the unit due to a breach of my obligations under any lease, rent-to-own, or homebuyer agreement with the Colville Indian Housing Authority or for any other reason.

Dated this ____ day of _____, 20__.

Signature

Witnessed by:
