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## **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 Warm Springs 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 Warm Springs Housing Authority and/or within any units owned or managed by the Warm Springs Housing Authority.

**AUTHORITY:** The Warm Springs Housing Authority has been designated as the "Tribally Designated Housing Entity" for the Confederated Tribes of the Warm Springs, 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 Warm Springs Housing Authority has obtained the controlled substances equipment and program (Smith Ionscan 600), and its staff has been trained and certified in its use.
4. The Warm Springs Housing Authority has reviewed the research and information regarding the Smith's Ionscan 600, and has determined that this controlled substances sampling and testing program is highly reliable as a means of testing for illegal controlled substances. The Smith's Ionscan 600 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 Warm Springs Housing Authority staff; certified Warm Springs Police Department staff; and the certified Tribal Sanitarian will be authorized to maintain and operate the controlled substances sampling and testing equipment. The retailer of the Smith Ionscan 600 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 Warm Springs Housing Authority shall ensure that at all times there is at least one staff member trained and certified in the use of Smith Ionscan 600.
2. The controlled substances testing equipment and program will be operated according to training and certification only. The Smith Ionscan 600 will not be used for anything other than its designed intended purpose according to the manufacturer.

3. The Smith Ionscan 600 will be stored and maintained by the certified operator at the Warm Springs 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 Smith Ionscan 600 is to be loaned to an agency outside the Warm Springs Housing Authority, the certified user will be loaned as well to operate the Smith Ionscan 600. Warm Springs Housing Authority makes no warranty, express or implied, as to the accuracy or validity of results from the Smith Ionscan 600 machine.

a. If the Smith Ionscan 600 is loaned to another agency, that agency will be billed for the use of the Smith Ionscan 600 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 Smith Ionscan 600 breaks or damages the Smith Ionscan 600, that agency will be billed the cost of replacement or repair, whichever is applicable.

5. *Any use* of the Smith Ionscan 600 must first be approved by the Warm Springs Housing Authority Executive Director.

### **C. Sampling and Testing Procedures:**

1. The Smith Ionscan 600 equipment and program will be used to collect samples and perform tests for the presence of narcotics and other illegal controlled substances residue in Warm Springs Housing Authority units.

2. The testing performed with the Smith Ionscan 600 will be completed consistent with this policy and accordance to the directed procedures.

a. Prior to use of the Smith Ionscan 600 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 Smith Ionscan 600 are designed to test invisible trace quantities, if the certified user can see the material to be tested with the naked eye, the Smith Ionscan 600 **shall not be used to test that material**. Instead, the certified user will 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, in a sealed container, as directed by training, until testing has been performed on the swab.

f. Each swab will then be tested as soon as practical and the results recorded, with the date, time, and location of the sampling recorded along with the name or initials of the persons performing the sampling and testing and a brief narrative of the sampling and testing.

g. If a test shows a positive result, the certified user will immediately verify the Smith Ionscan 600 functionality. The results of this functionality test will be recorded and stored along with the positive result.

h. The swabs, the related test results (including the plasmagram and other test data stored by the Smith Ionscan 600 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.

l. The Smith Ionscan 600 can be used in vapor mode to make an initial sweep of a unit where there is a suspected methamphetamine cooking operation, but no action can be taken with such results unless specific particle sampling is conducted.

4. All samples and test results used in or generated by the Smith Ionscan 600 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 Warm Springs 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 at or below the National safety level of .10.

d. A record of the specific areas tested, the test results (including the plasmagram and other test data stored by the Smith Ionscan 600 accessible via the IMS software), and the date of the test results will be maintained by the Warm Springs 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 Smith Ionscan 600 equipment and program will be used to conduct sampling and testing of an occupied unit if and when the Warm Springs Housing Authority has received reports or information regarding drug use in a home. The Smith Ionscan 600 equipment and program can also be used to conduct sampling and testing in a home during any scheduled inspections performed by the Warm Springs Housing Authority. It is the intent of Warm Springs Housing Authority to test each unit annually, to ensure our units are kept safe, decent and sanitary.

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 Warm Springs Housing Authority will terminate 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 Warm Springs 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 Warm Springs Housing Authority owned or managed units shall contain a provision or an addendum that authorizes the Warm Springs 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 Smith Ionscan 600 equipment and program can be called upon by Law Enforcement or first responder personnel, including child protective services.

a. Warm Springs Housing Authority may authorize the use of the Smith Ionscan 600 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. Warm Springs 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 Warm Springs Housing Authority by official personnel that they do have the necessary legal authorization.

c. Warm Springs 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 Warm Springs Housing Authority legal counsel.

13. Cost of testing is \$30.00 per positive test. All positive tests will be charged to the leaseholder of the dwelling unit.

#### **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 Warm Springs Housing Authority, or in any other legal action involving the Warm Springs Housing Authority where such evidence would be relevant. The swabs shall be maintained in the possession of the Warm Springs Housing Authority at all times, unless admitted and accepted as evidence by the Tribal Court.

2. It is critical that Warm Springs 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 Smith Ionscan 600 machine 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 Warm Springs Housing Authority records.

4. Any technical testimony regarding the Smith Ionscan 600 equipment or program, where practical, should be delivered by a technical level employee or designee of Smith's Detection.

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

1. The Warm Springs 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 Warm Springs 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 Smith Ionscan 600 for methamphetamine vacate that unit and that the unit be decontaminated of such residue (i.e., to the point where the Smith Ionscan 600 does not detect any residue) prior to be allowed to move back in.

3. Upon obtaining a positive test result from a dwelling unit, Warm Springs Housing Authority staff will notify the Executive Director, who will issue a notice 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 8x11 cardstock prominently displayed at main entrance to unit, signed by Executive Director.

4. A resident whose dwelling unit has tested positive with the Smith Ionscan 600 will be requested to sign a "release of liability & assumption of risk". Warm Springs Housing Authority's release form is attached. The tenant is given a letter on how to clean meth contaminated items.. If a resident refuses to sign the form, the Warm Springs 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, Warm Springs 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. Procedures for Decontamination**

1. Warm Springs 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 Warm Springs Housing Authority staff who have received such training are permitted to enter a unit after it has been tested positive with the Smith Ionscan 600.

3. Warm Springs Housing Authority staff who have 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 Warm Springs 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 Warm Springs 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 Warm Springs 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.