

DELEGATION AGREEMENT
No. AGR2017-042

DELEGATION AGREEMENT

Between

ARIZONA DEPARTMENT OF HEALTH SERVICES

And

COCHISE COUNTY

A Delegation Agreement is defined in Arizona Revised Statutes (“A.R.S.”) § 41-1001(7) as “an agreement between an agency and a political subdivision that authorizes the political subdivision to exercise functions, powers and duties conferred on the delegating agency by a provision of law.” A.R.S. § 41-1081 establishes standards of delegation.

The Arizona Department of Health Services (“**ADHS**”) is authorized by A.R.S. § 36-601.01(G)(10) to delegate to a political subdivision of this state any functions, powers or duties under the Smoke-Free Arizona Act. ADHS is authorized by A.R.S. § 36-136(D) to delegate to a local health department, county environmental department, or public health services district any functions, powers, or duties that the ADHS Director (“**Director**”) believes can be competently, efficiently, and properly performed by the local health department, county environmental department, or public health services district.

Cochise County (“**County**”) is a political subdivision of this state. See A.R.S. §§ 11-104 and 38-382. As a political subdivision of this state, Cochise County, through its County Health Department, may carry out delegated functions, powers, and duties on behalf of the ADHS. See A.R.S. §§ 36-136(D), 36-182, 36-601.01(G)(10) and 41-1001(7).

A.R.S. § 11-201(A)(3) authorizes the Cochise County Board of Supervisors to enter into contracts as necessary to assist the County in exercising its powers.

Therefore, the Director delegates to the County, and the County agrees to accept and perform the functions, powers, and duties described in Appendix B, in accordance with the terms and conditions of this Delegation Agreement (“**Agreement**”). The functions, powers, and duties to be retained by ADHS are described in Appendix B.

1. RECORDS AND INSPECTIONS:

- 1.1. The County agrees to retain all records and data related to the delegated functions, powers, and duties identified in Appendix B.
- 1.2. The County agrees to retain all records and data according to the Arizona State Library, Archives and Public Records, General Records Retention Schedule for All State and Local Agencies for Environmental Quality, Health, Management and Sustainability Records. See <http://apps.azlibrary.gov/records/general.aspx> for more information.
- 1.3. All records are subject to inspection and audit by the ADHS’ Office of Environmental Health (“**OEH**”). Upon receiving a request for records from OEH, the County agrees to produce a legible copy of any or all such records as requested to OEH within five (5) business days of receiving the OEH records request.

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- 1.4. An OEH representative, after providing prior notice to the County, may accompany County representatives on inspection related to delegated functions and review all County records related to delegated functions, powers, and duties identified in Appendix B.
- 1.5. A County representative, after providing prior notice to OEH, may request to accompany an OEH representative on an OEH inspection for the purposes of training, information sharing, or to coordinate County and OEH actions related to delegated functions, powers, and duties identified in Appendix B.

2. ENFORCEMENT ACTIONS:

- 2.1. The County, when exercising enforcement related to delegated functions, powers, and duties, shall comply with all applicable state statutes and rules identified in Appendix B.
- 2.2. The County shall be responsible for enforcement actions for those functions, powers, and duties identified in Appendix B.
- 2.3. The County shall respond to public nuisances dangerous to public health, as specified in A.R.S. § 36-601(A), and which falls under the County's delegated functions, powers, and duties identified in Appendix B. The OEH retains the authority to also respond to public nuisances dangerous to the public health. Unless a public nuisance dangerous to public health exists, no enforcement actions on a delegated function will be initiated by the OEH until the County has received notice of a violation from OEH and the County has had five (5) business days after receipt of the OEH notice of violation to initiate an enforcement action.

- 2.4. The County shall be responsible for the following:

- 2.4.1. Food Safety and General Sanitation Control:

See Appendix B.

- 2.4.2. Pure Food Control:

The County shall administer and enforce the provisions of A.R.S. §§ 36-901 through 36-916 which prohibits the manufacture, sale, holdings or delivery of adulterated and misbranded foods. Where adulterated or misbranded food is manufactured, sold, held, or delivered from or within the County, and no portion of such manufacture sale, holding, or delivery occurs within any other county of the state, the County may take enforcement action without first notifying OEH. However, if any portion of the manufacture, sale, delivery, holding, or offering for sale of adulterated or misbranded food occurs within any other county of the state, no enforcement action shall be initiated by the County until after OEH has received a notice of violation and has five (5) business days from the date the notice was received to initiate an enforcement action. The County shall, within 24 hours of identifying an emergency case, provide notice of violation to the OEH of the nature and extent of the violation of state statutes or rule relating to adulterated or misbranded foods, and shall provide additional information as OEH may require. See Appendix B.

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4.2.3. Smoke-Free Arizona Act

County shall be responsible for the education, inspections, investigations, and complaint responses for the Smoke-Free Arizona Act according to delegated functions, powers, and duties identified in Appendix B. The County shall forward reports of violation related to the Smoke-Free Arizona Act to the OEH for enforcement. See Appendix B.

3. FEES AND CIVIL PENALTIES:

The County is authorized to collect fees and assess civil penalties by: A.R.S. §§ 36-183.04; 36-183.05; 36-187; and 36-602. The County is also authorized to collect fees and assess civil penalties for delegated functions, powers, and duties under this Agreement, if such authority is included in the laws and rules identified in Appendix B.

4. QUALIFICATIONS OF PERSONNEL:

- 4.1. A County representative exercising delegated functions, powers, and duties identified in Appendix B with regard to Food and General Sanitation Control and Pure Food Control shall be an Arizona Registered Sanitarian authorized by A.R.S. § 36-136.01 or an unregistered individual that prepares and submit inspection reports to an Arizona Registered Sanitarian. Individuals that are not registered sanitarians shall not approve or disapprove the operation of a food establishment.
- 4.2. A County representative exercising delegated functions, powers, and duties identified in Appendix B with regard to the Smoke-Free Arizona Act, shall meet County personnel rules.

5. STANDARDS OF PERFORMANCE AND REPORTING:

- 5.1. The County's performance of delegated functions under the Agreement shall be in accordance with state statutes and rules identified in Appendix B and inspections for:
 - 5.1.1. Food establishments shall be inspected at least once every six months or at a frequency outlined in section 8-401.10 and 8-401.20 of the food code.
 - 5.1.2. Semi-public bathing places shall occur at least once each calendar year and public swimming pools shall be inspected at least once each month that the public swimming pool is open for water contact recreation.
 - 5.1.3. Public schools shall occur at least once each calendar year.
- 5.2. Unregistered individuals conducting food safety inspections shall receive food code training or have completed the Food and Drug Administration's Voluntary National Retail Food Regulatory Program Standards Standard 2 prerequisite training curriculum prior to conducting independent retail food inspections.
- 5.3. The County shall provide annually a:
 - 5.3.1. Food and General Sanitation Annual Report to the OEH Food Safety & Environmental Services Section, using the form provided in Appendix C, by September 1; and
 - 5.3.2. Smoke-Free Arizona Annual Report to the OEH Smoke-Free Arizona Section, using the form provided in Appendix D, by May 10.

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6. TERMINATION:

- 6.1. This Agreement may be terminated in whole or in part by the Director or the County, effective ninety (90) calendar days after either the Director or the County provides written notice of termination by certified mail to the other.
- 6.2. The County, prior to the termination of all or part of this Agreement, shall forward to the Director:
 - 6.2.1. A list and summary of the functions, powers, and duties the County is terminating;
 - 6.2.2. All pending complaints and enforcement actions received by the County for those functions, powers, and duties being terminated;
 - 6.2.3. The Smoke-Free Arizona Annual Report, identified in Appendix D, updated from the date of the last Smoke-Free Arizona Annual Report submitted to the Department for analyzing Smoke-Free Arizona activities to enforce this law, including all complaints and education outreach and enforcement activities by the County;
 - 6.2.4. A list of names of the persons and regulated facilities affected by the termination and to whom notification of termination was sent; and
 - 6.2.5. All records retained according to Section (A)(2).
- 6.3. The provisions of A.R.S. § 38-511 are incorporated herein by reference.

7. AMENDMENTS:

This Agreement may be amended by mutual approval of both the Director and the County by executing and filing a written amendment signed by both the Director and the County containing the desired modifications as required in A.R.S. § 41-1081.

8. DISPUTES:

- 8.1. Pursuant to A.R.S. § 12-1518, the Director and the County agree to use arbitration specified in A.R.S. § 12-133, should a dispute under this Agreement occur which cannot be resolved by the Director and the County.
- 8.2. In the event of a dispute between the Director and the County under this Agreement, the OEH or the County with who a matter in dispute is claimed will:
 - 8.2.1. Provide to the other a written notice of the matter in dispute and intent to resolve the matter in dispute, including a notice of proposed meeting to discuss and resolve the matter in dispute.
 - 8.2.2. After the meeting to resolve the matter in dispute, the OEH and County will implement the resolution agreed to by the OEH and the County within 10 business day of the date-of-the-meeting; unless during the meeting, the OEH and County agreed to extend the period needed for resolution.
 - 8.2.3. If after the meeting, a resolution is not reach between the OEH and the County, the matter in dispute shall be resolved through the use of arbitration as stated in subsection 3.

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8.3. In the event that the dispute between the Director and the County identified in subsection 2 is not resolved, the Director or the County with who a matter in dispute is claimed, shall provide to the other notice of intent to seek resolution through arbitration. The Director or the County with who a matter in dispute is claimed shall proceed with arbitration as specified in A.R.S. § 12-133.

9. TERM OF AGREEMENT:

This Agreement is effective July 1, 2017 and the termination date of this Agreement is June 30, 2032. In the event a new Agreement is not executed by the termination date, the Agreement may be extended by executing requirements in Section G by mutual agreement by filing an amendment in accordance with the provisions of A.R.S. § 41-1081.

ARIZONA DEPARTMENT OF HEALTH SERVICES

DIRECTOR _____ DATE _____

COCHISE COUNTY HEALTH DEPARTMENT

DIRECTOR _____ DATE _____

COUNTY BOARD OF SUPERVISORS

CHAIRMAN _____ DATE _____

ATTEST

CLERK OF THE BOARD _____ DATE _____

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APPENDIX A**

PRIMARY CONTACT PERSONS

1. The name and address of the primary contact person for the County is:

Carrie Langley
Acting Health Director
Cochise County Health Department
1415 Melody Lane, Bldg. A
Bisbee, AZ 85603
520.432.9468

2. The name and address of the primary contact person for the ADHS is:

Eric Thomas, Chief
Office of Environmental Health
Arizona Department of Health Services
150 N. 18th Avenue, Suite 140
Phoenix, Arizona 85007
602.364.0929

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APPENDIX B

1. COUNTY DELEGATED RESPONSIBILITIES:

Delegated Functions and Duties	Applicable Statutes and Rules
Swimming Pools and Bathing Places	A.R.S. § 36-132(A)(12). A.A.C. Title 9, Chapter 8, Article 8.
Bottled Water	A.R.S. §§ 36-132(A)(13) and 36-136(A)(6). A.A.C. Title 9, Chapter 8, Article 2.
Campgrounds	A.R.S. § 36-136(A)(6). A.A.C. Title 9, Chapter 8, Article 6.
Children's Camps	A.R.S. §§ 36-3901 through 36-3915 (<i>formerly 8-551 through 8-568</i>) and 36-136(A)(6). A.A.C. Title 9, Chapter 8, Article 4.
Food Establishments except for state prisons.	A.R.S. § 36-136(A)(6). A.A.C. Title 9, Chapter 8, Article 1.
Hotel and Motel Sanitation	A.R.S. § 36-136(A)(6). A.A.C. Title 9, Chapter 8, Article 13.
Public Nuisance Responses	A.R.S. §§ 36-136(A)(6) and 36-601.
Public Toilet Facilities	A.R.S. § 36-136(A)(6). A.A.C. Title 9, Chapter 8, Article 3.
Public School Sanitation	A.R.S. § 36-136(A)(6). A.A.C. Title 9, Chapter 8, Article 7.
Trailer Coach Park Sanitation	A.R.S. § 36-136(A)(6). A.A.C. Title 9, Chapter 8, Article 5.
Pure Food Control Investigations	A.R.S. §§ 36-901 through 36-916.
Smoke-Free Arizona	A.R.S. § 36-601.01 A.A.C. Title 9, Chapter 2, Article 1.

- 2. ADHS RETAINS** inspections for food establishments at state prisons not delegated to the County described in Subsection (A).
- 3. ADHS RETAINS** enforcement activities for reports of violation related to the Smoke-Free Arizona Act not delegated to the County described in Agreement Subsection (B) Enforcement Actions.

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APPENDIX C

FOOD AND GENERAL SANITATION ANNUAL REPORT FORM

Jurisdiction: _____ Fiscal Year: _____

Food Program Activity Categories	Complex	Moderate	Limited	Totals
Current Number of Food Establishments				
Number of Routine Inspections				
Number of Re-inspections				
Number of Pre-Operational Inspections Performed				
Number of Food borne Illness (FBI) Complaints Evaluated/Investigated				
Number of Non-FBI Complaints Evaluated/Investigated				
Number of Compliance Proceedings (Conferences, Hearings, Court)				
Number of Food Items Detained/Embargoed "Pounds"				
Number of Temporary Food Establishment Inspections Performed				

Sanitation Inspections and Other Programs	Number of Facilities	Number of Inspections	Number of Complaint Investigations	Number of Enforcement Actions
Public & Semipublic Bathing Places				
Trailer Coach Parks				
Public School Grounds				
Camp Grounds				
Children's Camps				
Public Accommodations				
Bottled Water				

Total number of Registered Sanitarians in the Food Safety Program: _____

Total number of Sanitarian Aides in the Food Safety Program: _____

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APPENDIX D

SMOKE-FREE ARIZONA ANNUAL REPORT FORM

Jurisdiction: _____ Fiscal Year: _____

Smoke-Free Arizona Activity Categories:	Individuals ¹	Public Buildings ²	Places of Employment ³	Retail Food ⁴	Other ⁵	Totals
Number of Complaints ^A (one category only)						
Number of Complaint Inspections ^B						
Number of Notice of Violations Issued ^C						
Number of Enforcement Referrals to ADHS ^D						
Number of Compliance Proceedings ^E						
Fines Assessed ^F						

A: Indicate the total number of complaints received from each category between May 1st [Year] and April 30th [Year].

B: Indicate the number of inspections/investigations conducted on-site with regards to the allegations made in the complaint. Complaint inspections do not include letters or phone calls made to the proprietor.

C: Indicate the total number of notices of violations issued. The notice of violation may or may not include an assessment of fines. Do not include the number of inspections reports or letters notifying the proprietor that a complaint has been filed.

D: Indicate the total number of establishments being referred to ADHS for enforcement.

E: Indicate the total number of compliance proceedings, this include hearings and meetings with the proprietor (and/or his representative) following the issuance of the notice of violations

F: Indicate the total amounts of money received for fines or settlements.

1: Used only for a report of violation regarding an individual who did not stop smoking when asked to quit smoking in a non-smoking area. This category is unlikely to be used.

2: Includes airport facilities, stadium, auditoriums, theaters, banks, city/county/state buildings, and similar establishments open to the general public.

3: Includes private offices or other businesses where the general public is not usually invited.

4: Includes all types of retail food establishments such as bars, restaurants grocery stores, etc. For example, a convenience store may be included in this category if this establishment has a food permit.

5: Includes all other establishments, locations, areas or spaces not defined in the categories listed above. For example, outdoor areas, courtyards, parks, bus stops, spaces lacking a physical structure, and Federal/Tribal land.

Smoke-Free Arizona Program Educational Services:	Totals
Number of Presentations (Group Events) ^A	
Number of Participants/Audience (Group Events) ^B	
Number of Consultations/Counseling Provided ^C	
Number of Media Contacts ^D	

A: Indicate the total number of presentations made between May 1st [Year] and April 30th [Year]. This category includes workshop, seminar, conference and other presentations for a group of people.

B: Indicate the total number of participants attending all the events mentioned in A. For consistency purposes, the following information should be documented at the county for each group event: *Name of the event, Date of the event, Location of the event, Title of the presentation, Number of participants/audience.*

Group Event Example: *Annual Conference; May 15-16, [Year]; Conference Center; Title of the presentation: "Understanding the Smoke-Free Arizona Act;" and Audience: 40 participants at the event.*

C: Indicate the total number consultations and counseling made between May 1st [Year] and April 30th [Year]. Consultations and counseling include routine inspections at food establishments when education is provided with regards to the Smoke-Free Arizona Act, on-site visits to businesses, meeting with business owners, etc. Consultation and counseling does not include information provided to the general public or a business owner over the phone about a general question on the Smoke-Free Arizona Act. For consistency purposes, the consultation should be documented (inspection report, logbook, daily planner, narrative, Email etc.) at the county. It should be related to a specific establishment with the date of the visit/meeting, and the name of the person who received the consultation.

D: Indicate the number of requests between May 1st [Year] and April 30th [Year] coming from the media (television, radio, newspaper) about the Smoke-Free Arizona program. This also includes contacts with the Public Information Officer or anyone else in your county.

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LETTER OF DETERMINATION**

DELEGATION AGREEMENT NO. _____

The Office of the County Attorney has determined that the Delegation Agreement made between the:

ARIZONA DEPARTMENT OF HEALTH SERVICES

AND THE

COCHISE COUNTY

is in proper form and is within the powers and authority granted under the laws of Arizona to the County Board of Supervisors (ref. A.R.S. § 11-201).

TYPED NAME OF COUNTY ATTORNEY

BY

SIGNATURE OF COUNTY ATTORNEY/DESIGNEE

TYPED TITLE OF SIGNATORY

DATE