



Guidance Document – Advisory Visits

ARIZONA DEPARTMENT OF HEALTH SERVICES SMOKE-FREE ARIZONA PROGRAM

Conducting an Advisory Visit / Compliance Visit

- I. PURPOSE: To provide guidance and to ensure uniform advisory visits at any premises with regards to the Smoke-Free Arizona Act, A.R.S. § 36-601.01.
- II. APPLICABILITY: Applies to Department (ADHS SFA Program) and Department's designee personnel conducting advisory visits related to the Smoke-Free Arizona Act.
- III. PROCEDURES:
 - A. If the Department has reason to believe that the proprietor of an establishment is in need of education about the requirements of A.R.S. § 36-601.01 and/or A.A.C. R9-2-101 – R9-2-112 an advisory visit may be conducted.
 - B. Upon entering an establishment and conducting an advisory visit, inspector should:
 1. Identify the proprietor at the given establishment;
 - a) The proprietor means an owner, operator, manager, or other person in control of a public place or place of employment. The proprietor may be any of the following people: establishment owner, manager, assistant manager, employee, clerk, cashier, chef, cook, lead or any person who has been designated as "the person in charge" by the establishment.
 2. Present photo identification and/or identify themselves including what agency they represent;
 3. State that the purpose of the visit is to provide information about the Smoke-Free Arizona Act, including but not limited to the required "No Smoking" signs and appropriate Smoke-Free Arizona brochure(s);
 4. Provide any applicable information and materials necessary to the proprietor so that they are able to comply with the provisions of A.R.S. § 36-601.01 and A.A.C. R9-2-101 – R9-2-112.
 - C. After completing the advisory visit, an Advisory Form or a local county form should be filled out by the inspector. The following should be included:
 1. Establishment name;
 2. Establishment street address, city, and zip code;
 3. Visit date;
 4. Visit time;
 5. Purpose (i.e. "Advisory Visit");
 6. Whether educational materials were provided;



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7. Whether “No Smoking” signs were provided;
 8. The inspectors name and signature; and
 9. The proprietor’s name, title, and signature.
- D. If, during an advisory visit, a violation of A.R.S. § 36-601.01 or A.A.C. R9-2-101 – R9-2-112 is observed, encourage the business proprietor to perform corrective actions that will result in compliance with the Law.
- E. If, during a compliance visit, a violation of A.R.S. § 36-601.01 or A.A.C. R9-2-101 – R9-2-112 is observed, the inspector shall document the violations on a Summary Inspection Report (“SIR”) or a local county inspection report, as per the procedures listed in the General Inspection Guidance Document. Upon return to the office, a complaint shall be filed based on the observations made during the compliance visit. The complaint shall be updated as per the observations and corrective actions made during the compliance visit and re-inspection(s), if applicable.
- F. Provide the Advisory Form, the SIR, or local county inspection report respectively to the proprietor and obtain name, title, and signature from proprietor. Note: Remember to do this on both pages of the SIR.
- a) If the proprietor refuses to sign, the inspector may write “refused to sign.”
- G. Keep a copy of the signed Advisory Form, SIR, or local county inspection report and leave a copy with the proprietor.



Guidance Document – General Inspections

ARIZONA DEPARTMENT OF HEALTH SERVICES SMOKE-FREE ARIZONA PROGRAM

Conducting a General Inspection

- I. **PURPOSE:** To provide guidance and to ensure uniform inspections of any premises with regards to the Smoke-Free Arizona Act, A.R.S. § 36-601.01.
- II. **APPLICABILITY:** Applies to Department (ADHS SFA Program) and Department's designee personnel conducting general inspections related to the Smoke-Free Arizona Act.
- III. **PROCEDURES:**
 - A. Prior to conducting an inspection prepare all inspection materials.
 - B. If the Department or the Department's designee has reason to believe that an establishment is in violation of A.R.S. § 36-601.01 and/or A.A.C. R9-2-101 – R9-2-112 an inspection shall be conducted.
 - C. Upon entering an establishment and conducting an inspection, inspector should:
 1. Identify the proprietor at the given establishment;
 - a) The proprietor means an owner, operator, manager or other person in control of a public place or place of employment. The proprietor may be any of the following people: establishment owner, manager, assistant manager, employee, clerk, cashier, chef, cook, lead or any person who has been designated as "the person in charge" by the establishment.
 2. Present photo identification and/or identify themselves including what agency they represent;
 3. State that the purpose of the inspection is to conduct either a compliance inspection or a complaint inspection;
 4. Afford an opportunity to have an authorized on-site representative of the regulated establishment accompany the inspector or regulator on the premises.
 - D. In determining whether a violation of A.R.S. § 36-601.01 or A.A.C. R9-2-101 – R9-2-112 has occurred, the inspector shall consider the following:
 1. The presence of an ashtray in an area where smoking is prohibited;
 2. The lack of a sign that is required under A.R.S. § 36-601.01(E) or the presence of a sign that does not meet the requirements of R9-2-105;
 3. The presence of smoking;
 4. The presence of tobacco ashes, cigarette butts or filters, or cigar stubs in an area where smoking is prohibited;

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5. The presence of tobacco smoke that drifts into a place of employment or public place through entrances, windows, ventilation systems, or other means;
 6. Except as provided in R9-2-108(D) and R9-2-108(E), the presence of tobacco smoke within a reasonable distance from entrances, open windows, or ventilation systems;
 7. Violations of the exemptions described in A.R.S. § 36-601.01(B); and/or
 8. Any other violation(s) of A.R.S. § 36-601.01 or A.A.C. R9-2-101 – R9-2-112.
- E. After determining whether a violation of the Law exists at the establishment under investigation, a Summary Inspection Report (“SIR”) or local county inspection report should be filled out by the inspector. The following should be included:
1. Establishment name;
 2. Establishment street address, city, and zip code;
 3. Inspection date;
 4. Inspection time;
 5. Inspection purpose (i.e. “Complaint”);
 6. All violation(s) that are observed:
The following applies if using ADHS SIR:
 - i. Circle item # on page 1 SIR; and
 - ii. List item # on page 2 of SIR and describe in detail the violation observed.
 7. All corrective action(s):
 - a) Observed at the time of inspection; or
 - b) Required prior to re-inspection.
 8. Whether educational materials are provided;
 9. Whether “No Smoking” signs are provided; and
 10. The inspectors name and signature (on both pages of the SIR).
- F. If it is determined that a violation of the Law does not exist at the establishment under investigation, a Summary Inspection Report (“SIR”) or local county inspection report should be filled out by the inspector. The following should be included:
1. Establishment name;
 2. Establishment street address, city, and zip code;
 3. Inspection date;
 4. Inspection time;
 5. Inspection purpose (i.e. “Complaint”);
 6. No violations observed;
The following applies if using ADHS SIR:
 - i. On page 2 describe the purpose of the inspection and that no violations were observed at the time of inspection.
 - ii. Describe observations made during the inspection such as signs posted, ashtrays at least 20 feet away, etc., specifically addressing the alleged violations mentioned in the complaint.
 7. Whether educational materials are provided;



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8. Whether “No Smoking” signs are provided; and
 9. The inspectors name and signature (on both pages of the SIR).
- G. Provide the SIR or local county inspection report to the proprietor and obtain name, title, and signature from proprietor (on both pages of the SIR).
- a) If the proprietor refuses to sign, the inspector may write “refused to sign” (on both pages of the SIR).
- H. Keep a copy of the signed SIR or local county inspection report and leave a copy with the proprietor.
- I. Any additional evidence should be documented to support violations observed. Examples of additional evidence include but are not limited to:
1. Photos (if applicable): Each photo should be labeled with the date, time, photographer, and a brief description of the photo.
 2. Letters sent to the proprietor of establishment (if applicable): If letters are sent via certified mail, the certified mail receipts should be saved.
- J. Upon return to the office, the complaint shall be updated as per the observations and corrective actions made during the complaint inspection and re-inspection(s), if applicable.
- K. If violations of the Law were observed during the initial inspection then a re-inspection will be needed to determine if the violations have been corrected. If violations were corrected at the time of inspection, a re-inspection may not be necessary.
1. Re-inspections need to be conducted within a reasonable amount of time, no more than 30 days from initial inspection.
 2. If violations of the Law are observed follow procedure previously explained in this document (Section E).
- L. If a pattern of non-compliance or willful violations are observed, the establishment may be referred for enforcement. The following is a sample timeline for enforcement referral:
1. Initial inspection with violations of the Law observed and documented.
 2. Re-inspection with violations of the Law observed and documented.
 3. Second re-inspection with violations of the Law observed and documented.
- Consult the guidance document titled Enforcement Referral at ADHS for possible referral for enforcement.
- Or
1. Initial inspection and proprietor refuses to allow inspection, document refusal as well as visual violations of the Law upon an incomplete interior inspection or an



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exterior inspection of the premises (i.e. lack of required “no-smoking” sign) using SIR or local county inspection report.

2. Re-inspection and proprietor refuses to allow inspection, document refusal as well as visual violations of the Law (i.e. lack of required “no-smoking” sign) using SIR or local county inspection report. Please note: police assistance may be needed if there are any safety concerns.

Consult the guidance document titled Enforcement Referral at ADHS for possible referral for enforcement.



Guidance Document – Inspection Documentation

ARIZONA DEPARTMENT OF HEALTH SERVICES SMOKE-FREE ARIZONA PROGRAM

Documenting Violations of the Smoke-Free Arizona Act

- I. PURPOSE: To provide guidance and to ensure uniform documentation with regards to violations of the Smoke-Free Arizona Act, A.R.S. § 36-601.01.
- II. APPLICABILITY: Applies to Department (ADHS SFA Program) and Department's designee personnel conducting advisory inspections, general inspections, re-inspections, and enforcement inspections related to the Smoke-Free Arizona Act.
- III. PROCEDURES:
 - A. When conducting an advisory or compliance inspection, inspector should follow the procedures described on the General Inspection Protocol (Sections A, B, C, and D).
 - B. After determining whether a violation of the Law exists at the establishment under investigation, a Summary Inspection Report ("SIR") or local county inspection report should be filled out by the inspector.
 1. If violations of the Law were observed at the establishment under investigation, follow procedure previously explained in the General Inspection document (Section E).
 - a) When documenting violations, inspector should be specific regarding the observations. Photographic evidence should support the observations. Some examples are as follow:
 - i) *Observed a lack of the required "No Smoking" sign(s)*
 - i. *Throughout the establishment; or*
 - ii. *On the employee entrance on the North (South, East, West, Front, Back) side of the building.*
 - ii) *Observed the presence of an ashtray(s) where smoking is prohibited*
 - i. *A glass ashtray was observed in the owner's office;*
 - ii. *A bucket being used as an ashtray was located by the front door of the establishment;*
 - iii. *Aluminum cans being used as ashtrays were observed on the bar counter top; or*



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- a) If the proprietor refuses to sign, the inspector may write “refused to sign” (on both pages of the SIR).
- E. Keep a copy of the signed Advisory Form, SIR, or local county inspection report and leave a copy with the proprietor.



Guidance Document - Repeat Complaint Inspection Policy

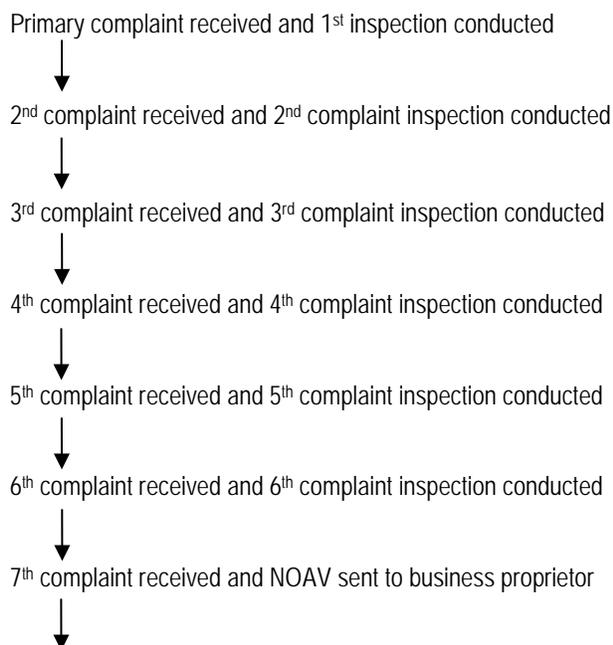


The purpose of the repeat complaint inspection policy is to establish a method for determining a business's pattern of compliance, including the appropriate course of action thereafter. A pattern of compliance may be determined following a number of inspections resulting from numerous complaints against a business that allege violations of the Smoke-Free Arizona Act.

NOTE:

- If multiple complaints are filed against one business at the same time:
 - Refer all subsequent complaints to the primary complaint filed
- If multiple complaints are filed within 30 days of the initial complaint and an inspection for the primary complaint finds that the business is in compliance:
 - Refer all subsequent complaints with the same allegations to the primary complaint filed
 - Conduct additional inspection(s) for complaints with new allegations

A business's pattern of compliance may be determined by the Program as a result of conducting at least 6 complaint inspections within a 12 month period of time, so long as violations are not observed during any of the complaint inspections. If a pattern of compliance is determined, a notice of alleged violation (NOAV) may be sent to the business proprietor. The purpose of sending a NOAV is to advise the business proprietor of the allegations of violations reported against their business without conducting an inspection. Once 6 NOAV's have been sent to a business, a follow-up compliance inspection will need to be conducted to ensure continued compliance. If at any point after a pattern of compliance has been determined, a complaint is received alleging new violations of the Act, an inspection will need to be conducted. If violations are observed during any of the 6 complaint inspections, a pattern of compliance would not be established and complaint inspections should continue until a pattern of compliance is established. The flow chart below illustrates the process for establishing a pattern of compliance and the appropriate subsequent use of NOAV's.



Reminder: At any point during this process if violations are observed during inspections or new allegations are made in a complaint, an inspection will need to be conducted and the process for establishing a pattern of compliance starts over.

8th – 12th complaints received and up to 5 additional NOAV's sent to the business proprietor



Follow-up compliance inspection conducted (if no violations are observed, up to 6 NOAV's can be sent, followed by a follow-up inspection; however, if violations are observed, the process for establishing a pattern of compliance starts over)

For additional questions regarding this policy, please contact Eric Thomas, Smoke-Free Arizona Program Manager at (602)364-0929 or at eric.thomas@azdhs.gov.



Guidance Document – Retail Tobacco Store Inspections

ARIZONA DEPARTMENT OF HEALTH SERVICES SMOKE-FREE ARIZONA PROGRAM

Conducting a Retail Tobacco Store Inspection

- I. **PURPOSE:** To ensure uniformity in conducting complaint inspections in places of employment claiming to be exempt “retail tobacco stores” with regards to the Smoke-Free Arizona Act, A.R.S. § 36-601.01.
- II. **APPLICABILITY:** Applies to the Department (ADHS SFA Program) and Department’s designee personnel conducting complaint inspections in “retail tobacco stores.”
- III. **PROCEDURES:**
 - A. Prior to conducting an inspection prepare all inspection materials.
 - B. If the Department or the Department’s designee has reason to believe that an establishment does not meet the definition of a “retail tobacco store” in A.R.S. § 36-601.01(A)(10) and the requirements in A.R.S. § 36-601.01(B)(3) and R9-2-107 an inspection shall be conducted.
 - C. Upon entering an establishment and conducting an inspection, inspector should:
 1. Identify the proprietor at the given establishment;
 1. The proprietor means an owner, operator, manager or other person in control of a public place or place of employment. The proprietor may be any of the following people: establishment owner, manager, assistant manager, employee, clerk, cashier, chef, cook, lead or any person who has been designated as “the person in charge” by the establishment.
 2. Present photo identification and/or identify themselves including what agency they represent;
 3. State that the purpose of the inspection is to conduct either a compliance inspection or a complaint inspection;
 4. Afford an opportunity to have an authorized on-site representative of the regulated establishment accompany the inspector or regulator on the premises.
 - D. To determine whether a proprietor claiming that their “retail tobacco store” meets the definition in A.R.S. § 36-601.01(A)(10) and the requirements in A.R.S. § 36-601.01(B)(3) and R9-2-107 and qualifies as an exemption of the Smoke-Free Arizona Act, the following must be provided or demonstrated by the proprietor at the time of inspection:

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1. The proprietor of a retail tobacco store where smoking is permitted which ***has not*** been in operation for at least an entire calendar year and that begins operating after January 1 of a calendar year shall complete, by the first day of operation, an affidavit that contains the following:
 - a. The name of the proprietor of the retail tobacco store,
 - b. The name and address of the retail tobacco store,
 - c. A statement that the proprietor of the retail tobacco store has personal knowledge of the facts supporting the affidavit,
 - d. A statement that the retail tobacco store ***expects*** to derive at least 51 percent of its gross income during each calendar year from the sale of tobacco products and accessories as required by A.R.S. § 36-601.01,
 - e. A statement describing the documents that contain the facts supporting the statement in subsection (B)(4),
 - f. The signature of the proprietor of the retail tobacco store,
 - g. An Arizona notary's signature certifying that the proprietor swore to or affirmed the truthfulness of the statements in the affidavit, and
 - h. The date of the Arizona notary's signature; or
2. The proprietor of a retail tobacco store where smoking is permitted which ***has*** been in operation for at least an entire calendar year shall complete, by January 31 of each year, an affidavit that contains:
 - a. The name of the proprietor of the retail tobacco store,
 - b. The name and address of the retail tobacco store,
 - c. A statement that the proprietor of the retail tobacco store has personal knowledge of the facts supporting the affidavit,
 - d. A statement that the retail tobacco store ***derived*** at least 51 percent of its gross income during the previous calendar year from the sale of tobacco products and accessories,
 - e. A statement describing the documents that contain the facts supporting the statement in subsection (C)(4),
 - f. The signature of the proprietor of the retail tobacco store,
 - g. An Arizona notary's signature certifying that the proprietor swore to or affirmed the truthfulness of the statements in the affidavit; and
 - h. The date of the Arizona notary's signature; and
3. Documents that enable the Department or the Department's designee to determine the percent of gross income derived from the sale of tobacco products and accessories (i.e. purchase invoices, sales invoices, TPT-1 tax return, cash register z-tape, etc...):
 - a. For the calendar quarter immediately preceding the date of the complaint; or
 - b. If the retail tobacco store was not in operation for the entire calendar quarter immediately preceding the date of the complaint, for the

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- period beginning on the date the retail tobacco store opened and ending on the date of the complaint; and
4. The establishment is physically separated from a neighboring business, if applicable; and
 5. The establishment has a separate ventilation system from a neighboring business, if applicable.
- E. After determining whether a violation of the Law exists at the establishment under investigation, a Summary Inspection Report ("SIR") should be filled out by the inspector. The following should be included:
1. Establishment name;
 2. Establishment street address, city, and zip code;
 3. Inspection date;
 4. Inspection time;
 5. Inspection purpose (i.e. "Complaint");
 6. All violation(s) that are observed:
The following applies if using ADHS SIR:
 - i. Circle item # on page 1 SIR; and
 - ii. List item # on page 2 of SIR and describe in detail the violation observed.
 7. All corrective action(s):
 1. Observed at the time of inspection; or
 2. Required prior to re-inspection.
 8. Whether educational materials are provided;
 9. Whether "No Smoking" signs are provided; and
 10. The inspectors name and signature (on both pages of the SIR).
- F. If it is determined that a violation of the Law does not exist at the establishment under investigation, a Summary Inspection Report ("SIR") should be filled out by the inspector. The following should be included:
1. Establishment name;
 2. Establishment street address, city, and zip code;
 3. Inspection date;
 4. Inspection time;
 5. Inspection purpose (i.e. "Complaint ");
 6. No violations observed:
The following applies if using ADHS SIR:
 - i. On page 2 describe the purpose of the inspection and that no violations were observed at the time of inspection.
 - ii. Describe observations made during the inspection such as signs posted at the time of the inspection, ashtrays at least 20 feet away, etc., specifically addressing the alleged violations mentioned in the complaint.
 7. Whether educational materials are provided;

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8. Whether “No Smoking” signs are provided; and
 9. The inspectors name and signature (on both pages of the SIR).
- G. Provide the SIR or local county inspection report and obtain name, title, and signature from proprietor (on both pages of the SIR).
1. If the proprietor refuses to sign, the inspector may write “refused to sign” (on both pages of the SIR).
- H. Keep a copy of the signed SIR or local county inspection report and leave a copy with the proprietor.
- I. Any additional evidence should be documented to support violations observed. Examples of additional evidence include but are not limited to:
1. Photos (if applicable): Each photo should be labeled with the date, time, photographer, and a brief description of the photo.
 2. Letters sent to the proprietor of establishment (if applicable): If letters are sent via certified mail, the certified mail receipts should be saved.
- J. Upon return to the office, the complaint shall be updated as per the observations and corrective actions made during the complaint inspection and re-inspection(s), if applicable.
- K. If violations of the Law were observed during the initial inspection then a re-inspection will be needed to determine if the violations have been corrected. If violations were corrected at the time of inspection, a re-inspection may not be necessary.
1. Re-inspections need to be conducted within a reasonable amount of time, no more than 30 days from initial inspection.
 2. If violations of the Law are observed follow procedure previously explained in this document (Section E).
- L. If a pattern of non-compliance or willful violations are observed the establishment may be referred for enforcement. The following is a sample timeline for enforcement referral:
1. Initial inspection with violations of the Law observed and documented.
 2. Re-inspection with violations of the Law observed and documented.
 3. Second re-inspection with violations of the Law observed and documented.
- Consult the guidance document titled Enforcement Referral at ADHS for possible referral for enforcement.

Or

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1. Initial inspection and proprietor refuses to allow inspection, document refusal as well as visual violations of the Law upon an incomplete interior inspection or an exterior inspection of the premises (i.e. lack of required “no-smoking” sign) using SIR or local county inspection report.
2. Re-inspection and proprietor refuses to allow inspection, document refusal as well as visual violations of the Law (i.e. lack of required “no-smoking” sign) using SIR or local county inspection report. Police assistance may be requested if there is a safety concern.

Consult the guidance document titled Enforcement Referral at ADHS for possible referral for enforcement.

- M. If the Department or the Department’s designee concludes that the establishment meets the definition in A.R.S. § 36-601.01(A)(10) and the requirements in A.R.S. § 36-601.01(B)(3) and R9-2-107, the Department or the Department’s designee shall notify the proprietor and note in the database that the establishment meets the exemption criteria defined in the Smoke-Free Arizona Act.
- N. If the Department or the Department’s designee concludes that the establishment does not meet the definition in A.R.S. § 36-601.01(A)(10) and the requirements in A.R.S. § 36-601.01(B)(3) and R9-2-107, the Department or the Department’s designee shall notify the proprietor and note in the database that the establishment is not recognized as an exemption of the Smoke-Free Arizona Act and shall comply with all requirements of an enclosed public place or place of employment or make the necessary changes to meet the exemption criteria defined in A.R.S. § 36-601.01.



Guidance Document – Enforcement Referrals

ARIZONA DEPARTMENT OF HEALTH SERVICES SMOKE-FREE ARIZONA PROGRAM

STANDARD OPERATING PROCEDURE

Enforcement Referral to ADHS

- I. **PURPOSE:** To ensure uniformity in referring smoking complaints to ADHS for enforcement.
- II. **APPLICABILITY:** Applies to County Health Department personnel involved with compliance and enforcement of the Smoke-Free Arizona Act, A.R.S. § 36-601.01, specifically Cochise, Gila, Maricopa, Pinal, and Yavapai Counties.
- III. **PROCEDURES:**
 - A. After the Department's designee determines that a violation of A.R.S. § 36-601.01 has occurred and a pattern of non-compliance has been documented, the Department's designee may refer a complaint to ADHS for enforcement.
 - B. A complaint shall be referred to ADHS in the following way:
 1. Observation findings for all inspections conducted shall be entered into the complaint database;
 2. The status "referred to ADHS for enforcement" shall be selected for the primary complaint;
 3. Additional complaints shall be "referred to" to the primary complaint in the complaint database;
 4. ADHS Smoke-Free Arizona Legal Liaison or Program Manager shall be notified via e-mail or phone that the complaint has been referred to ADHS in a timely manner; and
 5. The Department's designee shall provide documentation, including complaints, inspection reports, and pictures to ADHS.
 - C. If additional complaints are submitted for a public place or place of employment after enforcement referral to ADHS and while under investigation, the Department's designee or the Department's personnel (SFA Inspector, Legal Liaison, or Program Manager) shall do the following:
 1. Complaint shall be closed out in the complaint database by referring the complaint to the original complaint by selecting the following bullet in the pre-observation findings page, "No complaint inspection conducted. Establishment currently under investigation by County Health Department. Please refer to Complaint ID# _____. Status will be set to 'Closed';" or



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2. Complaint shall be closed out in the complaint database by selecting the following bullet in the pre-observation findings page, "No complaint inspection conducted by County Health Department. Complaint directly referred to ADHS for enforcement and is currently under investigation. Status will be set to 'Referred to ADHS'."



Guidance Document – Request for Complaint Information

ARIZONA DEPARTMENT OF HEALTH SERVICES SMOKE-FREE ARIZONA PROGRAM

Request for information

As with any information request regarding education, compliance, or enforcement activities of the Smoke-Free Arizona (SFA) Program in your county, it is important to inform your county or agency Public Information Officer (PIO) about the request. Provide the PIO with the contact information for the individual or organization. The PIO may screen the request by talking directly to the requesting party first and then clearing the SFA personnel to grant an interview (personal, telephone, radio, television, etc.). The interview may be to provide information to a specific audience or to write an article in a newspaper or in relation to a university (school) project or assignment. Follow the advice of your PIO.

County Attorney's Opinion

Feel free to share this guidance and the information provided below with your county attorney office. The county attorney may have a different opinion and advise otherwise. Due to possible ramifications from other regulatory agencies that go beyond Smoke-Free Arizona, please inform the ADHS Smoke-Free Arizona program of the actions your County Attorney chooses to take with regards to releasing the smoke-free complaint information or other important SFA materials.

Releasing Complaint Information

Printing and providing the "Complaint Information Sheet" from the database is acceptable (see next page). Make sure to remove any personal or confidential information that could be included in the section "Additional Information" especially when the information provided identifies individuals by name, or implicates and compromises the complainant's identity (e.g. an employee reporting his/her employer, a tenant reporting their landlord, a business complaining about the business next door, etc.).

Request from the Media

First and foremost, contact the PIO to inform them about the request for information from the media. Follow the advice of your PIO. Disclosure of information should not interfere with an on-going investigation. Disclosing requested complaint information to the public before the counties or ADHS had a chance to investigate, could jeopardize the actual investigations of these complaints.

Consider ways to provide some public information such as a statistical report by day/week/month of complaint records, or by types, counties, etc. Once it is determined there is no reasonable basis for substantiation, information on the complaints could be released. Retract the individual's private information (name, home address, phone number, etc.).

Request to obtain the name of the complainant

Disclosing the name of the complainant to the establishment subject to the complaint is a different issue. The applicable law is found in A.R.S. § 41-1010, which states: "Notwithstanding any other law, a person shall disclose the person's name during the course of reporting an alleged violation of law or rule.

During the course of the investigation or enforcement action, the name of the complainant shall be a public record unless the affected agency determines that the release of the complainant's name may result in substantial harm to any person or to public health or safety." This could be the case, for example, when an employee is reporting his immediate supervisor allowing smoking or is smoking inside the premises.

	Complaint Information Sheet Complaint ID: 200002 SAMPLE
Business	Sample Business
Address	150 N Test Avenue
Cross-Streets	
City	Phoenix
Zip	85007
County	Maricopa
Complaint Submitted On	3/11/2015 1:23:00 PM
Violation Date	3/11/2015 9:30:00 AM
Additional Info	<p>Example 1: Mr. John Doe, the general manager, is always smoking in his office. We have to inhale his second-hand smoke all day.</p> <p>Example 2: I own my business and often get complaints of smoke from the neighbor's business two doors down. Today as I was leaving 2 women that work there were standing on either side of the front door smoking.</p> <p>Example 3: Hi, I live at the X apartment complex in unit #3. My landlord smokes by the entrance into the leasing office. I have not complained to her yet, but I am tired of the situation. The office is also close to the laundromat. I am afraid she will retaliate against me if she finds out I complained. I can't afford to move from my apartment.</p>
Complaint Category	
Current Status	Open
Complaint Description	
Complaint Location	Business
Who was smoking?	

Example 1: Remove the name John Doe from the complaint and reword the additional information. CHD representative may also chose to add a Complaint Description explaining what is the violation occurring at the business such as **ashtrays where prohibited indoors, person in charge permitting smoking where prohibited, smoking where prohibited** if not chosen already. For the person "who was smoking?" field, inspector can add Manager.

Example 2: Reword or remove the additional information. CHD representative may also chose to add a Complaint Description explaining what is the violation occurring at the business such as, **person in charge permitting smoking where prohibited, smoking where prohibited** if not chosen already.

Example 3: Reword or remove the additional information especially the unit number. The CHD representative may also chose a Complaint Description explaining what is the violation occurring at the business such as, **person in charge permitting smoking where prohibited, smoking where prohibited** if not chosen already.

Make sure to remove any personal or confidential information that could be included in the section "Additional Information" especially when the information can compromise the identity of the complainant.



SUMMARY INSPECTION REPORT

ESTABLISHMENT NAME:			
ADDRESS:			
CITY, ZIP CODE:			
INSPECTION DATE:		INSPECTION TIME:	AM/PM
		INSPECTION PURPOSE:	

Based on an inspection conducted this day, the items circled below identify the violation(s) observed by the Department. Failure to correct may result in a Notice of Violation and Notice of Assessment of Civil Penalties.

Circle Violations witnessed during an inspection only.

ITEM #	SIGNAGE
1A	Lack of a sign that is required under A.R.S. § 36-601.01(E)(1) and (2); A.A.C. R9-2-104(A)(3); A.A.C. R9-2-104(H)(2); and A.A.C. R9-2-105.
1B	Presence of a sign that does not meet the requirements of A.R.S. § 36-601.01(E)(1); A.A.C. R9-2-105(A); A.A.C. R9-2-105(C).
ASHTRAYS	
2A	Presence of an ashtray in an area where smoking is prohibited. A.R.S. § 36-601.01(E)(3); A.A.C. R9-2-102(A); and A.A.C. R9-2-104(A)(4). <input type="checkbox"/> Inside <input type="checkbox"/> Outside (within 20 feet of an entrance)
PROPRIETOR PERMITTING SMOKING WHERE PROHIBITED	
3A	Proprietor permitting smoking in a public place, a place of employment, or within the distance specified in A.A.C. R9-2-102(A). A.R.S. § 36-601.01(B) and A.A.C. R9-2-104(A)(1) (except according to the exceptions listed in A.R.S. § 36-601.01(B))
	<input type="checkbox"/> Presence of smoking in an area where smoking is prohibited. <input type="checkbox"/> Inside <input type="checkbox"/> Outside (within 20 feet of an entrance) If someone was smoking, who was smoking? <input type="checkbox"/> Owner/Manager/Person in Charge <input type="checkbox"/> Customer/Visitor(s) <input type="checkbox"/> Employee/Worker(s) <input type="checkbox"/> Other
	<input type="checkbox"/> Presence of tobacco ashes, cigarette butts or filters, or cigar stubs in an area where smoking is prohibited. <input type="checkbox"/> Inside <input type="checkbox"/> Outside (within 20 feet of an entrance)
SMOKE DRIFTING INTO AN AREA WHERE SMOKING IS PROHIBITED	
4A	Proprietor permitting tobacco smoke to drift into a building or facility through an entrance, a window, a ventilation system, or other means. A.A.C. R9-2-102(B); A.A.C. R9-2-104(A)(2); A.A.C. R9-2-108(C); A.A.C. R9-2-108(E)(2)
OUTDOOR PATIOS	
5A	Outdoor patio where smoking is permitted does not meet the requirements of A.A.C. R9-2-108.
COMMUNICATION / EDUCATION	
6A	Proprietor failing to communicate to all existing and prospective employees (upon their application for employment) that smoking is prohibited in places of employment. A.R.S. § 36-601.01(C) and A.A.C. R9-2-104(A)(5)
6B	Owner, manager, operator or employee of place regulated by A.R.S. § 36-601.01 failing to inform any person who is smoking in violation of A.R.S. § 36-601.01 that smoking is illegal and request that the illegal smoking stop immediately. A.R.S. § 36-601.01(I)
RETAIL TOBACCO STORES	
7A	Enclosed public place or place of employment is not a retail store that derives the majority of its sales from tobacco products and accessories. A.R.S. § 36-601.01(A)(10) and A.A.C. R9-2-107(A).
7B	Retail tobacco store as defined by A.R.S. § 36-601.01(A)(10) is not physically separated so that smoke from retail tobacco store does not infiltrate into areas where smoking is prohibited. A.R.S. § 36-601.01(B)(3) and A.A.C. R9-2-107(A)
7C	Proprietor of retail tobacco store where smoking is permitted is unwilling to provide or does not have an affidavit on-site containing the information required under A.A.C. R9-2-107(B) or (C). A.A.C. R9-2-107(D)(1) and A.A.C. R9-2-107(E)(1)
7D	Proprietor of retail tobacco store where smoking is permitted is unwilling to provide or does not have documents on-site that enable the Department or Department's designee to determine the percent of gross income derived from the sale of tobacco products and accessories. A.A.C. R9-2-107(D)(2) and A.A.C. R9-2-107(E)(2)
MISCELLANEOUS	
8A	Proprietor failing to permit the Department or Department's designee to conduct an inspection to determine compliance with A.R.S. § 36-601.01 and A.A.C. R9-2-101 through A.A.C. R9-2-112. A.R.S. § 36-601.01(G)(4)
8B	Employer discharging or retaliating against an employee because the employee exercised rights afforded by A.R.S. § 36-601.01 and A.A.C. R9-2-101 through A.A.C. R9-2-112. A.R.S. § 36-601.01(F)

Proprietor

Arizona Department of Health Services Representative

Print Name and Title

Print Name

Signature

Signature



SUMMARY INSPECTION REPORT CONTINUATION FORM

ESTABLISHMENT NAME:			
ADDRESS:			
CITY, ZIP CODE:		COMPLAINT ID:	
INSPECTION DATE:	INSPECTION TIME:	AM/PM	INSPECTION PURPOSE:

ITEM #	DESCRIPTION OF OBSERVATION
	Describe observation of violation(s), including any corrective action(s) that have taken place or are required to take place in order to be in compliance with A.R.S. § 36-601.01 and A.A.C. R9-2-101 through A.A.C. R9-2-112.
	The purpose of this inspection is to verify compliance with the Smoke-Free Arizona Act, A.R.S. 36-601.01, in response to a citizen's complaint. Violations observed at the time of inspection indicate the establishment is not in compliance.
1A	Observed a lack of the required "No Smoking" signs at the entrance(s) of the establishment. Please post required signs at all entrances of the establishment. Provided required signs to _____(person in charge, manager, director, employee, etc.). Corrective Action: Signs were posted at the time of inspection. Note: Describe entrance location by using N, S, E, W or Front / Main, Back, Side. Re-inspection is necessary if sign(s) not posted at time of inspection.
1B	Observed the presence of a sign that does not meet the requirements of the SFA Act, A.R.S. 36-601.01. Please post required signs at all entrances. Provided required signs to person in charge. Corrective Action: Signs were posted at the time of inspection. Note: Re-inspection is necessary if sign(s) not posted at time of inspection.
2A	Observed the presence of an ashtray in an area where smoking is prohibited which indicates person in charge is permitting smoking where prohibited. Corrective Action: Person in charge removed and/or relocated ashtray at least 20 feet away from all entrances at time of inspection. Note: Describe ashtray (glass, metal, ceramic), its location, and/or distance from entrance. Re-inspection necessary if ashtray not removed or relocated at time of inspection.
3A	Observed evidence of smoking (cigarette butts, ashes) inside (or within 20 feet of entrances) which indicates person in charge is permitting smoking where prohibited. Observed ashtray inside establishment (See item 2A). If evidence of smoking is observed on other receptacle other than an ashtray, please describe (cigarette butts observed on glass cup, aluminum can, plastic bottle, etc.). Observed employee/customer smoking where prohibited. Please ensure smoking occurs outside and at least 20 feet away from all entrances. Corrective Action: Person in charge removed evidence of smoking. Person in charge asked customer/employee to move at least 20 feet away from entrance. Note: Re-inspection is necessary if smoking was occurring inside and/or other violations are not corrected at time of inspection.
4A	Observed smoke drifting into establishment through an entrance (window, ventilation system or other means). Please ensure smoke does not physically drift into areas where smoking is prohibited. Discussed means to prevent smoke from drifting into establishment with person in charge. Corrective Action: Proprietor turned on or will install air curtain, or fans. Note: Provide useful suggestions or methods that will help prevent physical infiltration of smoke. Make sure proprietor knows they are not a requirement of the Act, but they can aid in



	achieving compliance. Re-inspection may be necessary.
5A	Observed outdoor patio does not meet the requirements of A.A.C. R9-2-108; therefore, smoking is prohibited on outdoor patio. Observed ashtrays containing evidence of smoking (cigarette butts, ashes) located on tables within 20 feet of entrance. Discussed outdoor patio requirements with person in charge. Please prohibit smoking on patio until it meets outdoor patio requirements. Corrective Action: Person in charge removed ashtrays from outdoor patio. Proprietor posted signs prohibiting smoking until patio meets exemption criteria. Note: Re-inspection will be necessary. Proprietor may need sufficient time before a re-inspection is conducted if construction will take place to comply with the Act.
6A	Person in charge failing to inform employees that smoking is prohibited in places of employment. Please educate employees regarding requirements of the Act. Provided educational brochures, a copy of the SFA Act, and a copy of the SFA Rules, to person in charge. Corrective Action: Proprietor will educate employees during staff meeting (will provide brochures, posts reminder on break room, etc.).
6B	Person in charge or employee failing to inform any person who is smoking in violation of the Act to stop smoking or move outside at least 20 feet away from entrances. Please ensure smoking occurs outside and at least 20 feet away from all entrances. Corrective Action: Proprietor asked individual smoking to move at least 20 feet away from the entrance. Note: Describe location and/or distance where employee is smoking. Do not circle this violation if Items 2A or 3A have been witnessed and circled.
7A	Observed smoking inside retail tobacco store. Establishment does not meet requirements of A.A.C. R9-2-107(A) to operate as a retail tobacco store that derives the majority of its sales from tobacco products and accessories. Please prohibit smoking inside establishment until store meets exemption requirements. Corrective Action: Proprietor will present documentation corroborating that the establishment derives at least 51% of its sales from tobacco and accessories. Note: Re-inspection will be necessary.
7B	Observed physical presence of smoke infiltrating from retail tobacco store into areas where smoking is prohibited. Please ensure retail tobacco store is physically separated and independently ventilated from neighboring establishment(s). Please prohibit smoking inside establishment until store meets exemption requirements. Corrective Action: Proprietor will demonstrate physical separation during inspection or by providing pertinent documentation. Note: Separation may need to be verified with a physical inspection or after reviewing building plans / blue prints. Re-inspection will be necessary.
7C	Person in charge of retail tobacco store is unwilling to provide or does not have an affidavit on-site containing the information required by the Act. Please prohibit smoking inside establishment until store meets exemption requirements. Corrective Action: Proprietor will obtain and maintain required affidavit on-site. Note: Proprietor must update required affidavit yearly. Re-inspection will be necessary.
7D	Person in charge of retail tobacco store is unwilling to provide or does not have documentation on-site to determine the percent of gross income derived from the sale of tobacco products and accessories. Please prohibit smoking inside establishment until store meets exemption requirements. Corrective Action: Proprietor will maintain documentation on-site supporting the gross income for the establishment for the previous three months. Note: The SFA rules do not specify what type of documentation should be provided as long as the department or its designee can determine the 51% gross income derived from tobacco products. Re-inspection will be necessary.



8A	Person in charge failing to permit the Department or Department's designee to conduct an inspection to determine compliance with the Act. Advised proprietor that refusing the department's inspection is a violation of the Act and may result in assessment of civil penalty fines. Note: Police assistance may be requested if the Department or its designee encounters a potentially unsafe situation, proprietor is confrontational or is unwilling to cooperate. Re-inspection will be necessary.
8B	Employer discharging or retaliating against an employee because the employee exercised rights afforded by the Act. Note: Specific evidence should be provided to justify documenting violation. This violation would be very difficult to witness. To date, this violation has not been documented during an inspection.
	(Note: If possible, take photographs of all violations found at time of inspection and any corrective action)

<input type="checkbox"/> EDUCATIONAL MATERIALS PROVIDED	<input type="checkbox"/> "NO SMOKING" SIGNS PROVIDED
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Proprietor

Arizona Department of Health Services Representative

 Print Name and Title

 Print Name

 Signature

 Signature



SUMMARY INSPECTION REPORT

ESTABLISHMENT NAME:			
ADDRESS:			
CITY, ZIP CODE:			
INSPECTION DATE:		INSPECTION TIME:	AM/PM
		INSPECTION PURPOSE:	

Based on an inspection conducted this day, the items circled below identify the violation(s) observed by the Department. Failure to correct may result in a Notice of Violation and Notice of Assessment of Civil Penalties.

Circle Violations witnessed during an inspection only.

ITEM #	SIGNAGE
1A	Lack of a sign that is required under A.R.S. § 36-601.01(E)(1) and (2); A.A.C. R9-2-104(A)(3); A.A.C. R9-2-104(H)(2); and A.A.C. R9-2-105.
1B	Presence of a sign that does not meet the requirements of A.R.S. § 36-601.01(E)(1); A.A.C. R9-2-105(A); A.A.C. R9-2-105(C).
ASHTRAYS	
2A	Presence of an ashtray in an area where smoking is prohibited. A.R.S. § 36-601.01(E)(3); A.A.C. R9-2-102(A); and A.A.C. R9-2-104(A)(4). <input type="checkbox"/> Inside <input type="checkbox"/> Outside (within 20 feet of an entrance)
PROPRIETOR PERMITTING SMOKING WHERE PROHIBITED	
3A	Proprietor permitting smoking in a public place, a place of employment, or within the distance specified in A.A.C. R9-2-102(A). A.R.S. § 36-601.01(B) and A.A.C. R9-2-104(A)(1) (except according to the exceptions listed in A.R.S. § 36-601.01(B))
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	<input type="checkbox"/> Presence of tobacco ashes, cigarette butts or filters, or cigar stubs in an area where smoking is prohibited. <input type="checkbox"/> Inside <input type="checkbox"/> Outside (within 20 feet of an entrance)
SMOKE DRIFTING INTO AN AREA WHERE SMOKING IS PROHIBITED	
4A	Proprietor permitting tobacco smoke to drift into a building or facility through an entrance, a window, a ventilation system, or other means. A.A.C. R9-2-102(B); A.A.C. R9-2-104(A)(2); A.A.C. R9-2-108(C); A.A.C. R9-2-108(E)(2)
OUTDOOR PATIOS	
5A	Outdoor patio where smoking is permitted does not meet the requirements of A.A.C. R9-2-108.
COMMUNICATION / EDUCATION	
6A	Proprietor failing to communicate to all existing and prospective employees (upon their application for employment) that smoking is prohibited in places of employment. A.R.S. § 36-601.01(C) and A.A.C. R9-2-104(A)(5)
6B	Owner, manager, operator or employee of place regulated by A.R.S. § 36-601.01 failing to inform any person who is smoking in violation of A.R.S. § 36-601.01 that smoking is illegal and request that the illegal smoking stop immediately. A.R.S. § 36-601.01(I)
RETAIL TOBACCO STORES	
7A	Enclosed public place or place of employment is not a retail store that derives the majority of its sales from tobacco products and accessories. A.R.S. § 36-601.01(A)(10) and A.A.C. R9-2-107(A).
7B	Retail tobacco store as defined by A.R.S. § 36-601.01(A)(10) is not physically separated so that smoke from retail tobacco store does not infiltrate into areas where smoking is prohibited. A.R.S. § 36-601.01(B)(3) and A.A.C. R9-2-107(A)
7C	Proprietor of retail tobacco store where smoking is permitted is unwilling to provide or does not have an affidavit on-site containing the information required under A.A.C. R9-2-107(B) or (C). A.A.C. R9-2-107(D)(1) and A.A.C. R9-2-107(E)(1)
7D	Proprietor of retail tobacco store where smoking is permitted is unwilling to provide or does not have documents on-site that enable the Department or Department's designee to determine the percent of gross income derived from the sale of tobacco products and accessories. A.A.C. R9-2-107(D)(2) and A.A.C. R9-2-107(E)(2)
MISCELLANEOUS	
8A	Proprietor failing to permit the Department or Department's designee to conduct an inspection to determine compliance with A.R.S. § 36-601.01 and A.A.C. R9-2-101 through A.A.C. R9-2-112. A.R.S. § 36-601.01(G)(4)
8B	Employer discharging or retaliating against an employee because the employee exercised rights afforded by A.R.S. § 36-601.01 and A.A.C. R9-2-101 through A.A.C. R9-2-112. A.R.S. § 36-601.01(F)

Proprietor

Arizona Department of Health Services Representative

Print Name and Title

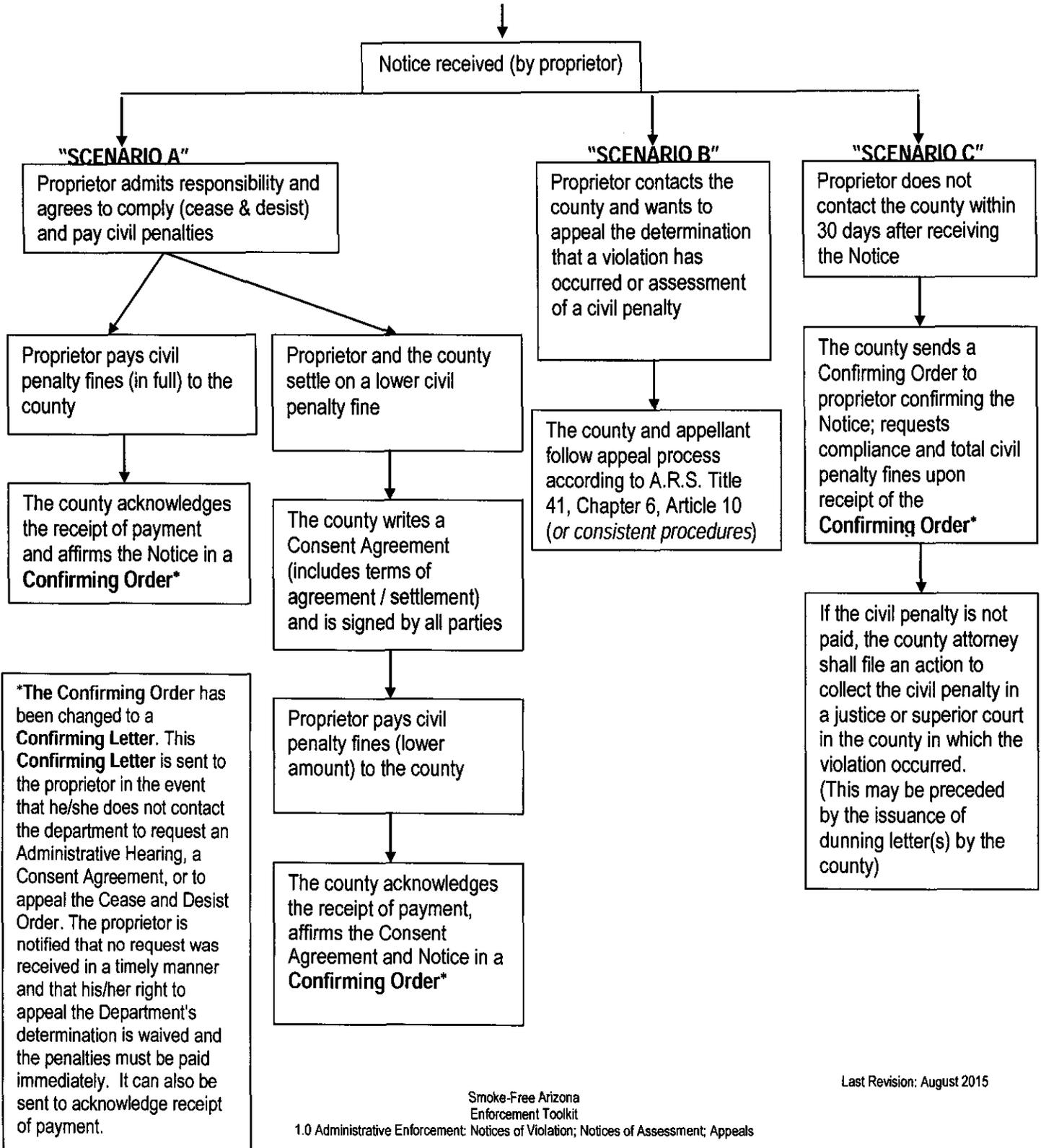
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Signature

Signature

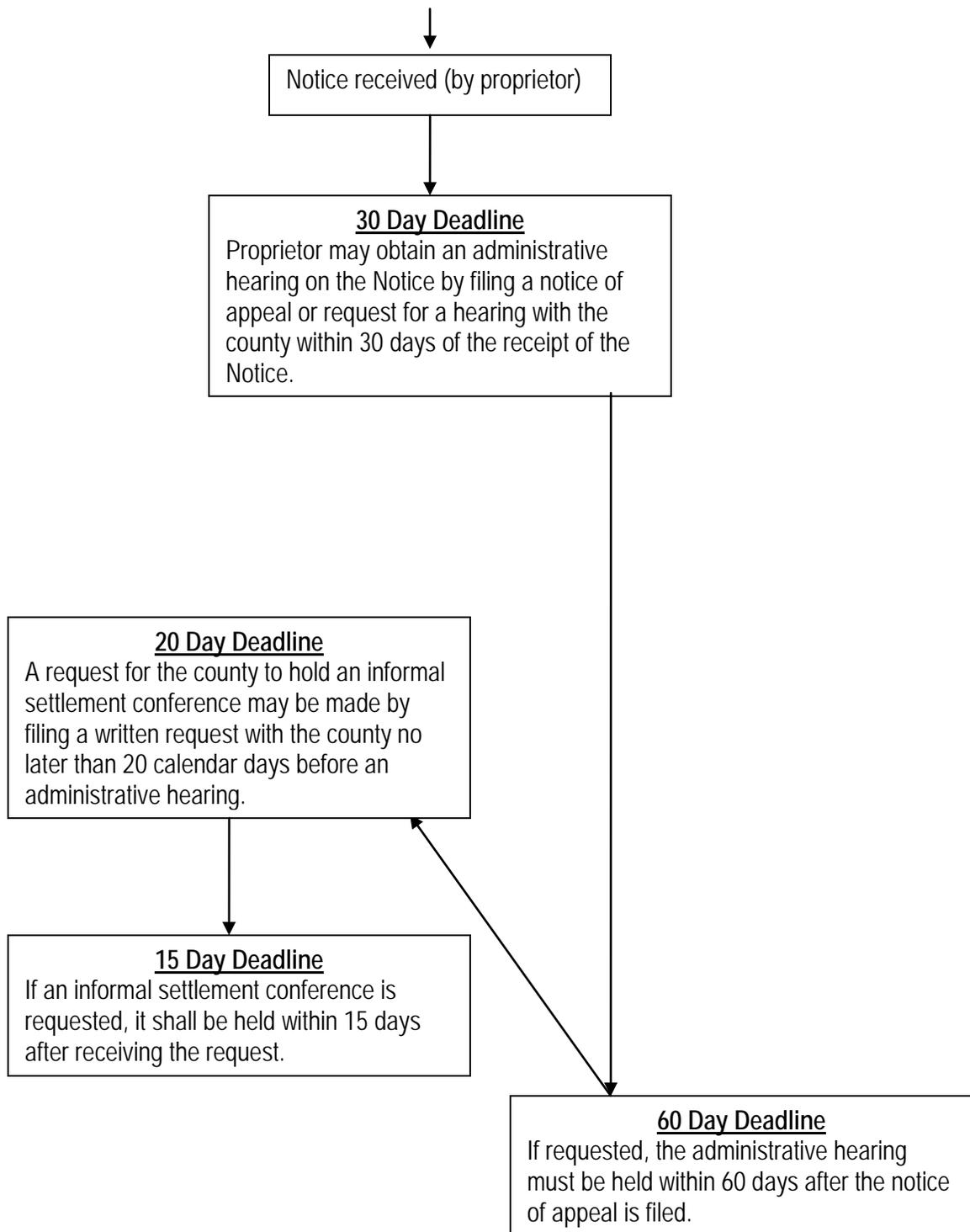
Flow Chart (Administrative Enforcement Process Scenarios)

Notice of Violation / Notice of Assessment of Civil Penalties – "Notice" issued
(by Department's designee ("county"))



Flow Chart (Uniform Administrative Appeals Procedures Deadlines)

Notice of Violation / Notice of Assessment of Civil Penalties – “Notice” issued
(by Department’s designee (“county”))



**BEFORE THE DIRECTOR OF THE
ARIZONA DEPARTMENT OF HEALTH SERVICES**

In the Matter of:)	Docket No.:
)	_____
XYZ RESTAURANT, LLC)	CEASE AND DESIST ORDER; NOTICE OF
)	VIOLATION; NOTICE OF ASSESSMENT
Respondent)	OF CIVIL PENALTIES
_____)	

I. LEGAL AUTHORITY

The Arizona Department of Health Services (the “Department”) is charged by Arizona Revised Statutes (“A.R.S.”) § 36-132(A)(1) with the power and duty to protect the health of the people of Arizona.

A.R.S. § 36-601.01(B), the Smoke-Free Arizona Act (the “Act”), prohibits smoking in all public places and places of employment in Arizona, with limited exceptions not relevant to this matter. A public place and non-vehicle place of employment, for purposes of the Act’s smoking prohibition, includes a distance from the public place and non-vehicle place of employment of “at least 20 feet in all directions measured from each outer edge of an entrance, and open window, or ventilation system.” Arizona Administrative Code (“A.A.C.”) R9-2-102(A). The owner, operator, manager or other person in control of a public place and place of employment must not permit smoking where prohibited. A.A.C. R9-2-104(A)(1); *see also* A.A.C. R9-2-101(22). The Act defines “smoking” as “inhaling, exhaling, burning, or carrying or possessing any lighted tobacco product, including cigars, cigarettes, pipe tobacco and any other lighted tobacco product.” A.R.S. § 36-601.01(A)(11).

Under the Act, a “public place” is defined as “any enclosed area to which the public is invited or in which the public is permitted, including airports, banks, bars . . . restaurants, retail food production and marketing establishments, retail service establishments, retail stores,

1 shopping malls, sports facilities, theaters, and waiting rooms.” A.R.S. § 36-601.01(A)(9).
2 Under the Act, “[p]laces of employment” includes “an enclosed area under the control of a
3 public or private employer that employees normally frequent during the course of
4 employment.” A.R.S. § 36-601.01(A)(7).

5 An “[e]nclosed area” is defined as “all space between a floor and ceiling that is
6 enclosed on all sides by permanent or temporary walls or windows (exclusive of doorways),
7 which extend from the floor to the ceiling.” A.R.S. § 36-601.01(A)(3). An “[e]nclosed area”
8 includes “a reasonable distance from any entrances, windows and ventilation systems so that
9 persons entering or leaving the building or facility shall not be subjected to breathing tobacco
10 smoke and so that tobacco smoke does not enter the building or facility through entrances,
11 windows, ventilation systems or any other means.” A.R.S. § 36-601.01(A)(3); *see also* A.A.C.
12 R9-2-102.

13 Under the Act, the owner, operator, manager or other person in control of a public place
14 and place of employment where smoking is prohibited must “clearly and conspicuously” post
15 “[n]o smoking’ signs” that identify: the Act; where smoking is prohibited; and where
16 complaints regarding violations may be registered. A.R.S. § 36-601.01(E)(1); A.A.C. R9-2-
17 104(A)(3); A.A.C. R9-2-105(A). A “[n]o smoking’ sign” that meets the requirements of
18 A.R.S. § 36-601.01(E)(1) and A.A.C. R9-2-105(A) must be clearly and conspicuously posted
19 “at every entrance” to a public place and place of employment where smoking is prohibited.
20 A.R.S. § 36-601.01(E)(2); A.A.C. R9-2-104(A)(3); A.A.C. R9-2-105(B).

21 An owner, manager, operator, or employee of a place regulated by the Act “shall inform
22 any person who is smoking in violation of this law that smoking is illegal and request that the
23 illegal smoking stop immediately.” A.R.S. § 36-601.01(I); A.A.C. R9-2-104(C).

1 Pursuant to A.R.S. § 36-601(B), the Director of the Department (“Director”) may issue
2 a cease and desist order to any person who engages in any action that is contrary to health laws
3 of the state.

4 A.R.S. § 36-601.01(G) provides the Department with the authority to implement and
5 enforce the Act. A.R.S. § 36-601.01(G)(11) authorizes the Department to promulgate
6 administrative rules for the “implementation and enforcement” of the Act; those rules are found
7 at A.A.C. R9-2-101 through R9-2-112.

8 A.R.S. § 36-601.01(G)(10) provides that the Department may delegate any functions,
9 powers, or duties under the Act to a state agency or political subdivision of the state. The
10 Department has delegated inspection and citation authority under the Act to **SAMPLE County**
11 (“Department’s Designee”). **SAMPLE County** exercises its delegated inspection and citation
12 authority through its **Environmental Services Department / Public Health Department**. The
13 Department or the Department’s Designee, if the Department or the Department’s Designee has
14 reason to believe a violation of the Act exists, is authorized to conduct inspections of “any
15 public place or place of employment for purposes of determining compliance with” the Act.
16 A.R.S. § 36-601.01(G)(4); A.A.C. R9-2-109(C)(2), (D).

17 A.R.S. § 36-601.01(G)(5) authorizes the Department to issue a “notice of violation to
18 the person who owns, manages, operates, or otherwise controls the public place or place of
19 employment.” In determining whether a violation of the Act has occurred, the Department or
20 the Department’s Designee shall consider: “The presence of an ashtray in an area where
21 smoking is prohibited” by the Act; the lack of signage that is required by the Act; “the presence
22 of smoking”; “[t]he presence of tobacco ashes, cigarette butts or filters, or cigar stubs in an area
23 where smoking is prohibited” by the Act; and the “presence of tobacco smoke” in an area
24

1 where smoking is prohibited by the Act. A.A.C. R9-2-110. A.R.S. § 36-601.01(G)(5) requires
2 the notice of violation to contain “the nature of each violation, date and time each violation
3 occurred,” and the Department’s contact person. In addition, A.R.S. § 36-601.01(G)(6)
4 authorizes the Department to impose a civil penalty on a person who violates the Act, “in an
5 amount of not less than \$100, but not more than \$500 for each violation.” Each day the
6 violation occurs constitutes a separate violation. A.R.S. § 36-601.01(G)(6).

7 **II. CORPORATION INFORMATION**

8 **XYZ Restaurant**, LLC, is a domestic limited liability company and is registered with
9 the Arizona Corporation Commission. **XYZ Restaurant**, LLC, is located at (**Address**) 1234 N.
10 18th Ave. Phoenix, Arizona 85007 (“**XYZ**”).

11 **III. FACTUAL BASIS FOR CEASE AND DESIST ORDER AND ASSESSMENT OF
12 CIVIL PENALTIES**

13 On (**MONTH DAY, YEAR**) **February 10, 2015**, the Department received a complaint
14 (**ID #**) (# 22AAA1) regarding XYZ, alleging that on **February 8, 2015**: smoking was occurring
15 where prohibited, signs were missing, smoke was entering into area(s) not allowed, the person
16 in charge was not educating employees, the person in charge was permitting smoking where
17 prohibited, and there was evidence of smoking (ie: ashes, tobacco products).

18 On **February 14, 2015**, the Department received a complaint (# 22AAA2) regarding
19 XYZ, alleging that on **February 12, 2015**: smoking was occurring where prohibited, the person
20 in charge was not educating employees, and the person in charge was permitting smoking
21 where prohibited.

22 On **February 16, 2015**, at (**time am/pm**) 10:45 a.m., the Department’s Designee
23 conducted a complaint inspection at XYZ. The Department’s Designee observed the required
24 “no smoking” signs missing at the establishment’s front and rear entrances. *See* A.R.S. § 36-

1 601.01(E)(1), (2); A.A.C. R9-2-104(A)(3); A.A.C. R9-2-105(B). The Department's Designee
2 observed an ashtray located inside on the bar table. *See* A.R.S. § 36-601.01(B), (E)(3); A.A.C.
3 R9-2-102(A); A.A.C. R9-2-104(A)(4). The Department's Designee also observed a customer
4 smoking in an area where smoking is prohibited. *See* A.R.S. § 36-601.01(B); A.A.C. R9-2-
5 104(A)(1).

6 On **February 25, 2015**, the Department received a complaint (# 22AAA3) regarding
7 , alleging that on **February 25, 2015**: smoking was occurring where prohibited, there were
8 ashtrays where prohibited indoors, smoke was entering into area(s) not allowed, the person in
9 charge was permitting smoking where prohibited, and there was evidence of smoking (ie:
10 ashes, tobacco products).

11 On **March 2, 2015**, the Department received a complaint (# 22AAA4) regarding XYZ,
12 alleging that on **February 28, 2015**: smoking was occurring where prohibited, there were
13 ashtrays where prohibited indoors, smoke was entering into area(s) not allowed, the person in
14 charge was not educating employees, the person in charge was permitting smoking where
15 prohibited, and there was evidence of smoking (ie: ashes, tobacco products).

16 On **March 6, 2015**, the Department received a complaint (# 22AAA5) regarding XYZ,
17 alleging that on **March 4, 2015**: smoking was occurring where prohibited, there were ashtrays
18 where prohibited indoors, smoke was entering into area(s) not allowed, the person in charge
19 was not educating employees, the person in charge was permitting smoking where prohibited,
20 and there was evidence of smoking (ie: ashes, tobacco products).

21 On **March 8, 2015**, the Department received a complaint (# 22AAA6) regarding XYZ,
22 alleging that on **March 8, 2015**: smoking was occurring where prohibited, there were ashtrays
23 where prohibited indoors, smoke was entering into area(s) not allowed, the person in charge
24

1 was not educating employees, the person in charge was permitting smoking where prohibited,
2 and there was evidence of smoking (ie: ashes, tobacco products).

3 On **March 11, 2015**, at approximately **7:00 p.m.**, the Department's Designee conducted
4 a complaint re-inspection at XYZ. The Department's Designee observed tobacco ashes and
5 cigarette butts outside within 20 feet of the front entrance. In addition, the Department's
6 Designee also observed the owner/manager/person in charge and a customer smoking in a
7 prohibited area. *See* A.R.S. § 36-601.01(B); A.A.C. R9-2-104(A)(1).

8 On **April 15, 2015**, at 8:00 p.m., the Department's Designee conducted a complaint re-
9 inspection at XYZ. The Department's Designee observed tobacco ashes and cigarette butts
10 inside. In addition, the Department's Designee observed smoking inside the establishment by
11 the owner and an unknown individual. *See* A.R.S. § 36-601.01(B); A.A.C. R9-2-102(A);
12 A.A.C. R9-2-104(A)(1).

13 On **May 13, 2015**, at 7:00 p.m., the Department's Designee conducted a complaint re-
14 inspection at XYZ. The Department's Designee observed tobacco ashes and cigarette butts
15 inside. In addition, the Department's Designee observed smoking inside the establishment by a
16 customer. *See* A.R.S. § 36-601.01(B); A.A.C. R9-2-102(A); A.A.C. R9-2-104(A)(1).

17 On **June 10, 2015**, the Department received a complaint (# 22AAA7) regarding XYZ,
18 alleging that on **May 30, 2015**: smoking was occurring where prohibited, the person in charge
19 was permitting smoking where prohibited, and the outdoor patio was not in compliance.

20 On **June 17, 2015**, at 2:00 p.m., a Department Representative ("Representative") and
21 the Department's Designee conducted a complaint re-inspection at XYZ. The Representative
22 and the Department's Designee observed an ashtray located outside on a table within 20 feet of
23 an entrance. *See* A.R.S. § 36-601.01(E)(3); A.A.C. R9-2-102(A); A.A.C. R9-2-104(A)(4). The
24

1 Representative and the Department’s Designee observed cigarette butts and ashes on a table
2 within 20 feet of an entrance, and in a trashcan located behind the bar inside the establishment.
3 The Department’s Designee also observed a customer smoking at a table located within 20 feet
4 of the front entrance. *See* A.A.C. 36-601.01(B); R9-2-104(A)(1).

5 **IV. FINDINGS, NOTICES, AND INSTRUCTIONS FOR HEARING REQUEST**

6 Based on the observations of the Department’s Designee noted above, the Department
7 has reasonable cause to believe that XYZ Restaurant, LLC, has violated the Act and the
8 administrative rules adopted pursuant to the Act.

9 **IT IS THEREFORE ORDERED** pursuant to A.R.S. § 36-601(B), that XYZ
10 Restaurant, LLC its officers, agents, servants, employees, and any persons acting in concert or
11 participation with it promptly cease and desist all actions in violation of the Act or the rules
12 adopted under the Act, including permitting smoking in areas where prohibited.

13 **YOU ARE NOTIFIED** that pursuant to A.R.S. § 36-601.01(G)(6) the Department
14 assesses civil penalties against XYZ Restaurant, LLC, in the amount of \$2,400.00 for the
15 violations listed in the attached Civil Penalties Table.

16 **YOU ARE ADVISED** that you may request a hearing to appeal the Cease and Desist
17 Order (“Order”) portion of this action by submitting a written request to the Clerk of the
18 Department, Arizona Department of Health Services, 1740 W. Adams, Room 203, Phoenix,
19 Arizona 85007 **within 15 calendar days** of receipt of this Order. You may also request a
20 hearing on the Notice of Assessment of Civil Penalties (“Notice”) portion of this action by
21 submitting a written request to the Clerk of the Department **within 30 calendar days** of receipt
22 of this Notice. **No consideration will be given to requests made by phone or e-mail.** If you
23 choose to request a hearing on both the Order and Notice, you may do so at the same time
24

1 (within 15 days), although you have a full 30 days to appeal the Notice.

2 **IF YOU TIMELY REQUEST A HEARING, YOU MAY ALSO REQUEST** that
3 the Department hold an informal settlement conference by submitting a written request to the
4 Department **no later than 20 calendar days** before a hearing that may be scheduled in this
5 matter. Such request shall be sent to Eric Thomas, Smoke-Free Arizona Program, Division of
6 Public Health Services, Arizona Department of Health Services, 150 N. 18th Ave Ste130,
7 Phoenix, Arizona 85007. **No consideration will be given to requests made by phone or e-**
8 **mail.**

9 DATED this _____ day of _____, 2015

10 ARIZONA DEPARTMENT OF HEALTH SERVICES

11
12
13 _____
14 Robert Lane
15 Director's Designee
16
17
18
19
20
21
22
23
24

1 ORIGINAL filed this _____ day of _____, 2015
with:

2 **Clerk of the Department**
3 Arizona Department of Health Services
1740 W. Adams, Room 203
4 Phoenix, AZ 85007

5 COPY of the foregoing sent by certified mail,
return receipt requested this _____ day of _____, 2015
6 to:

7 **Statutory Agent Name**
(Business Owner)
8 Address
City, State, Zip Code

9 COPIES of the foregoing sent by interdepartmental
10 or regular mail this _____ day of _____, 2015
to:

11 **Assistant Attorney General Name**
12 **(AAG working with ADHS)**
Office of the Attorney General
13 1275 W. Washington Street
Phoenix, AZ 85007

14 Eric Thomas, Department Contact Person
15 Smoke-Free Arizona Program
Office of Environmental Health
16 Arizona Department of Health Services
150 N. 18th Avenue, Suite 130
17 Phoenix, AZ 85007
Eric.Thomas@azdhs.gov

18 Myrna Motta, Legal Liaison
19 ADHS/Division of Public Health
150 N. 18th Ave., Suite 130
20 Phoenix, AZ 85007

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**ARIZONA DEPARTMENT OF HEALTH SERVICES
DIVISION OF PUBLIC HEALTH SERVICES
Office of Environmental Health**

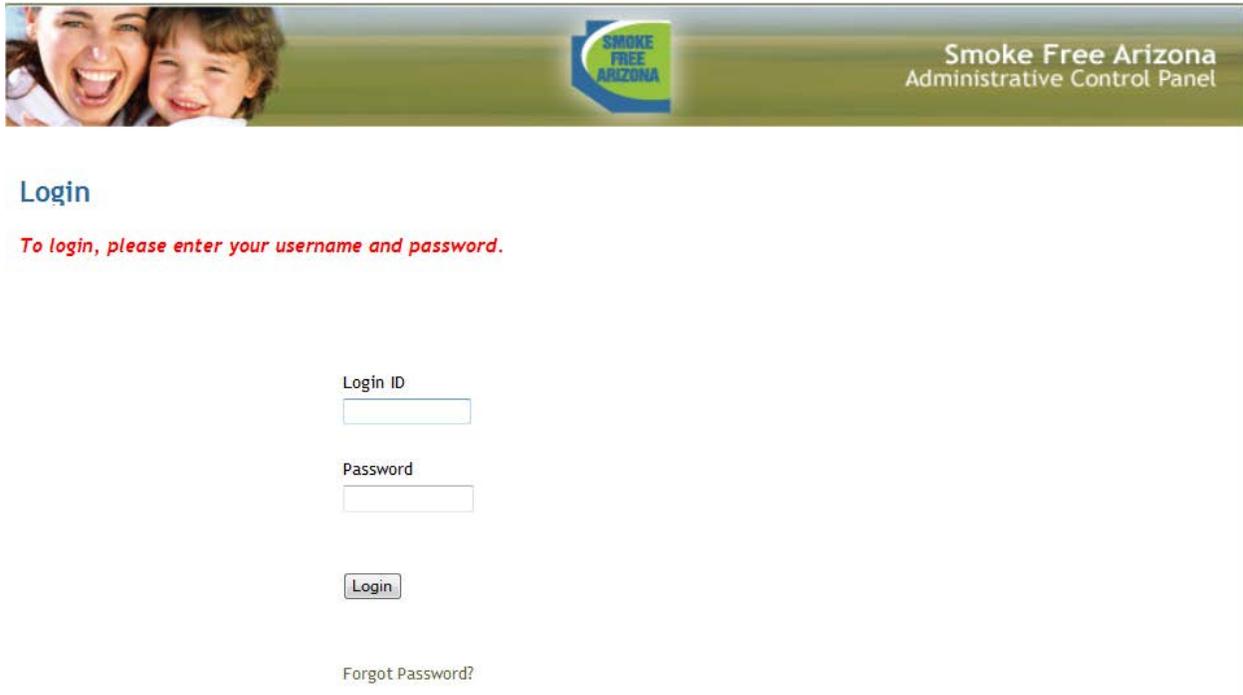
XYZ RESTAURANT, LLC (Establishment's Name)
CIVIL PENALTIES [Docket No: 2015-SFA-SAMPLE-DHS]

<p>A.R.S. § 36-601.01(E)(1), (2); A.A.C. R9-2-104(A)(3); A.A.C. R9-2-105 (References)</p>	<p>Failure to post required “[n]o smoking’ signs” (Violation)</p>	<p>Observation date: 02/16/15 1st offense @ \$100.00 (Offense # & Fine-Amount)</p>	<p>\$100.00 (Totals)</p>
<p>A.R.S. § 36-601.01(E)(3); A.A.C. R9-2-102(A); A.A.C. R9-2-104(A)(4)</p>	<p>Failure to remove ashtray(s) from area(s) where smoking is prohibited</p>	<p>Observation date: 02/16/15 1st offense @ \$100.00 Observation date: 06/17/15 2nd offense @ \$300.00</p>	<p>\$400.00</p>
<p>A.R.S. § 36-601.01(B); A.A.C. R9-2-102(A); and A.A.C. R9-2-104(A)(1)</p>	<p>Failure to prohibit smoking in public place/place of employment</p>	<p>Observation date: 02/16/15 1st offense @ \$100.00 Observation date: 03/11/15 2nd offense @ \$300.00 Observation date: 04/15/15 3rd offense @ \$500.00 Observation date: 5/13/15 4th offense @ \$500.00 Observation date: 6/17/15 5th offense @ \$500.00</p>	<p>\$1,900.00</p>
<p style="text-align: center;">Total</p>			<p>\$2,400.00</p>

SMOKE-FREE ARIZONA CONTROL PANEL (DATABASE) USER GUIDE

1. Access

- ❖ To access the control panel, use the following link (see image below): <https://smokefreeadmin.health.azdhs.gov/login.asp>.
- ❖ User must have a **Login ID** and **Password**



Login

To login, please enter your username and password.

Login ID

Password

Login

[Forgot Password?](#)

- ❖ Obtain a **Login ID** and **Password** from supervisor with County Health Department (CHD) Administrator rights or from the Arizona Department of Health Services (ADHS) Smoke-Free Arizona Program contact person.

1.A. Creating a User Name (For Personnel with CHD Administrator Rights ONLY)

- ❖ To create a **Login ID** and **Password**, a user with CHD Administrator rights must log in and go to the **Users** tab. Click **Add New User**.
- ❖ See the image below. Please fill all the required information to create a new user.



Users

Users are the people who access this system to perform the functions listed in the Main Menu. Use the link above to add a new User, or the links attached to each record below to manage existing Users.

- ❖ Your county will already be chosen on the **County** drop down menu. The image below shows a **CHD Administrator** adding a **New User** in Maricopa County.
- ❖ Add **user information**: First Name, Last Name, Username, Password, and Email. All users have inspector rights; users with **Inspector** rights can only view complaints once they are assigned to them. These users cannot view old complaints from previous inspectors or inspections assigned to another user in the same county. Supervisors can choose to give employees County Health Department (CHD) Administrator rights. Email notifications are automatically sent out to users with CHD Administrator rights every time a complaint is received in that county.

Add User

After making your changes and clicking the button at the bottom, please check this area of the screen for a message. If the text is in red, then your data did not validate properly and you will need to fix the problematic fields and resubmit the information. If the text turns green, then you have successfully made your changes.

* County

* First Name

* Last Name

* Username
6 - 10 characters

* Password
6 - 10 characters

* Retype Password
Must match Password above

* Email

* Permissions
 County Health Department Administrator
 Inspector *All system Users have Inspector permissions. This setting is not editable.*

When adding a NEW USER, an email will be generated and sent to this person with his/her login information.

- ❖ After entering user login name (ID) and password, user will access the main menu control panel screen (see image below).

Smoke Free Arizona Administrative Control Panel

Menu · Users · County Data · Complaints · Complaint Report

Main Menu

Welcome to the SmokeFreeArizona.org Administrative Control Panel. This application is used to control the News Updates content on www.smokefreearizona.org, as well as manage Complaints submitted by the general public through the Online Complaint Submittal Form. Below is a list of links to accomplish these tasks. All necessary links also always show above in the navigation bar.

Users

List of Users
Add New User

County Data

List of Counties

Complaints

List of Complaints

Complaint Summary

Open	31
In Progress - Re-inspection scheduled	32
In Progress - Notice of violation issued	0
Unable to Investigate (Insufficient information)	155
Closed	8797
Referred to ADHS	7

2. Assigning Complaints

- ❖ Complaints need to be assigned in a timely manner. Complaints can be assigned by users with CHD Administrator rights.
- ❖ To assign complaints, go to the **Complaints** tab (see image below).

Smoke Free Arizona Administrative Control Panel

Menu · News Updates · Signage Orders · Users · County Data · **Complaints** · Complaint Report · Report Download

Main Menu

Welcome to the SmokeFreeArizona.org Administrative Control Panel. This application is used to control the News Updates content on www.smokefreearizona.org, as well as manage Complaints submitted by the general public through the Online Complaint Submittal Form. Below is a list of links to accomplish these tasks. All necessary links also always show above in the navigation bar.

News Updates

List of News Updates
Add New News Update

Signage Orders

Search for Signage Orders

Users

List of Users
Add New User

Complaint Summary

Open	23
In Progress - Re-inspection scheduled	23
In Progress - Notice of violation issued	0
Unable to Investigate (Insufficient information)	211
Closed	12558
Referred to ADHS	8

- ❖ To see Unassigned Open Complaints in your county, click the **Open** link on the **Complaint Summary** (shown below).

- ❖ Once user clicks on **Open**, a screen similar to the one below will appear. Open complaints are **Unassigned**.

Status = Open					
	Assigned Inspector	Business	City	ID	Submitted
Edit Add Obs. View Obs.	Debbie Reynolds MACTUPP (Change)	Phoenix Sky Harbor Airport	Phoenix	228216	4/4/2013
Edit Add Obs. View Obs.	Debbie Reynolds MACTUPP (Change)	Sky Habor Airport - Terminal 4	Phoenix	228313	4/24/2013
Edit Add Obs. View Obs.	Debbie Reynolds MACTUPP (Change)	Global Pharmedica	Phoenix	228412	5/15/2013
Edit Add Obs. View Obs.	Debbie Reynolds MACTUPP (Change)	Finish Line	Tempe	228415	5/16/2013
Edit Add Obs. View Obs.	Debbie Reynolds MACTUPP (Change)	SouthWest Airlines - Maintenance Office Area	Phoenix	228418	5/17/2013
Edit Add Obs. View Obs.	Debbie Reynolds MACTUPP (Change)	Medical Plaza - Multiple Doctor's Office	Phoenix	228420	5/17/2013
Edit Add Obs. View Obs.	Debbie Reynolds MACTUPP (Change)	Arizona Department of Economic Security	Phoenix	228423	5/20/2013
Edit Add Obs. View Obs.	Debbie Reynolds MACTUPP (Change)	Ken McDonald Golf Course	Tempe	228434	5/23/2013
Edit Add Obs. View Obs.	Debbie Reynolds MACTUPP (Change)	Temple bar	Scottsdale	228438	5/27/2013
Edit Add Obs. View Obs.	Debbie Reynolds MACTUPP (Change)	Chapman Hyundai	Phoenix	228443	5/28/2013
Edit Add Obs. View Obs.	Debbie Reynolds MACTUPP (Change)	Paradise Valley Corporate Center	Scottsdale	228446	5/29/2013
Edit Add Obs. View Obs.	Unassigned (Assign)	BARWELL	Mesa	228452	6/1/2013
Edit Add Obs. View Obs.	Unassigned (Assign)	Orangewood RV Center	Surprise	228453	6/2/2013

- ❖ Once user clicks **Assign** (shown in red above), user must choose an inspector name from the drop down menu. The image below shows an example of inspectors in **Maricopa** County only.

Menu · News Updates · Signage Orders · Users · County Data · **Complaints** · Complaint Report · Report Download

List of Complaints · Complaint Data · List of Observations · Add New Observation

Assign Inspector (Complaint: ID = 228452)

After making your changes and clicking the button at the bottom, please check this area of the screen for a message.
 If the text is in red, then your data did not validate properly and you will need to fix the problematic fields and resubmit the information.
 If the text turns green, then you have successfully made your changes.

Complaint Data - Assigned Inspector

* Inspector

- ADHS Administrator
- Amy Roberts
- Bonnie Rine
- Debbie Reynolds MACTUPP
- Donna Beedle (MACTUPP)
- Edward Girard
- Elaine Huck
- Esther Compton
- Hether Krause
- Jovanna Perez
- Lani Gorzen
- Lauren Dinh
- Lydia George
- Marc Ellis
- Maricopa County
- Maricopa One
- Nollis Sanders

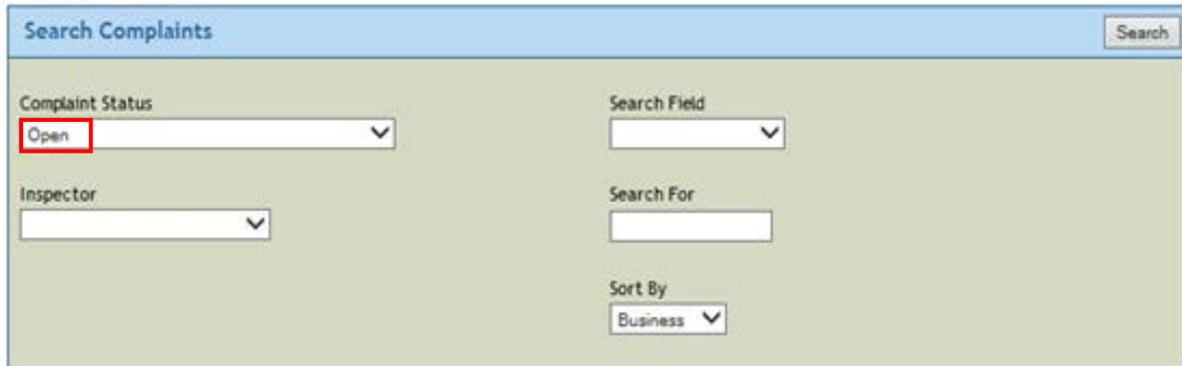
Copyright 2013 | SmokeFreeArizona.org | All Rights Reserved

- ❖ The complaints shown below are all examples of complaints assigned to “ADHS Administrator”. If an inspector is chosen by mistake, click on **Change** and pick a different inspector name. Click **Save Changes**.

Status = Open							
			Assigned Inspector	Business	City	ID	Submitted
Edit	Add Obs.	View Obs.	ADHS Administrator (Change)	Arizona Dept of Economic Security	Phoenix	231051	9/17/2014
Edit	Add Obs.	View Obs.	ADHS Administrator (Change)	Banner Health Center	Sun City West	231076	9/23/2014

3. Adding Observations / Closing Complaints

- ❖ When the public places a complaint, an inspection must be conducted within **15 days**. Once the inspection is completed, findings must be recorded in the control panel. Find the complaint in the control panel.
 - User can search by **Open** under **Complaint Status**. The user will see a list of all open complaints.



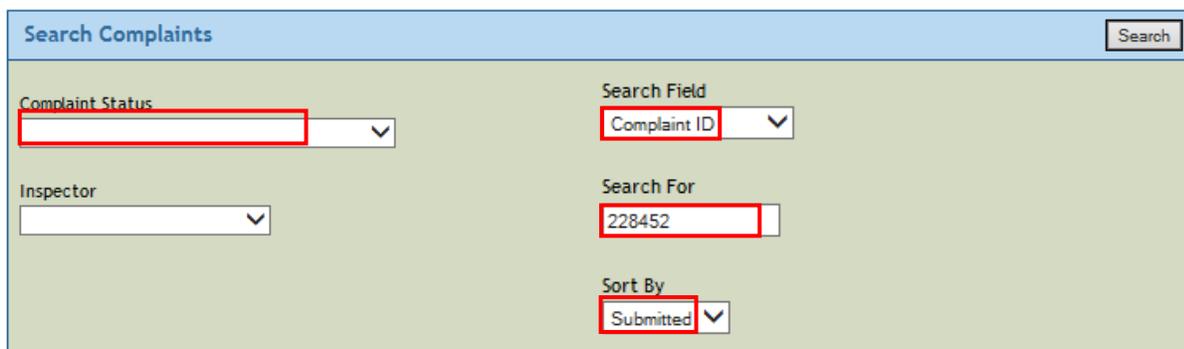
The screenshot shows the 'Search Complaints' interface. The 'Complaint Status' dropdown menu is set to 'Open', which is highlighted with a red box. Other fields include 'Search Field' (blank), 'Inspector' (blank), 'Search For' (blank), and 'Sort By' (set to 'Business'). A 'Search' button is located in the top right corner.

- User can search by **Name**; type the Establishment Name under the **Search For** field. Note: Complaint status must be blank to accurately find the complaint.



The screenshot shows the 'Search Complaints' interface. The 'Complaint Status' dropdown is blank. The 'Search Field' dropdown is set to 'Name of Business', and the 'Search For' text box contains 'BARWELL'. The 'Sort By' dropdown is set to 'Submitted'. A 'Search' button is located in the top right corner.

- User can search by **Complaint ID** number under **Search Field**. Type the Complaint ID Number under the **Search For** field. Note: Complaint status must be blank to accurately find the complaint.



The screenshot shows the 'Search Complaints' interface. The 'Complaint Status' dropdown is blank. The 'Search Field' dropdown is set to 'Complaint ID', and the 'Search For' text box contains '228452'. The 'Sort By' dropdown is set to 'Submitted'. A 'Search' button is located in the top right corner.

- ❖ Once the user finds the complaint, click on **Add Obs.** (Add Observation) to record the inspector's observations.

Edit **Add Obs.** View Obs. ADHS Administrator (Change) BARWELL Mesa 228452 6/1/2013

- ❖ Once user clicks on **Add Obs.**, the following menu will be displayed. Read the four options provided and choose the one that best fits the action taken in regards to the specific complaint. Choose option **number 1** to record observations and / or findings.

Business: BARWELL

Add New Observations (Complaint: ID = 228452)

After making your changes and clicking the button at the bottom, please check this area of the screen for a message. If the text is in red, then your data did not validate properly and you will need to fix the problematic fields and resubmit the information. If the text turns green, then you have successfully made your changes.

Please carefully select one of these four options

- 1. Complaint inspection conducted by County Health Department. Observation findings must be entered.
- 2. No complaint inspection conducted. Notice of Alleged Violation sent by County Health Department. Status will be set to 'Closed'.
- 3. No complaint inspection conducted. Establishment currently under investigation by County Health Department. Please refer to Complaint ID# . Status will be set to 'Closed'.
- 4. No complaint inspection conducted by County Health Department. Complaint directly referred to ADHS for enforcement and is currently under investigation. Status will be set to 'Referred to ADHS'.

Save Changes

1. Complaint inspection conducted by County Health Department. Observation findings must be entered.

- ❖ User will record observation by filling out every required field marked by a red asterisk * in the **Observation Data** section shown below. Inspector must transcribe narrative report written on the **SFA Summary Inspection Report and Continuation Form**, up to 1000 characters, describing the inspection findings in the **Additional Information** space provided. For CHDs that **do not** use the SFA Summary Inspection Report, please provide detailed information about the inspection. Inspector should specifically address allegations made in the complaint on their observations. Findings should include observations made during the inspection, whether or not violations were observed. If no violations are found, inspector should document requirements of the Act that are in compliance (i.e. signs posted, ashtrays at least 20 feet away from entrances, no one observed smoking where prohibited, outdoor patio meets exemption criteria, etc.).

Observation Data

* Inspector

* Method of Observation

* Observation Date
Day
Time :

* Observations

* Complaint Category
 Individual (What's This?)
 Public Building (What's This?)
 Place of Employment (What's This?)
 Retail Food (What's This?)
 Other

* Complaint Status
 Open
 In Progress: Re-inspection scheduled
 In Progress: Notice of violation issued
 Unable to Investigate: Insufficient Information
 Closed
 Referred to ADHS

Additional Info - 1000 characters left.

* Findings
check all that apply
 Ashtrays where prohibited - indoors
 Ashtrays where prohibited - outdoors
 Evidence of smoking (i.e, ashes, tobacco products)
 "Outdoor patio" not in compliance
 Person in charge not educating employees
 Person in charge permitting smoking where prohibited
 Signs incorrect
 Signs missing
 Smoke entering into area(s) not allowed
 Smoking where prohibited
 Other

* Action Taken - Proprietor
check all that apply
 No action necessary
 Corrected at the time of inspection
 Proprietor agrees to correct violation prior to re-inspection
 Proprietor acknowledges receipt of notice of violation
 Other

* Action Taken - Health Dept
check all that apply
 No evidence found to verify complaint
 Complaint verified - Corrective action verified
 Complaint verified - Re-inspection scheduled
 Referred to ADHS for enforcement
 Notice of violation issued
 Education conducted
 Other

- ❖ User must choose **Inspector** name from the drop down menu.
- ❖ User must choose **Method of Observation**. The methods of observation include:
 - **Advisory Visit** (*this method should not be used if the visit occurs in response to a complaint*);
 - **Email** (*this method can be used if the complainant is contacted through email – for example the complaint is not a violation of the SFA and an email is sent to complainant explaining how the SFA does not apply to the specific establishment or situation*);
 - **Mail** (*this method should be used only if a letter, Notice of Alleged Violation (NOAV), or Notice of Violation (NOV) are sent to the proprietor*);
 - **Onsite Inspection** (*this method can be used even if the place of business is closed at the time; inspector should document observations made on the exterior of the establishment*);

- **Phone** (*this method can be used if the complainant is contacted through phone– for example the complaint is not a violation of the SFA and the complainant is contacted via phone explaining how the SFA Act does not apply to the specific establishment or situation*); or
- **Other** (*User can choose other and enter relevant comment (see image below)*). **Note:** This field has very limited space. A detailed explanation can be entered on the additional information field.

❖ User must enter **Observation Date** and **Time**.

❖ User must choose **Observations**. The observations are:

- **No Evidence Found**;
- **Evidence Found**; or
- **N/A (Not Applicable)** - *this observation can be used when the method of observation is advisory visit, email, phone, or other.*

❖ User must choose **Complaint Category**. The complaint categories are:

- **Individual** (*this complaint category should not be chosen; the smoke-free program cannot pursue legal action against an individual smoking where prohibited. The SFA Act makes the business owner responsible for the areas under their control and individuals in these areas*);
- **Public Building** (*this complaint category should be chosen if the majority of individuals frequenting the establishment are visitors from the public*);
- **Place of Employment**; (*this complaint category should be chosen if the majority of individuals frequenting the establishment are employees*)
- **Retail Food** (*this complaint category should be chosen if the establishment is a permitted food establishment through the CHD Environmental Services Department / Section*); or
- **Other** (*user can choose other and enter relevant comment (see image above)*). **Note:** This field has very limited space. A detailed explanation can be entered on the additional information field.

Note: Please be consistent when choosing categories especially with multiple complaints at the same type of establishment or the same location.

❖ User must choose **Complaint Status**. The complaint statuses are:

- **Open** (*this complaint has not been investigated*) ;
- **In Progress: Re-inspection scheduled** (*violations were found during the inspection that were not corrected; re-inspection is necessary*);
- **In Progress: Notice of Violation issued** (*this complaint status should be chosen if a Notice of Violation is issued and the enforcement case is in progress*);
- **Unable to Investigate: Insufficient Information** (*this complaint category may be chosen; however, the complaint can be closed and an explanation added to the Additional Information Section instead*);
- **Closed**; or
- **Referred to ADHS** (*this complaint category may be chosen when the complaint has been investigated, violations have been found during 3 inspections, and it's ready for ADHS enforcement protocol – **only applies** to CHDs that do not conduct their own enforcement efforts*).

- ❖ User must choose from the list of **Findings** to document observations witnessed during an inspection. Check all that apply. User can choose **Other** and enter relevant comment (see image below). **Note: This field has very limited space. A detailed explanation can be entered on the additional information field.**

* Findings

check all that apply

- Ashtrays where prohibited - indoors
- Ashtrays where prohibited - outdoors
- Evidence of smoking (i.e, ashes, tobacco products)
- "Outdoor patio" not in compliance
- Person in charge not educating employees
- Person in charge permitting smoking where prohibited
- Signs incorrect
- Signs missing
- Smoke entering into area(s) not allowed
- Smoking where prohibited
- Other

- ❖ User must choose from the list **Action Taken – Proprietor**. Check all that apply. User can choose **Other** and enter relevant comment (see image below). **Note: This field has very limited space. A detailed explanation can be entered on the additional information field.**

* Action Taken - Proprietor

check all that apply

- No action necessary
- Corrected at the time of inspection
- Proprietor agrees to correct violation prior to re-inspection
- Proprietor acknowledges receipt of notice of violation
- Other

- ❖ User must choose from the list **Action Taken – Health Dept**. Check all that apply. User can choose **Other** and enter relevant comment (see image below). **Note: This field has very limited space. A detailed explanation can be entered on the additional information field.**

* Action Taken - Health Dept

check all that apply

- No evidence found to verify complaint
- Complaint verified - Corrective action verified
- Complaint verified - Re-inspection scheduled
- Referred to ADHS for enforcement
- Notice of violation issued
- Education conducted
- Other

- ❖ Once all the information is entered click **Save Changes**. The observation will be date and time stamped. If any mistakes were made in the entry, click **Edit** and correct the mistake by updating the finding information. For the changes to take effect, user must click **Save Changes**. **Note:** The **Recorded Date** and **Time** will not be updated. Only the observation date and time can be edited when updating the complaint information if necessary due to an entry mistake.

	Inspector	Observation Date	Date Recorded	Recorded By
Edit	ADHS Administrator	6/3/2013 4:15:00 PM	6/12/2013 3:17:51 PM	Eric Thomas

- ❖ Remember that when adding an observation, inspectors can choose from four observation options provided (see image below). Once user clicks on **Add Obs.**, the following menu will be displayed. Read the four options provided and choose the one that best fits the action taken in regards to the specific complaint.

Please carefully select one of these four options

- 1. **Complaint inspection conducted by County Health Department.** Observation findings must be entered.
- 2. No complaint inspection conducted. Notice of Alleged Violation sent by County Health Department. Status will be set to 'Closed'.
- 3. No complaint inspection conducted. Establishment currently under investigation by County Health Department. Please refer to Complaint ID# . Status will be set to 'Closed'.
- 4. No complaint inspection conducted by County Health Department. Complaint directly referred to ADHS for enforcement and is currently under investigation. Status will be set to 'Referred to ADHS'.

Save Changes

- ❖ Choose option **number 2** to record if a Notice of Alleged Violation was sent to the proprietor and an inspection **will not** be conducted.

2. No complaint inspection conducted. Notice of Alleged Violation sent by County Health Department. Status will be set to 'Closed'.

- ❖ The **Complaint Status** will be set to **Closed** automatically.

Status = Closed

	Assigned Inspector	Business	City	ID	Submitted
Edit Add Obs. View Obs.	Leslie Horton (Change)	Mr. T's Barber Shop	Cottonwood	225837	10/13/2011
NOTICE OF ALLEGED VIOLATION SENT					

- ❖ When user clicks on **View Obs.** (View Observation), user will see a similar entry as the one show below stating **No Records Found**. For this reason, adding an inspection finding is still necessary; the reporting system will not count this complaint unless a finding is added.

Business: Mr. T's Barber Shop - Print Complaint and All Observations

Observations: Complaint ID = 225837

Observations are information collected after performing an inspection of a Complaint.

No records found.

- ❖ In the example below, user chose option **number 2** but also added a separate finding shown below. In order to close the complaint above, user clicks **Add Obs.** and selects option **number 1** from the observation menu and enters all the **Observation Data** information.
- ❖ Once the Observation Data sheet is filled, a user can click on **View Obs.** and see the observation entered by the inspector for more specific information and to aid in data accuracy (see images below).

Status = Closed

	Assigned Inspector	Business	City	ID	Submitted
Edit Add Obs. View Obs.	Jenny Ablan (Change)	Fox Tobacco & Liquor	Unincorporated - Pinal County	226515	3/26/2012
NOTICE OF ALLEGED VIOLATION SENT					

Business: Fox Tobacco & Liquor - Print Complaint and All Observations

Observations: Complaint ID = 226515

Observations are information collected after performing an inspection of a Complaint.

	Inspector	Observation Date	Date Recorded	Recorded By	
Edit Print	Jenny Ablan	4/10/2012 2:30:00 PM	4/11/2012 7:57:21 AM	Jenny Ablan	Delete

- ❖ Choose option **number 3** when referring complaints. Option **number 3** is explained in the next section below **Referring Complaints**.

Please carefully select one of these four options

- 1. **Complaint inspection conducted by County Health Department.** Observation findings must be entered.
- 2. No complaint inspection conducted. Notice of Alleged Violation sent by County Health Department. Status will be set to 'Closed'.
- 3. No complaint inspection conducted. Establishment currently under investigation by County Health Department. Please refer to Complaint ID# [input field]. Status will be set to 'Closed'.
- 4. No complaint inspection conducted by County Health Department. Complaint directly referred to ADHS for enforcement and is currently under investigation. Status will be set to 'Referred to ADHS'.

Save Changes

- 3. No complaint inspection conducted. Establishment currently under investigation by County Health Department. Please refer to Complaint ID# . Status will be set to 'Closed'.

- ❖ Choose option **number 4** when referring a complaint to ADHS for enforcement.
- ❖ This option is only for counties that do not perform any SFA enforcement efforts (**Cochise, Gila, Pinal, Maricopa, Santa Cruz, and Yavapai**).
- ❖ If your County is responsible for SFA enforcement efforts, you can seek advice from the ADHS SFA Program before referring a complaint to ADHS. Complaints should not be referred to ADHS without previous consultation with SFA Program Management.

Please carefully select one of these four options

- 1. **Complaint inspection conducted by County Health Department.** Observation findings must be entered.
- 2. No complaint inspection conducted. Notice of **Alleged Violation** sent by County Health Department. Status will be set to 'Closed'.
- 3. No complaint inspection conducted. Establishment currently under investigation by County Health Department. Please refer to Complaint ID# . Status will be set to 'Closed'.
- 4. No complaint inspection conducted by County Health Department. Complaint directly referred to ADHS for enforcement and is currently under investigation. Status will be set to 'Referred to ADHS'.

Save Changes

- 4. No complaint inspection conducted by County Health Department. Complaint directly referred to ADHS for enforcement and is currently under investigation. Status will be set to 'Referred to ADHS'.

- ❖ Choose option **number 4** if the establishment under investigation is being referred to ADHS for enforcement.
- ❖ An establishment can be referred for enforcement once 3 inspections have been conducted in which violations were found and were not corrected. An establishment can also be referred if the Department's Designee (CHD personnel) is refused access to the establishment twice.

3.A. Sample Observations

- ❖ **Ambiguous Observation**

Additional Info - 630 characters left

Partially enclosed bus stop..... kinda sorta in a way somewhat does or does not meet outdoor patio rules of open on one end.... All four sides are about half open i guess providing some sense of shelter during adverse weather conditions. If you add it all up..... its open on one side. No enforcement needed. may stick a bunch of signs up on it if I get more complaints.

- ❖ **Observation is ambiguous.** The inspector is not certain whether the bus stop is in violation of the Act. There are a lot of unnecessary details documented. The inspector is mistakenly discussing outdoor patio requirements to justify smoking occurring at the bus stop. SFA signs only be posted by entrances.

- ❖ **Observation Needs More Information**

Additional Info - 862 characters left

Met with employee of Family Dollar to explain why a complaint was submitted. All smoking must be outside and 20 feet from the front door.

- ❖ **Observation needs more information.** The inspector did not document his/her findings during the time of the inspection. It is hard to know if this observation is addressing the allegations of the submitted complaint. Information provided is not very specific.

- ❖ **Good Observation**

Additional Info - 243 characters left

Complaint inspection conducted by Maricopa County representative. Spoke with manager regarding requirements of A.R.S. 36-601.01. Violations observed indicated the establishment is not in compliance. The required signage was posted at front entrance into the establishment. No one observed smoking where prohibited. Observed ashtray within 10 feet of front/south entrance. Manager moved ashtray more than 20 feet of entrance at time of inspection. Violation corrected. Please ensure all persons smoke 20 feet from all entrances, open windows and ventilation systems. Education was conducted. Representative requested that management educate all employees on A.R.S. 36-601.01. Brochure was provided to the manager. No further action required at this time.

- ❖ **Good Observation.** The inspector explains what happen during the inspection thoroughly. Inspector states his/her findings and violations witnessed; inspector explicitly explains that position of the ashtray. Inspector states corrective action and future expectations for the management. The observation is finished by mentioning that No further action is necessary at the time.

4. Referring Complaints

- ❖ Please see the images below. When complaints against the same establishment and same location are received, user must refer subsequent complaints to the first complaint filed.
- ❖ In the example below, the first complaint against Silverado Senior Living was placed on 2/19/2013 (Complaint ID 227973). Two subsequent complaints were placed on 2/21/2013 (Complaint ID 227986) and 2/22/2013 (Complaint ID 227992).

Edit	Add Obs.	View Obs.	ADHS Administrator (Change)	Silverado Senior Living	Scottsdale	227973	2/19/2013
Edit	Add Obs.	View Obs.	ADHS Administrator (Change)	Silverado Senior Living	Scottsdale	227986	2/21/2013
				Refer to:	227973		
Edit	Add Obs.	View Obs.	ADHS Administrator (Change)	Silverado Senior Memory Care	Scottsdale	227992	2/22/2013
				Refer to:	227973		

- ❖ Once an inspection is conducted, findings can be recorded under Complaint ID 227973 by clicking **Add New Observation** or **Add Obs.**, choosing option **number 1**, and filling out the **Observation Data** information. The Complaint Status can be set to **Closed** or to **In Progress: Re-inspection Scheduled** if necessary.
- ❖ In order to refer Complaint ID 227986 to Complaint ID 227973, user must enter a finding. On Complaint ID 227986, click on **Add Obs.**, and choose option **number 3** (instead of 1). Enter the number of the first complaint number (in this case Complaint ID 227973) in the space provided.
- ❖ As option **number 3** explains, the complaint will be closed. Also a red message will appear right under the complaint saying **Refer to Complaint 227973**.
- ❖ Any users looking into **Complaint ID 227973's** observations will know to review observations made in complaint 227973.

Menu · News Updates · Signage Orders · Users · County Data · **Complaints** · Complaint Report · Report Download

Complaint Data · List of Observations · **Add New Observation**

Business: Silverado Senior Living

Add New Observations (Complaint: ID = 227986)

After making your changes and clicking the button at the bottom, please check this area of the screen for a message. If the text is in red, then your data did not validate properly and you will need to fix the problematic fields and resubmit the information. If the text turns green, then you have successfully made your changes.

Please carefully select one of these four options

- 1. Complaint inspection conducted by County Health Department. Observation findings must be entered.
- 2. No complaint inspection conducted. Notice of Alleged Violation sent by County Health Department. Status will be set to 'Closed'.
- 3. No complaint inspection conducted. Establishment currently under investigation by County Health Department. Please refer to Complaint ID# . Status will be set to 'Closed'.
- 4. No complaint inspection conducted by County Health Department. Complaint directly referred to ADHS for enforcement and is currently under investigation. Status will be set to 'Referred to ADHS'.

❖ User must repeat the process for Complaint ID 227992. Once the findings are entered, the complaints will look like the image shown below.

Edit	Add Obs.	View Obs.	ADHS Administrator (Change)	Silverado Senior Living	Scottsdale	227973	2/19/2013
Edit	Add Obs.	View Obs.	ADHS Administrator (Change)	Silverado Senior Living	Scottsdale	227986	2/21/2013
				Refer to:	227973		
Edit	Add Obs.	View Obs.	ADHS Administrator (Change)	Silverado Senior Memory Care	Scottsdale	227992	2/22/2013
				Refer to:	227973		

❖ When user clicks on **View Obs.** for **Complaint ID 227986** and **227992**, a blank page like the one below will appear. This is normal. The database reporting system counts this complaint, but in order to view the complaint findings the user needs to view the ones entered in **Complaint ID 227973**.

Note: The reason why complaints are referred is so that users don't enter multiple inspection findings on each complaint, when only one complaint inspection was conducted.



Business: Silverado Senior Living - Print Complaint and All Observations

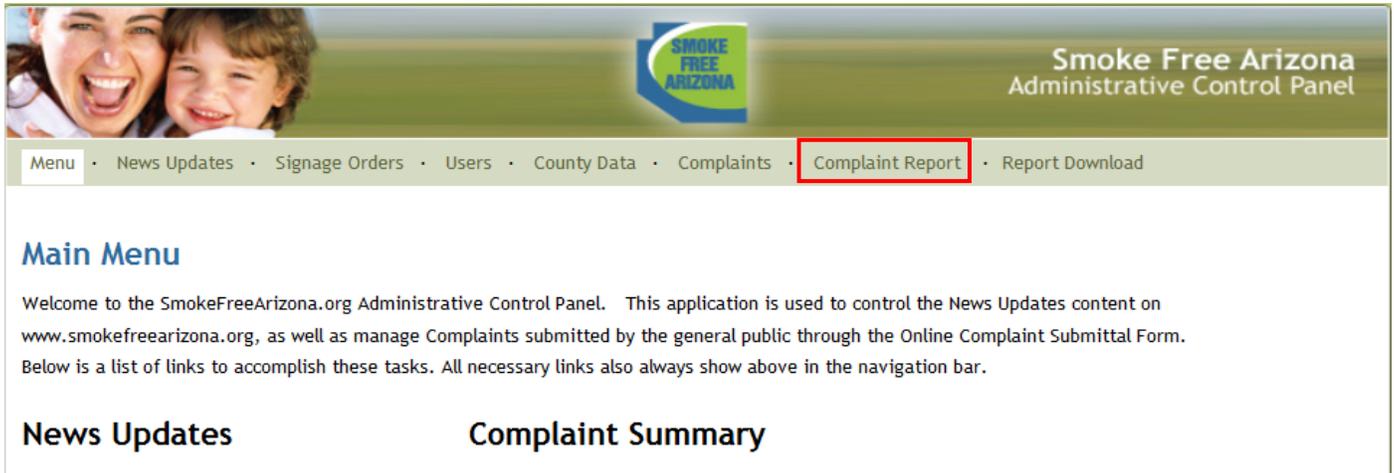
Observations: Complaint ID = 227986

Observations are information collected after performing an inspection of a Complaint.

No records found.

SFA CONTROL PANEL REPORTING SYSTEM USER GUIDE

1. Log into SFA control panel and choose Complaint Report tab.

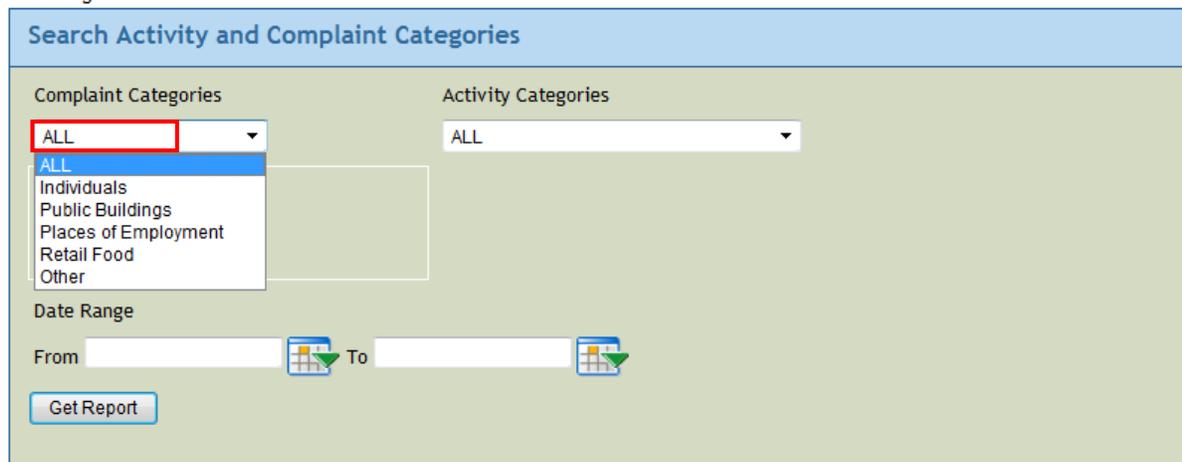


The screenshot shows the top navigation bar of the Smoke Free Arizona Administrative Control Panel. The navigation bar includes links for Menu, News Updates, Signage Orders, Users, County Data, Complaints, Complaint Report (highlighted with a red box), and Report Download. Below the navigation bar is the "Main Menu" section, which contains a welcome message and a list of links: News Updates and Complaint Summary.

2. Choose **Complaint Category** from the drop down menu or choose "ALL" to include all Complaint Categories. To obtain data for SFA Annual Report, please choose "ALL."

Report by Complaint Criteria

Please use the search options below to create reports, including the number of complaints, complaint inspections, and Notices of Violat date range.



The screenshot shows the "Search Activity and Complaint Categories" form. It includes two dropdown menus: "Complaint Categories" and "Activity Categories". The "Complaint Categories" dropdown is currently set to "ALL" and is open, showing a list of options: ALL, Individuals, Public Buildings, Places of Employment, Retail Food, and Other. The "Activity Categories" dropdown is also set to "ALL". Below these dropdowns is a "Date Range" section with "From" and "To" input fields, each with a calendar icon. A "Get Report" button is located at the bottom of the form.

[Export to PDF](#) | | [Export to Excel](#)

3. Choose **Activity Category** from the drop down menu or choose "ALL" to include all Activity Categories. To obtain data for SFA Annual Report, please choose "ALL."

Report by Complaint Criteria

Please use the search options below to create reports, including the number of complaints, complaint inspections, and Notices of Violation issued in selected date range.

Search Activity and Complaint Categories

Complaint Categories	Activity Categories
ALL	ALL
Inspectors All	
Date Range	
From	To
Get Report	

Export to PDF || Export to Excel

4. Your county has been preselected for you. To obtain data for the SFA Annual Report, choose "ALL" for the **Inspectors** field.

Report by Complaint Criteria

Please use the search options below to create reports, including the number of complaints, complaint inspections, and Notices of Violation issued in selected date range.

Search Activity and Complaint Categories

Complaint Categories	Activity Categories
ALL	ALL
Inspectors All	
Date Range	
From	To
Get Report	

Export to PDF || Export to Excel

5. Choose May 1, 2013 to May 1, 2014 as the **Date Range**. This is the Smoke-Free Arizona reporting year that should be submitted to ADHS for the Annual Report.

❖ *This data set will not include any complaints submitted on May 1, 2014; however, May 1, 2014 should be chosen as the end date to include all complaints placed on April 30, 2014.*

Report by Complaint Criteria

Please use the search options below to create reports, including the number of complaints, complaint inspections, and Notices of Violation issued in selected date range.

Search Activity and Complaint Categories

Complaint Categories: ALL
Activity Categories: ALL
Inspectors: All

Date Range
From: 1-May-2013 To: 1-May-2014

Get Report

[Export to PDF](#) || [Export to Excel](#)

6. Click Get Report.

Report by Complaint Criteria

Please use the search options below to create reports, including the number of complaints, complaint inspections, and Notices of Violation issued in selected date range.

Search Activity and Complaint Categories

Complaint Categories: ALL
Activity Categories: ALL
Inspectors: All

Date Range
From: 1-May-2013 To: 1-May-2014

Get Report

[Export to PDF](#) || [Export to Excel](#)

7. A report will be generated such as the one seen below.

Date Selected: 5/1/2013 to 5/1/2014

Cochise					
Activity Categories	Complaint Categories				
Items	Other	Public Building	Open	No Action Closed	Total
Number of Complaint	1	8		1	10
Number of Complaint Inspection	1	10			11
Notice of Violation					

Coconino							
Activity Categories	Complaint Categories						
Items	Other	Place of Employment	Public Building	Retail Food	Open	No Action Closed	Total
Number of Complaint	5	8	3	5	1		22
Number of Complaint Inspection	4	12	5	7			28
Notice of Violation				1			1

Gila							
Activity Categories	Complaint Categories						
Items	Other	Place of Employment	Public Building	Retail Food	Open	No Action Closed	Total
Number of Complaint	1	2	2	8			13
Number of Complaint Inspection	1	2	1	13			17
Notice of Violation		1	1				2



INTERGOVERNMENTAL AGREEMENT (IGA)

Contract No. ADHS12-022016

ARIZONA DEPARTMENT OF
HEALTH SERVICES
1740 West Adams, Room 303
Phoenix, Arizona 85007
(602) 542-1040
(602) 542-1741 FAX

Project Title: Prop 201 Smoke Free Arizona

Begin Date: 7/01/12

Geographic Service Area: Pima County

Termination Date: 6/30/17

Arizona Department of Health Services has authority to contract for services specified herein in accordance with A.R.S. §§ 11-951, 11-952, 36-104 and 36-132. The Contractor represents that it has authority to contract for the performance of the services provided herein pursuant to:

- Counties: A.R.S. §§ 11-201, 11-951, 11-952 and 36-182.
- Indian Tribes: A.R.S. §§ 11-951, 11-952 and the rules and sovereign authority of the contracting Indian Nation.
- School Districts: A.R.S. §§ 11-951, 11-952, and 15-342.
- City of Phoenix: Chapter II, §§ 1 & 2, Charter, City of Phoenix.
- City of Tempe: Chapter 1, Article 1, §§ 1.01 & 1.03, Charter, City of Tempe.

Amendments signed by each of the parties and attached hereto are hereby adopted by reference as a part of this Contract, from the effective date of the Amendment, as if fully set out herein.

Arizona Transaction (Sales) Privilege: _____ Federal Employer Identification No: _____ Tax License No.: _____ Contractor Name: Pima County Health Department Address: 3950 South Country Club Road Tucson, AZ 85714	<p style="text-align: center;">FOR CLARIFICATION, CONTACT:</p> Name: _____ Phone: _____ FAX No: _____
<p style="text-align: center;">CONTRACTOR SIGNATURE:</p> The Contractor agrees to perform all the services set forth in the Agreement and Work Statement.	This Contract shall henceforth be referred to as Contract No. <u>ADHS12-022016</u> . The Contractor is hereby cautioned not to commence any billable work or provide any material, service or construction under this Contract until Contractor receives a fully executed copy of the Contract.
Signature of Person Authorized to Sign _____ Date _____ Print Name and Title _____	State of Arizona Signed this _____ day of _____, 2012 _____ Procurement Officer
<p style="text-align: center;">CONTRACTOR ATTORNEY SIGNATURE:</p> Pursuant to A.R.S. § 11-952, the undersigned Contractor's Attorney has determined that this Intergovernmental Agreement is in proper form and is within the powers and authority granted under the laws of Arizona.	<p style="text-align: center;">RESERVED FOR USE BY THE SECRETARY OF STATE</p> <p style="text-align: center;">Under House Bill 2011, A.R.S. § 11-952 was amended to remove the requirement that Intergovernmental Agreements be filed with the Secretary of State.</p>
Signature of Person Authorized to Sign _____ Date _____ Print Name and Title _____	
Attorney General Contract, No. P0012012000033, which is an Agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952 by the undersigned Assistant Attorney General, who has determined that it is in the proper form and is within the powers granted under the laws of the State of Arizona to those parties to the Agreement represented by the Attorney General. The Attorney General, BY:	
Signature _____ Date _____ Assistant Attorney General:	

Contract Number ADHS12-022016	INTERGOVERNMENTAL AGREEMENT TERMS AND CONDITIONS
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1. **Definition of Terms.** As used in this Contract, the terms listed below are defined as follows:
 - 1.1 "Attachment" means any document attached to the Contract and incorporated into the Contract.
 - 1.2 "ADHS" means Arizona Department of Health Services.
 - 1.3 "Budget Term" means the period of time for which the contract budget has been created and during which funds should be expended.
 - 1.4 "Change Order" means a written order that is signed by a Procurement Officer and that directs the Contractor to make changes authorized by the Uniform Terms and Conditions of the Contract.
 - 1.5 "Contract" means the combination of the Uniform and Special Terms and Conditions, the Specifications and Statement or Scope of Work, Attachments, Referenced Documents, any Contract Amendments and any terms applied by law.
 - 1.6 "Contract Amendment" means a written document signed by the Procurement Officer and the Contractor that is issued for the purpose of making changes in the Contract.
 - 1.7 "Contractor" means any person who has a Contract with the Arizona Department of Health Services.
 - 1.8 "Cost Reimbursement" means a contract under which a contractor is reimbursed for costs, which are reasonable, allowable and allocable in accordance with the contract terms and approved by ADHS.
 - 1.9 "Days" means calendar days unless otherwise specified.
 - 1.10 "Fixed Price" establishes a set price per unit of service. The set price shall be based on costs, which are reasonable, allowable and allocable.
 - 1.11 "Gratuity" means a payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.
 - 1.12 "Materials" unless otherwise stated herein, means all property, including but not limited to equipments, supplies, printing, insurance and leases of property.
 - 1.13 "Procurement Officer" means the person duly authorized by the State to enter into and administer Contracts and make written determinations with respect to the Contract.
 - 1.14 "Purchase Order" means a written document that is signed by a Procurement Officer, that requests a vendor to deliver described goods or services at a specific price and that, on delivery and acceptance of the goods or services by ADHS, becomes an obligation of the State.
 - 1.15 "Services" means the furnishing of labor, time or effort by a Contractor or Subcontractor.
 - 1.16 "Subcontract" means any contract, express or implied, between the Contractor and another party or between a subcontractor and another party delegating or assigning, in whole or in part, the making or furnishing of any material or any service required for the performance of this Contract.
 - 1.17 "State" means the State of Arizona and/or the ADHS. For purposes of this Contract, the term "State" shall not include the Contractor.

Contract Number ADHS12-022016	INTERGOVERNMENTAL AGREEMENT TERMS AND CONDITIONS
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2. Contract Type.

This Contract shall be:

Cost Reimbursement

3. Contract Interpretation.

- 3.1 Arizona Law. The law of Arizona applies to this Contract including, where applicable, the Uniform Commercial Code as adopted by the State of Arizona.
- 3.2 Implied Contract Terms. Each provision of law and any terms required by law to be in this Contract are a part of this Contract as if fully stated in it.
- 3.3 Contract Order of Precedence. In the event of a conflict in the provisions of the Contract, as accepted by the State and as they may be amended, the following shall prevail in the order set forth below:
 - 3.3.1 Terms and Conditions;
 - 3.3.2 Statement or Scope of Work;
 - 3.3.3 Attachments;
 - 3.3.4 Referenced Documents.
- 3.4 Relationship of Parties. The Contractor under this Contract is an independent Contractor. Neither party to this Contract shall be deemed to be the employee or agent of the other party to the Contract.
- 3.5 Severability. The provisions of this Contract are severable. Any term or condition deemed illegal or invalid shall not affect any other term or condition of the Contract.
- 3.6 No Parole Evidence. This Contract is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document.
- 3.7 No Waiver. Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.
- 3.8 Headings. Headings are for organizational purposes only and shall not be interpreted as having legal significance or meaning.

4. Contract Administration and Operation.

- 4.1 Term. As indicated on the signature page of the Contract, the Contract shall be effective as of the Begin Date and shall remain effective until the Termination Date.
- 4.2 Contract Renewal. This Contract shall not bind, nor purport to bind, the State for any contractual commitment in excess of the original Contract period. The term of the Contract shall not exceed five years. However, if the original Contract period is for less than five years, the State shall have the right, at its sole option, to renew the Contract, so long as the original Contract period together with the renewal periods does not exceed five years. If the State exercises such rights, all terms, conditions and provisions of the original Contract shall remain the same and apply during the renewal period with the exception of price and Scope of Work, which may be renegotiated.
- 4.3 New Budget Term. If a budget term has been completed in a multi-term Contract, the parties may agree to

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change the amount and type of funding to accommodate new circumstances in the next budget term. Any increase or decrease in funding at the time of the new budget term shall coincide with a change in the Scope of Work or change in cost of services as approved by the Arizona Department of Health Services.

- 4.4 Non-Discrimination. The Contractor shall comply with State Executive Order No. 2009-09 and all other applicable Federal and State laws, rules and regulations, including the Americans with Disabilities Act.
- 4.5 Records and Audit. Under A.R.S. § 35-214 and A.R.S. § 35-215, the Contractor shall retain and shall contractually require each subcontractor to retain all data and other records ("records") relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract. All records shall be subject to inspection and audit by the State and where applicable the Federal Government at reasonable times. Upon request, the Contractor shall produce a legible copy of any or all such records.
- 4.6 Financial Management. For all contracts, the practices, procedures, and standards specified in and required by the Accounting and Auditing Procedures Manual for the ADHS funded programs shall be used by the Contractor in the management of Contract funds and by the State when performing a Contract audit. Funds collected by the Contractor in the form of fees, donations and/or charges for the delivery of these Contract services shall be accounted for in a separate fund.
 - 4.6.1 *Federal Funding.* Contractors receiving federal funds under this Contract shall comply with the certified finance and compliance audit provision of the Office of Management and Budget (OMB) Circular A-133, if applicable. The federal financial assistance information shall be stated in a Change Order or Purchase Order.
 - 4.6.2 *State Funding.* Contractors receiving state funds under this Contract shall comply with the certified compliance provisions of A.R.S. § 35-181.03.
- 4.7 Inspection and Testing. The Contractor agrees to permit access, at reasonable times, to its facilities.
- 4.8 Notices. Notices to the Contractor required by this Contract shall be made by the State to the person indicated on the signature page by the Contractor, unless otherwise stated in the Contract. Notices to the State required by the Contract shall be made by the Contractor to an ADHS Procurement Officer, unless otherwise stated in the Contract. An authorized ADHS Procurement Officer and an authorized Contractor representative may change their respective person to whom notice shall be given by written notice, and an amendment to the Contract shall not be necessary.
- 4.9 Advertising and Promotion of Contract. The Contractor shall not advertise or publish information for commercial benefit concerning this Contract without the prior written approval of an ADHS Procurement Officer.
- 4.10 Property of the State.
 - 4.10.1 *Equipment.* Except as provided below or otherwise agreed to by the parties, the title to any and all equipment acquired through the expenditure of funds received from the State shall remain the property of the State by and through the ADHS and, as such, shall remain under the sole direction, management and control of the ADHS. When this Contract is terminated, the disposition of all such property shall be determined by the ADHS. For Fixed Price contracts, when the Contractor provides the services/materials required by the Contract, any and all equipment purchased by the Contractor remains the property of the Contractor. All purchases of equipment need to be reported to the ADHS Office of Inventory Control.
 - 4.10.2 *Title and Rights to Materials.* As used in this section, the term "Materials" means all products created or produced by the Contractor under this Contract, including, but not limited to: written and electronic information, recordings, reports, research, research findings, conclusions, abstracts, results, software, data and any other intellectual property or deliverables created, prepared, or received by the Contractor in performance of this Contract. Contractor acknowledges that all

Contract Number	INTERGOVERNMENTAL AGREEMENT
ADHS12-022016	TERMS AND CONDITIONS

Materials are the property of the State by and through the ADHS and, as such, shall remain under the sole direction, management and control of the ADHS. The Contractor is not entitled to a patent or copyright on these Materials and may not transfer a patent or copyright on them to any other person or entity. To the extent any copyright in any Materials may originally vest in the Contractor, the Contractor hereby irrevocably transfers to the ADHS, for and on behalf of the State, all copyright ownership. The ADHS shall have full, complete and exclusive rights to reproduce, duplicate, adapt, distribute, display, disclose, publish, release and otherwise use all Materials. The Contractor shall not use or release these Materials without the prior written consent of the ADHS. When this Contract is terminated, the disposition of all such Materials shall be determined by the ADHS. Further, the Contractor agrees to give recognition to the ADHS for its support of any program when releasing or publishing program Materials.

Notwithstanding the above, if the Contractor is a State agency, the following shall apply instead: It is the intention of ADHS and Contractor that all material and intellectual property developed under this Agreement be used and controlled in ways to produce the greatest benefit to the parties to this Contract and the citizens of the State of Arizona. As used in this paragraph, "Material" means all written and electronic information, recordings, reports, findings, research information, abstracts, results, software, data, discoveries, inventions, procedures and processes of services developed by the Contractor and any other materials created, prepared or received by the Contractor and subcontractors in performance of this Agreement. "Material" as used herein shall not include any pre-existing data, information, materials, discoveries, inventions or any form of intellectual property invented, created, developed or devised by Contractor (or its employees, subcontractors or agents) prior to the commencement of the services funded by this Agreement or that may result from Contractor's involvement in other service activities that are not funded by the Agreement.

Title and exclusive copyright to all Material shall vest in the State of Arizona, subject to any rights reserved on behalf of the federal government. As State agencies and instrumentalities, both ADHS and Contractor shall have full, complete, perpetual, irrevocable and non-transferable rights to reproduce, duplicate, adapt, make derivative works, distribute, display, disclose, publish and otherwise use any and all Material. The Contractor's right to use Material shall include the following rights: the right to use the Material in connection with its internal, non-profit research and educational activities, the right to present at academic or professional meetings or symposia and the right to publish in journals, theses, dissertations or otherwise of Contractor's own choosing. Contractor agrees to provide ADHS with a right of review prior to any publication or public presentation of the Material, and ADHS shall be entitled to request the removal of its confidential information or any other content the disclosure of which would be contrary to the best interest of the State of Arizona. Neither party shall release confidential information to the public without the prior expressly written permission of the other, unless required by the State public records statutes or other law, including a court order. Each party agrees to give recognition to the other party in all public presentations or publications of any Material, when releasing or publishing them.

In addition, ADHS and Contractor agree that any and all Material shall be made freely available to the public to the extent it is in the best interest of the State. However, if either party wants to license or assign an intellectual property interest in the material to a third-party for monetary compensation, ADHS and Contractor agree to convene to determine the relevant issues of title, copyright, patent and distribution of revenue. In the event of a controversy as to whether the Material is being used for monetary compensation or in a way that interferes with the best interest of the state or ADHS, then the Arizona Department of Administration shall make the final decision. Notwithstanding the above, "monetary compensation" does not include compensation paid to an individual creator for traditional publications in academia (the copyrights to which are Employee-Excluded Works under ABOR Intellectual Property Policy Section 6-908C.4), an honorarium or other reimbursement of expenses for an academic or professional presentation, or an unprofitable distribution of Material.

4.11 E-Verify Requirements In accordance with A.R.S. § 41-4401, Contractor warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with Section A.R.S. § 23-214, Subsection A.

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4.12 Scrutinized Businesses In accordance with A.R.S. § 35-391 and A.R.S. § 35-393, Contractor certifies that the Contractor does not have scrutinized business operations in Sudan or Iran.

4.13 Federal Immigration and Nationality Act The Contractor shall comply with all federal, state and local immigration laws and regulations relating to the immigration status of their employees during the term of the Contract. Further, the Contractor shall flow down this requirement to all subcontractors utilized during the term of the Contract. The State shall retain the right to perform random audits of Contractor and subcontractor records or to inspect papers of any employee thereof to ensure compliance. Should the State determine that the Contractor and/or any subcontractors be found noncompliant, the State may pursue all remedies allowed by law, including, but not limited to; suspension of work, termination of the Contract for default and suspension and/or debarment of the Contractor.

5. Costs and Payments

5.1 Payments. Payments shall comply with the requirements of A.R.S. Titles 35 and 41, net 30 days. Upon receipt and acceptance of goods or services, the Contractor shall submit a complete and accurate Contractor's Expenditure Report for payment from the State within thirty (30) days, as provided in the Accounting and Auditing Procedures Manual for the ADHS.

5.2 Recoupment of Contract Payments.

5.2.1 *Unearned Advanced Funds*. Any unearned State funds that have been advanced to the Contractor and remain in its possession at the end of each budget term, or at the time of termination of the Contract, shall be refunded to the ADHS within forty-five (45) days of the end of a budget term or of the time of termination.

5.2.2 *Contracted Services*. In a fixed price contract, if the number of services provided is less than the number of services for which the Contractor received compensation, funds to be returned to the ADHS shall be determined by the Contract price. Where the price is determined by cost per unit of service or material, the funds to be returned shall be determined by multiplying the unit of service cost by the number of services the Contractor did not provide during the Contract term. Where the price for a deliverable is fixed, but the deliverable has not been completed, the Contractor shall be paid a pro rata portion of the completed deliverable. In a cost reimbursement contract, the ADHS shall pay for any costs that the Contractor can document as having been paid by the Contractor and approved by ADHS. In addition, the Contractor will be paid its reasonable actual costs for work in progress as determined by Generally Accepted Accounting Procedures up to the date of contract termination.

5.2.3 *Refunds*. Within forty-five (45) days after the end of each budget term or of the time of termination of the Contract, the Contractor shall refund the greater of: i) the amount refundable in accordance with paragraph 4.2.1, Unearned Advanced Funds; or ii) the amount refundable in accordance with paragraph 5.2.2, Contracted Services.

5.2.4 *Unacceptable Expenditures*. The Contractor agrees to reimburse the ADHS for all Contract funds expended, which are determined by the ADHS not to have been disbursed by the Contractor in accordance with the terms of this Contract. The Contractor shall reimburse ADHS within 45 days of the determination of unacceptability.

5.3 Unit Costs/Rates or Fees. Unit costs/rates or fees shall be based on costs, which are determined by ADHS to be reasonable, allowable and allocable as outlined in the Accounting and Auditing Procedures Manual for the ADHS.

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5.4 Applicable Taxes.

5.4.1 *State and Local Transaction Privilege Taxes.* The State of Arizona is subject to all applicable state and local transaction privilege taxes. Transaction privilege taxes apply to the sale and are the responsibility of the seller to remit. Failure to collect taxes from the buyer does not relieve the seller from its obligation to remit taxes.

5.4.2 *Tax Indemnification.* The Contractor and all subcontractors shall pay all federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall require all subcontractors to hold the State harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal, and/or state and local laws and regulations and any other costs, including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.

5.4.3 *I.R.S. W9 Form.* In order to receive payment under any resulting Contract, the Contractor shall have a current I R S. W9 Form on file with the State of Arizona

5.5 Availability of Funds for the Next Fiscal Year. Funds may not be presently available for performance under this Contract beyond the first year of the budget term or Contract term. The State may reduce payments or terminate this Contract without further recourse, obligation or penalty in the event that insufficient funds are appropriated in the subsequent budget term. The State shall not be liable for any purchases or Subcontracts entered into by the Contractor in anticipation of such funding. The Procurement Officer shall have the discretion in determining the availability of funds.

5.6 Availability of Funds for the Current Contract Term. Should the State Legislature enter back into session and decrease the appropriations through line item or general fund reductions, or for any other reason these goods or services are not funded as determined by ADHS, the following actions may be taken by ADHS:

5.6.1 Accept a decrease in price offered by the Contractor;

5.6.2 Reduce the number of goods or units of service and reduce the payments accordingly;

5.6.3 Offer reductions in funding as an alternative to Contract termination; or

5.6.4 Cancel the Contract.

6 **Contract Changes**

6.1 Amendments, Purchase Orders and Change Orders. This Contract is issued under the authority of the Procurement Officer who signed this Contract. The Contract may be modified only through a Contract Amendment, Purchase Order and/or Change Order within the scope of the Contract, unless the change is administrative or otherwise permitted by the Special Terms and Conditions. Changes to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by an unauthorized State employee or made unilaterally by the Contractor are violations of the Contract and of applicable law. Such changes, including unauthorized Contract Amendments, Purchase Orders and/or Change Orders, shall be void and without effect, and the Contractor shall not be entitled to any claim under this Contract based on those changes.

6.2 Subcontracts. The Contractor shall not enter into any subcontract under this Contract without the advance written approval of the Procurement Officer. The subcontract shall incorporate by reference all material and applicable terms and conditions of this Contract.

6.3 Assignments and Delegation. The Contractor shall not assign any right nor delegate any duty under this Contract without the prior written approval of the Procurement Officer. The State shall not unreasonably withhold approval.

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7. Risk and Liability

- 7.1 Risk of Loss. The Contractor shall bear all loss of conforming material covered under this Contract until received and accepted by authorized personnel at the location designated in the Purchase Order, Change Order or Contract. Mere receipt does not constitute final acceptance. The risk of loss for nonconforming materials shall remain with the Contractor regardless of receipt
- 7.2 Mutual Indemnification. Each party (as "indemnitor") agrees to indemnify, defend and hold harmless the other party (as "indemnitee") from and against any and all claims, losses, liability, costs or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as "claims") arising out of bodily injury of any person (including death) or property damage, but only to the extent that such claims, which result in vicarious/derivative liability to the indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the indemnitor, its officers, officials, agents, employees or volunteers.
- 7.3 Indemnification - Patent and Copyright. To the extent permitted by A.R.S. § 41-621 and A.R.S. § 35-154, the Contractor shall indemnify and hold harmless the State against any liability, including costs and expenses, for infringement of any patent, trademark or copyright arising out of performance of the Contract or use by the State of materials furnished by or work performed under this Contract. The State shall reasonably notify the Contractor of any claim for which it may be liable under this paragraph.
- 7.4 Force Majeure.
- 7.4.1 Liability and Definition. Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of force majeure. The term "*force majeure*" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God; acts of the public enemy; acts of terrorism; war; riots; strikes; mobilization; labor disputes; civil disorders; fire; flood; lockouts; injunctions-interventions not caused by or resulting from the act or failure to act of the parties; failures or refusals to act by government authority not caused by or resulting from the act or failure to act of the parties; and other similar occurrences beyond the control of the party declaring force majeure, which such party is unable to prevent by exercising reasonable diligence.
- 7.4.2 Exclusions. Force Majeure shall not include the following occurrences:
- 7.4.2.1 Late delivery of Materials caused by congestion at a manufacturer's plant or elsewhere, or an oversold condition of the market;
- 7.4.2.2 Late performance by a subcontractor unless the delay arises out of a force majeure occurrence in accordance with this force majeure term and condition; or
- 7.4.2.3 Inability of either the Contractor or any subcontractor to acquire or maintain any required insurance, bonds, licenses or permits.
- 7.4.3 Notice. If either party is delayed at any time in the progress of the work by force majeure, the delayed party shall notify the other party in writing of such delay, as soon as is practicable and no later than the following working day of the commencement thereof, and shall specify the causes of such delay in such notice. Such notice shall be delivered or mailed certified-return receipt and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by Contract Amendment for a period of time equal to the time that the results or effects of such delay prevent the delayed party from performing in accordance with this Contract.

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7.4.4 *Default.* Any delay or failure in performance by either party hereto shall not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if, and to the extent that, such delay or failure is caused by force majeure.

7.5 Third Party Antitrust Violations. The Contractor assigns to the State any claim for overcharges resulting from antitrust violations to the extent that those violations concern materials or services supplied by third parties to the Contractor for or toward the fulfillment of this Contract.

8. Description of Materials The following provisions shall apply to Materials only:

8.1 Liens. The Contractor agrees that the Materials supplied under this Contract are free of liens. In the event the Materials are not free of liens, Contractor shall pay to remove the lien and any associated damages or replace the Materials with Materials free of liens.

8.2 Quality. Unless otherwise modified elsewhere in these terms and conditions, the Contractor agrees that, for one year after acceptance by the State of the Materials, they shall be:

- 8.2.1 Of a quality to pass without objection in the Contract description;
- 8.2.2 Fit for the intended purposes for which the Materials are used;
- 8.2.3 Within the variations permitted by the Contract and are of even kind, quantity, and quality within each unit and among all units;
- 8.2.4 Adequately contained, packaged and marked as the Contract may require; and
- 8.2.5 Conform to the written promises or affirmations of fact made by the Contractor.

8.3 Inspection/Testing. Subparagraphs 8.1 through 8.2 of this paragraph are not affected by inspection or testing of or payment for the Materials by the State.

8.4 Compliance With Applicable Laws. The Materials and services supplied under this Contract shall comply with all applicable federal, state and local laws, and the Contractor shall maintain all applicable license and permit requirements.

8.5 Survival of Rights and Obligations After Contract Expiration and Termination.

8.5.1 *Contractor's Representations.* All representations and warranties made by the Contractor under this Contract in paragraphs 7 and 8 shall survive the expiration or termination hereof. In addition, the parties hereto acknowledge that pursuant to A.R.S. § 12-510, except as provided in A.R.S. § 12-529, the State is not subject to or barred by any limitations of actions prescribed in A.R.S. Title 12, Chapter 5.

8.5.2 *Purchase Orders and Change Orders.* Unless otherwise directed in writing by the Procurement Officer, the Contractor shall fully perform and shall be obligated to comply with all Purchase Orders and Change Orders received by the Contractor prior to the expiration or termination hereof, including, without limitation, all Purchase Orders and Change Orders received prior to but not fully performed and satisfied at the expiration or termination of this Contract.

9. State's Contractual Remedies

9.1 Right to Assurance. If the State, in good faith, has reason to believe that the Contractor does not intend to, or is unable to, perform or continue performing under this Contract, the Procurement Officer may demand in writing that the Contractor give a written assurance of intent to perform. Failure by the Contractor to provide written assurance within the number of Days specified in the demand may, at the State's option, be the basis for terminating the Contract.

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9.2 Stop Work Order.

9.2.1 *Terms.* The State may, at any time, by written order to the Contractor, require the Contractor to stop all or any part of the work called for by this Contract for a period up to ninety (90) Days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.

9.2.2 *Cancellation or Expiration.* If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the Contractor shall resume work. The Procurement Officer shall make an equitable adjustment in the delivery schedule or Contract price, or both, and the Contract shall be amended in writing accordingly.

9.3 Non-exclusive Remedies. The rights and remedies of ADHS under this Contract are not exclusive, and ADHS is entitled to all rights and remedies available to it, including those under the Arizona Uniform Commercial Code and Arizona common law.

9.4 Right of Offset. The State shall be entitled to offset against any sums due the Contractor in any Contract with the State or damages assessed by the State because of the Contractor's non-conforming performance or failure to perform this Contract. The right to offset may include, but is not limited to, a deduction from an unpaid balance and a collection against the bid and/or performance bonds. Any offset taken for damages assessed by the State shall represent a fair and reasonable amount for the actual damages and shall not be a penalty for non-performance.

10. **Contract Termination**

10.1 Cancellation for Conflict of Interest. Pursuant to A.R.S. § 38-511, the State may cancel this Contract within three (3) years after Contract execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the State is, or becomes at any time while the Contract or an extension of the Contract is in effect, an employee of or a consultant to any other party to this Contract with respect to the subject matter of the Contract. The cancellation shall be effective when the Contractor receives written notice of the cancellation, unless the notice specifies a later time. If the Contractor is a political subdivision of the State, it may also cancel this Contract as provided in A.R.S. § 38-511.

10.2 Gratuities. The State may, by written notice, terminate this Contract, in whole or in part, if the State determines that employment or a Gratuity was offered or made by the Contractor or a representative of the Contractor to any officer or employee of the State for the purpose of influencing the outcome of the procurement, securing the Contract or an Amendment to the Contract, or receiving favorable treatment concerning the Contract, including the making of any determination or decision about Contract performance. The State, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by the Contractor.

10.3 Suspension or Debarment. The State may, by written notice to the Contractor, immediately terminate this Contract if the State determines that the Contractor or its subcontractor has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body.

10.4 Termination Without Cause.

10.4.1 Both the State and the Contractor may terminate this Contract at any time with thirty (30) days notice in writing specifying the termination date. Such notices shall be given by personal delivery or by certified mail, return receipt requested.

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10.4.2 If the Contractor terminates this Contract, any monies prepaid by the State, for which no service or benefit was received by the State, shall be refunded to the State within 5 days of the termination notice. In addition, if the Contractor terminates the Contract, the Contractor shall indemnify the State for any sanctions imposed by the funding source as a result of the Contractor's failure to complete the Contract.

10.4.3 If the State terminates this Contract pursuant to this Section, the State shall pay the Contractor the Contract price for all Services and Materials completed up to the date of termination. In a fixed price contract, the State shall pay the amount owed for the Services or Materials by multiplying the unit of service or item cost by the number of unpaid service units or items. In a cost reimbursement contract, the ADHS shall pay for any costs that the Contractor can document as having been paid by the Contractor and approved by ADHS. In addition, the Contractor will be paid its reasonable actual costs for work in progress as determined by GAAP up to the date of termination. Upon such termination, the Contractor shall deliver to the ADHS all deliverables completed. ADHS may require Contractor to negotiate the terms of any remaining deliverables still due.

10.5 Mutual Termination. This Contract may be terminated by mutual written agreement of the parties specifying the termination date and the terms for disposition of property and, as necessary, submission of required deliverables and payment therein.

10.6 Termination for Default. The State reserves the right to terminate the Contract in whole or in part due to the failure of the Contractor to comply with any material obligation, term or condition of the Contract, to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the Contract. In the event the ADHS terminates the Contract in whole or in part as provided in this paragraph, the ADHS may procure, upon such terms and in such manner as deemed appropriate, Services or Materials, similar to those terminated, and Contractor shall be liable to the ADHS for any excess costs incurred by the ADHS in obtaining such similar Services or Materials.

10.7 Continuation of Performance Through Termination. Upon receipt of the notice of termination and until the effective date of the notice of termination, the Contractor shall perform work consistent with the requirements of the Contract and, if applicable, in accordance with a written transition plan approved by the ADHS. If the Contract is terminated in part, the Contractor shall continue to perform the Contract to the extent not terminated. After receiving the notice of termination, the Contractor shall immediately notify all subcontractors, in writing, to stop work on the effective date of termination, and on the effective date of termination, the Contractor and subcontractors shall stop all work.

10.8 Disposition of Property. Upon termination of this Contract, all property of the State, as defined herein, shall be delivered to the ADHS upon demand.

11. **Arbitration** Pursuant to A.R.S. § 12-1518, disputes under this Contract shall be resolved through the use of arbitration when the case or lawsuit is subject to mandatory arbitration pursuant to rules adopted under A.R.S. § 12-133.

12 **Communication**

12.1 Program Report. When reports are required by the Contract, the Contractor shall provide them in the format approved by ADHS.

12.2 Information and Coordination. The State will provide information to the Contractor pertaining to activities that affect the Contractor's delivery of services, and the Contractor shall be responsible for coordinating their activities with the State's in such a manner as not to conflict or unnecessarily duplicate the State's activities. As the work of the Contractor progresses, advice and information on matters covered by the Contract shall be made available by the Contractor to the State throughout the effective period of the Contract.

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13. **Client Grievances** If applicable, the Contractor and its subcontractors shall use a procedure through which clients may present grievances about the operation of the program that result in the denial, suspension or reduction of services provided pursuant to this Contract and which is acceptable to and approved by the State.
14. **Sovereign Immunity** Pursuant to A.R.S. § 41-621(O), the obtaining of insurance by the State shall not be a waiver of any sovereign immunity defense in the event of suit.
15. **Fingerprint and Certification Requirements/Juvenile Services.**
- 15.1 Paid and Unpaid Personnel. Pursuant to A.R.S. § 36-425.03, the Contractor shall ensure that all paid and unpaid personnel who are required or are allowed to provide Services directly to juveniles have obtained fingerprint clearance cards in accordance with A.R.S. § 41-1758 et. seq.
- 15.2 Costs The Contractor shall assume the costs of fingerprint certifications and may charge these costs to its fingerprinted personnel.
16. **Administrative Changes** The Procurement Officer, or authorized designee, reserves the right to correct any obvious clerical, typographical or grammatical errors, as well as errors in party contact information (collectively, "Administrative Changes"), prior to or after the final execution of a Contract or Contract Amendment. Administrative Changes subject to permissible corrections include: misspellings, grammar errors, incorrect addresses, incorrect Contract Amendment numbers, pagination and citation errors, mistakes in the labeling of the rate as either extended or unit, and calendar date errors that are illogical due to typographical error. The Procurement Office shall subsequently send to the Contractor notice of corrections to administrative errors in a written confirmation letter with a copy of the corrected Administrative Change attached.
17. **Survival of Terms After Termination or Cancellation of Contract** All applicable Contract terms shall survive and apply after Contract termination or cancellation to the extent necessary for Contractor to complete and for the ADHS to receive and accept any final deliverables that are due after the date of the termination or cancellation.
18. **Health Insurance Portability and Accountability Act of 1996 (HIPAA)** The Contractor warrants that it is familiar with the requirements of HIPAA, as amended by the Health Information Technology for Economic and Clinical Health Act (HITECH Act) of 2009, and accompanying regulations and will comply with all applicable HIPAA requirements in the course of this Contract. Contractor warrants that it will cooperate with the Arizona Department of Health Services (ADHS) in the course of performance of the Contract so that both ADHS and Contractor will be in compliance with HIPAA, including cooperation and coordination with the Government Information Technology Agency (GITA), Statewide Information Security and Privacy Office (SISPO) Chief Privacy Officer and HIPAA Coordinator and other compliance officials required by HIPAA and its regulations. Contractor will sign any documents that are reasonably necessary to keep ADHS and Contractor in compliance with HIPAA, including, but not limited to, business associate agreements.
- If requested by the ADHS Procurement Office, Contractor agrees to sign a "Pledge To Protect Confidential Information" and to abide by the statements addressing the creation, use and disclosure of confidential information, including information designated as protected health information and all other confidential or sensitive information as defined in policy. In addition, if requested, Contractor agrees to attend or participate in HIPAA training offered by ADHS or to provide written verification that the Contractor has attended or participated in job related HIPAA training that is: (1) intended to make the Contractor proficient in HIPAA for purposes of performing the services required and (2) presented by a HIPAA Privacy Officer or other person or program knowledgeable and experienced in HIPAA and who has been approved by the GITA/SISPO Chief Privacy Officer and HIPAA Coordinator.
19. **Comments Welcome** The ADHS Procurement Office periodically reviews the Uniform Terms and Conditions and welcomes any comments you may have. Please submit your comments to: ADHS Procurement Administrator, Arizona Department of Health Services, 1740 West Adams, Suite 303, Phoenix, Arizona, 85007.

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A. Background

The Arizona Department of Health Services (ADHS) has been assigned the duties of implementation, education, compliance, and enforcement of Proposition 201, the Smoke-Free Arizona Act (the Act). As a part of this initiative, ADHS has determined that the most effective and expeditious methodology is to implement the program in partnership with the County Health Departments (CHD). The CHD shall provide an education component, and respond to written, on-line, and telephone complaints or other means of communications directly received from the public as provided in the County delegation authority.

B. Objective

Provide education, compliance, and enforcement activities in accordance with the Act.

C. Scope of Work

The CHD shall:

1. Educate public places, places of employment, and citizens within their jurisdiction with respect to the Act.
2. Determine compliance with the Act through inspections and investigations.
3. Identify violations in accordance with Arizona Revised Statute (A.R.S.) § 36-601.01 and Arizona Administrative Code (A.A.C.) R9-2-101 through R9-2-112.
4. Assess fees, fines, and penalties to those establishments that are in violation of A.R.S. § 36-601.01 and A.A.C. R9-2-101 through R9-2-112.
5. Provide an annual report to ADHS that includes the number of educational services provided, the number of compliance activities as outlined in the *Delegation Agreement between Arizona Department of Health Services and the CHD* herein after referred to as Delegation Agreement.
6. Provide services within the budget period for this Agreement in the State Fiscal Year (SFY) of July 1, through June 30, of each year.

D. Tasks

The CHD shall:

1. Provide educational information about the Act to public places, places of employment, and citizens of the County.
2. Document and maintain records of:
 - 2.1 The educational activities by the number of presentations, number of participants, number of consultations and counseling provided, and the number of media contacts;
 - 2.2 The Act compliance inspections/verifications;
 - 2.3 The number of complaints received and the category of the complaint as outlined in the Delegation Agreement;
 - 2.4 The number of complaint inspections completed and the category of the complaint inspection as outlined in the Delegation Agreement;
 - 2.5 The number of notices of violations issued and the category of the violation as outlined in the Delegation Agreement;

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- 2.6 The number of enforcement actions taken;
- 2.7 The number of compliance proceedings held and the category of the proceeding as outlined in the Delegation Agreement;
- 2.8 The number and amount of fines assessed by the category of the fee as outlined in the Delegation Agreement;
- 3. Track complaints using the smokefreearizona.org complaint tracking system.
- 4. Investigate all complaints by inspection or written notice.
- 5. Perform complaint inspections in accordance with established time frames as outlined in A.A.C. R9-2-108 in response to public complaints and as requested by the ADHS.
- 6. Adjudicate violations in accordance with A.R.S. § 36-601.01 (G) (6-8) and A.A.C. R9-2-112. Monies collected from fines will be returned to ADHS in accordance with A.R.S. § 35-146 (B). Violations or assessments of penalties that are appealed shall comply with A.R.S. § 36-601.01 (G) (6-8).
- 7. Prepare and submit:
 - 7.1 Contractor's Expenditure Report (CER) quarterly (form to be provided by ADHS); and
 - 7.2 A backup report detailing the expenditures listed on the CER.
- 8. Prepare and submit an annual report (format provided by ADHS) summarizing all programmatic activities for the program each year starting May 1 of each year.
- 9. Ensure that inspectors, health educators, and supervisors performing education, compliance, and enforcement activities attend the Smoke-Free Arizona annual training provided by ADHS at least once a year.

E. Unobligated/Unexpended Funds

- 1. Any funds provided to the CHD and determined to be unearned and remaining after the SFY budget period, shall be returned to the ADHS in accordance with A.R.S. § 36-601.01(L)(2). Per statute, these returned funds "...shall be deposited in the tobacco products tax fund and used for education programs to reduce and eliminate tobacco use and for no other purpose".
- 2. The CHD shall within sixty (60) days after the end of SFY budget period:
 - 2.1 Provide a complete accounting of all expended funds and any outstanding obligations;
 - 2.2 Return the unobligated/unexpended balance to ADHS, if applicable;
 - 2.3 Return monies collected from fees and fines in a separate payment from the unobligated/unexpended balance.
- 3. The expenditure and obligation shall be restricted to services performed within the appropriate budget period.

F. State Provided Items

ADHS shall provide:

- 1. Smokefreearizona.org website, which provides:

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- 1.1 Information, including signs, brochures for download; and
- 1.2 Electronic submission of complaints
- 2. Smoke-Free Arizona signs ("No Smoking") to be used for:
 - 2.1 Businesses and public places;
 - 2.2 Restaurants and bars; and
 - 2.3 Vehicles used for business purposes.
- 3. Informational brochures for:
 - 3.1 The general public;
 - 3.2 Businesses, restaurants, and bars.
- 4. Smoke-Free Arizona annual training for all County staff performing education, compliance, and enforcement activities. Training classes will be provided in the Phoenix metro area or electronically

G. Reference Documents

A.R.S. § 36.601.01 and A.A.C. R9-2-101 through R9-2-112. The rules have been published by the Secretary of State (SOS) and are available on the SOS website.

H. Deliverables

The CHD shall submit:

- 1. A quarterly CER (format provided by ADHS). The CER shall be on the State Fiscal Year of July 1, through June 30, of each year.
- 2. An annual report summarizing all programmatic activities from May 1, through April 30, of each year. The report shall be submitted to ADHS by May 10, each year.

I. Notices, Correspondence and Reports

- 1. Notices, Correspondence and Reports from the CHD to ADHS shall be sent to:

Smoke-Free Arizona Program
Arizona Department of Health Services
150 N 18th Ave Ste 130
Phoenix, AZ 85007
Phone: 602-364-3449
Fax: 602-364-3146

- 2. Notices, Correspondence and Payments from the ADHS to the CHD shall be sent to:

Pima County Health Department
Community Surveillance and Investigation
Attn: Smoke Free Arizona Program
3950 S. Country Club, Ste 200
Tucson, AZ. 85714
Phone: 520-243-7765
Fax: 520-791-6597

Contract Number	INTERGOVERNMENTAL AGREEMENT
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PRICE SHEET/FEE SCHEDULE

Type of Unit	Unit Rate
Budget Periods: 7/1 – 6/30	
Education and Compliance Activities	\$259,007.00
Enforcement Activities	\$25,000.00
Estimated quarterly amount	\$71,001.75
Not to exceed Annual Total	\$284,007.00

Note: If the CHD has unused funds from the previous quarters, the CHD shall carry forward the funds to the following quarters, up to the term of the budget period.

All expenses are included inclusive of any travel and travel related expenses.

Authorization for Provision of Services: Authorization for purchase of services under this Agreement shall be made only upon ADHS issuance of a Purchase Order that is signed by an authorized agent. The Purchase Order will indicate the Agreement number and the dollar amount of funds authorized. The CHD shall only be authorized to perform services up to the amount on the Purchase Order. ADHS shall not have any legal obligation to pay for services in excess of the amount indicated on the Purchase Order. No further obligation for payment shall exist on behalf of ADHS unless a) the Purchase Order is changed or modified with an official ADHS Procurement Change Order, and/or b) an additional Purchase Order is issued for purchase of services under this Agreement.