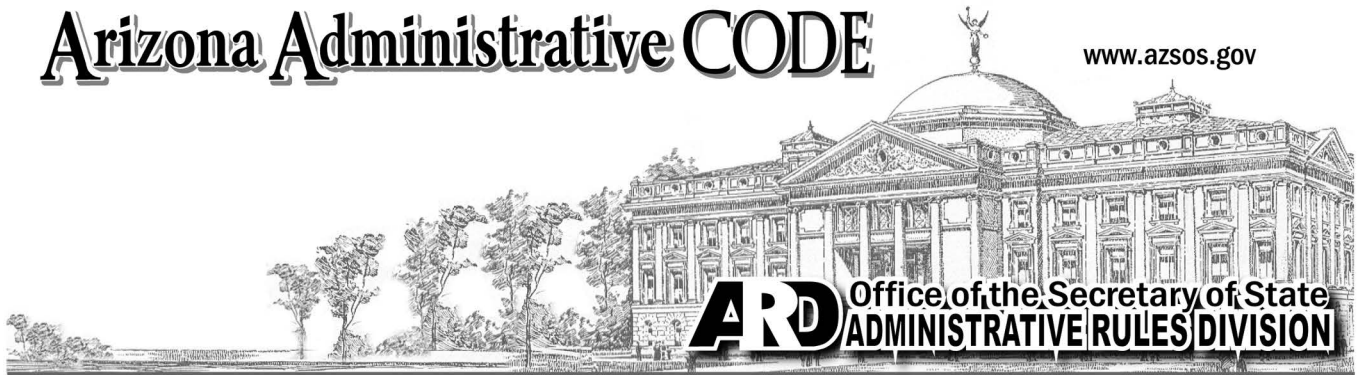




9 A.A.C. 2

Supp. 24-1

TITLE 9. HEALTH SERVICES

CHAPTER 2. DEPARTMENT OF HEALTH SERVICES - TOBACCO-RELATED PROGRAMS

The table of contents on page one contains links to the referenced page numbers in this Chapter.
Refer to the notes at the end of a Section to learn about the history of a rule as it was published in the *Arizona Administrative Register*.

This Chapter contains rules that were filed to be codified in the *Arizona Administrative Code* between the dates of
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Questions about these rules? Contact:

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The release of this Chapter in Supp. 24-1 replaces Supp. 07-2, 1-9 pages.

Please note that the Chapter you are about to replace may have rules still in effect after the publication date of this supplement. Therefore, all superseded material should be retained in a separate binder and archived for future reference.

PREFACE

Under Arizona law, the Department of State, Office of the Secretary of State (Office), Administrative Rules Division, accepts state agency rule notice and other legal filings and is the publisher of Arizona rules. The Office of the Secretary of State does not interpret or enforce rules in the *Administrative Code*. Questions about rules should be directed to the state agency responsible for the promulgation of the rule.

Scott Cancelosi, Director
ADMINISTRATIVE RULES DIVISION

RULES

The definition for a rule is provided for under A.R.S. § 41-1001. “‘Rule’ means an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency.”

THE ADMINISTRATIVE CODE

The *Arizona Administrative Code* is where the official rules of the state of Arizona are published. The *Code* is the official codification of rules that govern state agencies, boards, and commissions.

The *Code* is separated by subject into Titles. Titles are divided into Chapters. A Chapter includes state agency rules. Rules in Chapters are divided into Articles, then Sections. The “R” stands for “rule” with a sequential numbering and lettering outline separated into subsections.

Rules are codified quarterly in the *Code*. Supplement release dates are printed on the footers of each Chapter.

First Quarter: January 1 - March 31
Second Quarter: April 1 - June 30
Third Quarter: July 1 - September 30
Fourth Quarter: October 1 - December 31

For example, the first supplement for the first quarter of 2022 is cited as Supp. 22-1. Supplements are traditionally released three to four weeks after the end of the quarter because filings are accepted until the last day of the quarter.

Please note: The Office publishes by Chapter, not by individual rule Section. Therefore there might be only a few Sections codified in each Chapter released in a supplement. This is why the Office lists only updated codified Sections on the previous page.

RULE HISTORY

Refer to the HISTORICAL NOTE at the end of each Section for the effective date of a rule. The note also includes the *Register* volume and page number in which the notice was published (A.A.R.) and beginning in supplement 21-4, the date the notice was published in the *Register*.

AUTHENTICATION OF PDF CODE CHAPTERS

The Office began to authenticate Chapters of the *Code* in Supp. 18-1 to comply with A.R.S. §§ 41-1012(B) and A.R.S. § 41-5505.

A certification verifies the authenticity of each *Code* Chapter posted as it is released by the Office of the Secretary of State. The authenticated pdf of the *Code* includes an integrity mark with a certificate ID. Users should check the validity of the signature, especially if the pdf has been downloaded. If the digital signature is invalid it means the document’s content has been compromised.

HOW TO USE THE CODE

Rules may be in effect before a supplement is released by the Office. Therefore, the user should refer to issues of the *Arizona Administrative Register* for recent updates to rule Sections.

ARIZONA REVISED STATUTE REFERENCES

The Arizona Revised Statutes (A.R.S.) are available online at the Legislature’s website, www.azleg.gov. An agency’s authority note to make rules is often included at the beginning of a Chapter. Other Arizona statutes may be referenced in rule under the A.R.S. acronym.

SESSION LAW REFERENCES

Arizona Session Law references in a Chapter can be found at the Secretary of State’s website, www.azsos.gov under Services-> Legislative Filings.

EXEMPTIONS FROM THE APA

It is not uncommon for an agency to be exempt from the steps outlined in the rulemaking process as specified in the Arizona Administrative Procedures Act, also known as the APA (Arizona Revised Statutes, Title 41, Chapter 6, Articles 1 through 10). Other agencies may be given an exemption to certain provisions of the Act.

An agency’s exemption is written in law by the Arizona State Legislature or under a referendum or initiative passed into law by Arizona voters.

When an agency files an exempt rulemaking package with our Office it specifies the law exemption in what is called the preamble of rulemaking. The preamble is published in the *Register* online at www.azsos.gov/rules, click on the *Administrative Register* link.

Editor’s notes at the beginning of a Chapter provide information about rulemaking Sections made by exempt rulemaking. Exempt rulemaking notes are also included in the historical note at the end of a rulemaking Section.

The Office makes a distinction to certain exemptions because some rules are made without receiving input from stakeholders or the public. Other exemptions may require an agency to propose exempt rules at a public hearing.

PERSONAL USE/COMMERCIAL USE

This Chapter is posted as a public courtesy online, and is for private use only. Those who wish to use the contents for resale or profit should contact the Office about Commercial Use fees. For information on commercial use fees review A.R.S. § 39-121.03 and 1 A.A.C. 1, R1-1-113.

Rhonda Paschal, rules managing editor, assisted with the editing of this Chapter.

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Administrative Rules Division

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TITLE 9. HEALTH SERVICES

CHAPTER 2. DEPARTMENT OF HEALTH SERVICES - TOBACCO-RELATED PROGRAMS

Authorizing statute: A.R.S. §§ 36-132(A)(1) and A.R.S. § 36-136(G)

Implementing statute: A.R.S. § 36-136(Q), as amended by Laws 2021, Ch. 118

Supp. 24-1

Editor's Note: The Office of the Secretary of State publishes all Chapters on white paper (Supp. 01-3).

Editor's Note: This Chapter contains rules which were adopted and amended under an exemption from the provisions of the Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1995, Ch. 275, Section 9. Exemption from A.R.S. Title 41, Chapter 6 means that the Department of Health Services did not submit these rules to the Governor's Regulatory Review Council for review; the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department was not required to hold public hearings on these rules; and the Attorney General did not certify these rules. Because this Chapter contains rules which are exempt from the regular rulemaking process, the Chapter is being printed on blue paper.

Editor's Note: This Chapter contains rules which were repealed under an exemption from the provisions of the Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1992, Ch. 301, § 61. Exemption from A.R.S. Title 41, Chapter 6 means that the Department of Health Services did not submit these rules to the Governor's Regulatory Review Council for review; the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department was not required to hold public hearings on these rules; and the Attorney General did not certify these rules. Because this Chapter contains rules on which exempt rulemaking occurred, the Chapter is being printed on blue paper.

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Article 1, consisting of Sections R9-2-101, adopted effective December 18, 1995 (Supp. 95-4).

Article 1, consisting of Sections R9-2-101 through R9-2-111, repealed effective September 30, 1993, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1992, Ch. 301, § 61; received by the Office of the Secretary of State October 1, 1993.

New Article 1 consisting of Sections R9-2-101 through R9-2-111 adopted effective January 6, 1989.

Former Article 1 consisting of Sections R9-2-111 through R9-2-113, R9-2-211, R9-2-311, R9-2-312, R9-2-411 through R9-2-413, R9-2-511, R9-2-611, and R9-2-612 repealed effective January 6, 1989.

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Article 4, consisting of R9-2-401 through R9-2-411, adopted effective February 10 1997, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 97-1).

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CHAPTER 2. DEPARTMENT OF HEALTH SERVICES - TOBACCO-RELATED PROGRAMS

ARTICLE 1. SMOKE-FREE ARIZONA

R9-2-101. Definitions

In addition to the definitions in A.R.S. § 36-601.01(A), the following definitions apply in this Article unless otherwise specified:

1. "Adult day care" means "adult day health care facility" as defined in A.R.S. § 36-401.
2. "Ashtray" means any receptacle that is designed for disposing of the debris from smoking materials such as ash, cigarette butts or filters, or cigar stubs.
3. "Calendar quarter" means a period from:
 - a. January 1 through March 31,
 - b. April 1 through June 30,
 - c. July 1 through September 30, or
 - d. October 1 through December 31.
4. "Child care facility" has the meaning in A.R.S. § 36-881.
5. "Child care group home" has the meaning in A.R.S. § 36-897.
6. "Complaint" means a written or oral statement of a possible violation of A.R.S. § 36-601.01.
7. "Contiguous area" means a place that:
 - a. Is physically attached to a public place or non-vehicle place of employment; or
 - b. Is separated from the public place or non-vehicle place of employment only by other places controlled by the proprietor.
8. "Controlled" means under the authority and responsibility of a proprietor.
9. "Department" means the Arizona Department of Health Services.
10. "Department's designee" means a state agency or political subdivision to which the Department delegates any functions, powers, or duties under A.R.S. § 36-601.01.
11. "Drift" means the physical movement of tobacco smoke, regardless of cause, into any area where smoking is prohibited by A.R.S. § 36-601.01.
12. "Emergency exit" means a doorway in a building or facility used for egress to the outdoors only when there is an immediate threat to the health or safety of an individual.
13. "Entering" means an individual going into or leaving a building or facility.
14. "Entrance" means a doorway in a building or facility that:
 - a. Is used by an individual for ingress from the outdoors or egress to the outdoors, and
 - b. Excludes:
 - i. An emergency exit, and
 - ii. A doorway for outdoor patio patrons.
15. "Health care institution" means a building or facility regulated under A.R.S. Title 36, Chapter 4.
16. "Health care professional" means one of the following individuals regulated under A.R.S. Title 32 or A.R.S. Title 36, Chapter 6, Article 7 or Chapter 17, including:
 - a. A podiatrist;
 - b. A doctor of chiropractic or chiropractic assistant;
 - c. A dentist, dental consultant, dental hygienist, or dentist;
 - d. A doctor of medicine;
 - e. A doctor of naturopathic medicine or naturopathic medical assistant;
 - f. A registered nurse practitioner, registered nurse, practical nurse, registered or practical nurse licensed by a state other than Arizona and practicing in Arizona according to the Nurse Licensure Compact, A.R.S. § 32-1660, or nursing assistant;
 - g. A dispensing optician;
 - h. An optometrist;
 - i. A doctor of osteopathic medicine;
 - j. A pharmacist, pharmacy intern, pharmacy technician, or pharmacy technician trainee;
 - k. A physical therapist or physical therapist assistant;
 - l. A psychologist;
 - m. A veterinarian or veterinary technician;
 - n. A physician assistant;
 - o. A radiologic technologist, including a practical radiologic technologist in podiatry, unlimited practical radiologic technologist, nuclear medicine technologist, or practical technologist in bone densitometry;
 - p. A homeopathic physician or a medical assistant employed by a homeopathic physician;
 - q. A behavioral health professional, including a baccalaureate social worker, master social worker, clinical social worker, professional counselor, associate counselor, marriage and family therapist, associate marriage and family therapist, associate substance abuse counselor, independent substance abuse counselor, or substance abuse technician;
 - r. An occupational therapist or occupational therapy assistant;
 - s. A respiratory therapist or respiratory therapy technician;
 - t. An acupuncturist;
 - u. An athletic trainer;
 - v. A massage therapist;
 - w. A midwife;
 - x. A hearing aid dispenser;
 - y. An audiologist; or
 - z. A speech-language pathologist or speech-language pathology assistant.
17. "Open to the general public" means when the proprietor of a veterans or fraternal club permits an individual who is not a member, an employee, or a bona fide guest as defined in A.R.S. § 4-101 to be present in the veterans or fraternal club.
18. "Outdoor patio" means an area designated by a proprietor according to R9-2-108(A).
19. "Outdoor patio patron" means an individual who is occupying an outdoor patio.
20. "Permeable" means permitting tobacco smoke to pass through.
21. "Private residence" means a structure, other than a health care institution, where an individual lives and sleeps.
22. "Proprietor" means an owner, operator, manager or other person in control of a public place or a place of employment.
23. "Reasonable distance" means the distance that meets the requirements in R9-2-102(A).
24. "Tobacco products and accessories" means:
 - a. Smoking materials such as cigars, cigarettes, or pipe tobacco; and
 - b. Smoking-related materials such as lighters, humidors, pipes, or cigarette cases.
25. "Vehicle" means motor vehicle as defined in A.R.S. § 28-101.
26. "Ventilation system" means the natural or mechanical means of supplying air to, or removing air from a space.

Historical Note

Adopted effective January 6, 1989 (Supp. 89-1).

Repealed effective September 30, 1993, under an exemp-

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tion from the provisions of the Administrative Procedure Act pursuant to Laws 1992, Ch. 301, § 61; received in the Office of the Secretary of State October 1, 1993 (Supp. 93-4). New Section adopted effective December 18, 1995 (Supp. 95-4). Section repealed by final rulemaking at 12 A.A.R. 4002, effective December 4, 2006 (Supp. 06-4). New Section made by exempt rulemaking at 13 A.A.R. 1512, effective May 1, 2007 (Supp. 07-2). Amended by final expedited rulemaking at 30 A.A.R. 233 (February 2, 2024), with an immediate effective date of January 10, 2024 (Supp. 24-1).

R9-2-102. Reasonable Distance

- A. Except as permitted in R9-2-108(D) or R9-2-108(E), a public place or non-vehicle place of employment shall have a distance where outside smoking is prohibited of at least 20 feet in all directions measured from each outer edge of an entrance, an open window, or a ventilation system.
- B. A proprietor of a public place or non-vehicle place of employment shall not permit tobacco smoke to drift into the area where smoking is prohibited as described in subsection (A).

Historical Note

Adopted effective January 6, 1989 (Supp. 89-1). Repealed effective September 30, 1993, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1992, Ch. 301, § 61; received in the Office of the Secretary of State October 1, 1993 (Supp. 93-4). New Section made by exempt rulemaking at 13 A.A.R. 1512, effective May 1, 2007 (Supp. 07-2).

R9-2-103. Individual Responsibilities

- A. An individual shall not smoke tobacco in an area of a public place or place of employment where smoking is prohibited by A.R.S. § 36-601.01 or R9-2-102(A).
- B. An individual in an area of a public place or place of employment where smoking is prohibited by A.R.S. § 36-601.01 or R9-2-102(A) shall stop smoking immediately when requested to stop smoking by the proprietor of the public place or a place of employment.

Historical Note

Adopted effective January 6, 1989 (Supp. 89-1). Repealed effective September 30, 1993, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1992, Ch. 301, § 61; received in the Office of the Secretary of State October 1, 1993 (Supp. 93-4). New Section made by exempt rulemaking at 13 A.A.R. 1512, effective May 1, 2007 (Supp. 07-2).

R9-2-104. Proprietor Responsibilities

- A. A proprietor shall:
 - 1. Not permit smoking in a public place, a place of employment, or within the distance required in R9-2-102(A) except according to this Article and the exceptions listed in A.R.S. § 36-601.01(B);
 - 2. Not permit tobacco smoke to drift into a building or facility through an entrance, a window, a ventilation system, or other means;
 - 3. Post signs according to A.R.S. § 36-601.01(E)(1) and R9-2-105;
 - 4. Remove all ashtrays from all areas where smoking is prohibited; and
 - 5. Communicate that smoking is prohibited in places of employment to:
 - a. All existing employees by the effective date of this Article, and

- b. An applicant for employment at the time of the application for employment.

- B. If a building or facility that is controlled by a proprietor contains several places of employment or public places that are controlled by other proprietors:
 - 1. The proprietor of the entire building or facility shall comply with the requirements in subsection (A) for the area controlled by the proprietor of the entire building or facility, and
 - 2. The proprietor of each place of employment or public place shall comply with the requirements in subsection (A) for the area controlled by the proprietor of the place of employment or public place.
- C. If an individual in an area controlled by a proprietor is smoking in violation of A.R.S. § 36-601.01, the proprietor shall:
 - 1. Inform the individual that the individual is in violation of A.R.S. § 36-601.01, and
 - 2. Request that the individual stop smoking immediately.
- D. A proprietor of a veterans or fraternal club shall not permit smoking in an area of the veterans or fraternal club that is open to the general public.
- E. A proprietor of a retail tobacco store where smoking is permitted shall comply with R9-2-107.
- F. A proprietor of an outdoor patio where smoking is permitted shall comply with R9-2-108.
- G. A proprietor may declare that smoking is prohibited in an entire establishment, facility, or outdoor area.
- H. In a vehicle owned and operated by a proprietor during working hours, the proprietor shall:
 - 1. Not permit smoking in the vehicle when:
 - a. More than one individual occupies the vehicle, and
 - b. The vehicle is used for business purposes; and
 - 2. Post signs according to A.R.S. § 36-601.01(E)(1), A.R.S. § 36-601.01(E)(2), and R9-2-105(C).

Historical Note

Adopted effective January 6, 1989 (Supp. 89-1). Repealed effective September 30, 1993, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1992, Ch. 301, § 61; received in the Office of the Secretary of State October 1, 1993 (Supp. 93-4). New Section made by exempt rulemaking at 13 A.A.R. 1512, effective May 1, 2007 (Supp. 07-2).

R9-2-105. Sign Requirements

- A. To meet the requirements of A.R.S. §§ 36-601.01(E)(1) and 36-601.01(E)(2), a proprietor of a public place or non-vehicle place of employment shall post signs that:
 - 1. Are no smaller than four inches by six inches; and
 - 2. Contain:
 - a. The international no smoking symbol or the words "No Smoking";
 - b. The telephone number designated by the Department for making complaints;
 - c. The web site address designated by the Department for making complaints; and
 - d. Letters, numbers, and symbols of sufficient size to be clearly legible to an individual of normal vision from a distance of five feet; and
 - 3. Include a citation to A.R.S. § 36-601.01.
- B. A proprietor of a public place or non-vehicle place of employment shall post a sign that meets the requirements in subsection (A):
 - 1. At every entrance,

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2. At a height and location easily seen by an individual entering the public place or non-vehicle place of employment, and
 3. So that the sign is not obscured in any way.
- C. A proprietor of a vehicle described in A.R.S. § 36-601.01(A)(7) shall:
1. Post at least one sign that:
 - a. Is no smaller than two inches by three inches;
 - b. Meets the requirements in subsections (A)(2)(a) through (A)(2)(c); and
 - c. Contains letters, numbers, and symbols of sufficient size to be clearly legible to an individual of normal vision from a distance of three feet;
 2. Include a citation to A.R.S. § 36-601.01 on the sign; and
 3. Firmly affix the sign to:
 - a. A vehicle door window,
 - b. The vehicle dashboard, or
 - c. Another area in the vehicle that is visible to each occupant in the vehicle.

Historical Note

Adopted effective January 6, 1989 (Supp. 89-1).
 Repealed effective September 30, 1993, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1992, Ch. 301, § 61; received in the Office of the Secretary of State October 1, 1993 (Supp. 93-4). New Section made by exempt rulemaking at 13 A.A.R. 1512, effective May 1, 2007 (Supp. 07-2).

R9-2-106. Private Residence

- A. Smoking is prohibited in a private residence licensed or certified by the Department or in areas of a private residence licensed or certified by the Department as:
1. An adult day care,
 2. A child care facility,
 3. A child care group home, or
 4. A health care institution other than an adult day care.
- B. Smoking is prohibited in a health care professional's private residence:
1. In an area where the health care professional provides services to an individual, and
 2. When the health care professional is providing services to an individual.
- C. A.R.S. § 36-601.01 does not apply to the private residence of an individual who is receiving services from a health care professional in the individual's private residence.

Historical Note

Adopted effective January 6, 1989 (Supp. 89-1).
 Repealed effective September 30, 1993, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1992, Ch. 301, § 61; received in the Office of the Secretary of State October 1, 1993 (Supp. 93-4). New Section made by exempt rulemaking at 13 A.A.R. 1512, effective May 1, 2007 (Supp. 07-2).

R9-2-107. Retail Tobacco Store

- A. A proprietor may permit smoking in a retail tobacco store only if the 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 this Section.
- B. The proprietor of a retail tobacco store where smoking is permitted and that begins operating after January 1 of a calendar year shall complete, by the retail tobacco store's first day of operation, an affidavit that contains:
1. The name of the proprietor of the retail tobacco store,

2. The name and address of the retail tobacco store,
 3. A statement that the proprietor of the retail tobacco store has personal knowledge of the facts supporting the affidavit,
 4. 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,
 5. A statement describing the documents that contain the facts supporting the statement in subsection (B)(4),
 6. The signature of the proprietor of the retail tobacco store,
 7. An Arizona notary's signature certifying that the proprietor swore to or affirmed the truthfulness of the statements in the affidavit, and
 8. The date of the Arizona notary's signature.
- C. The proprietor of a retail tobacco store where smoking is permitted and that has been in operation for at least an entire calendar year shall complete, by January 31 of each year, an affidavit that contains:
1. The name of the proprietor of the retail tobacco store;
 2. The name and address of the retail tobacco store;
 3. A statement that the proprietor of the retail tobacco store has personal knowledge of the facts supporting the affidavit;
 4. 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;
 5. A statement describing the documents that contain the facts supporting the statement in subsection (C)(4), supporting documentation may include sales slips, invoices, receipts, and deposit slips;
 6. The signature of the proprietor of the retail tobacco store;
 7. An Arizona notary's signature certifying that the proprietor swore to or affirmed the truthfulness of the statements in the affidavit; and
 8. The date of the Arizona notary's signature.
- D. If the Department or the Department's designee receives a complaint under R9-2-109(A) about a retail tobacco store where smoking is permitted, the proprietor of the retail tobacco store shall provide to the Department or the Department's designee:
1. The affidavit under subsection (B) or the most current affidavit under subsection (C), whichever is appropriate; and
 2. 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:
 - 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 period beginning on the date the retail tobacco store opened and ending on the date of the complaint.
- E. The proprietor of a retail tobacco store where smoking is permitted shall retain on the premises of the retail tobacco store and make available to the Department or the Department's designee upon request:
1. The affidavit under subsection (B) or the most current affidavit under subsection (C), whichever is appropriate; and
 2. The documents:

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- a. Identified under subsection (B)(5) or subsection (C)(5), whichever is appropriate; and
- b. Required under subsection (D)(2).

Historical Note

Adopted effective January 6, 1989 (Supp. 89-1).
 Repealed effective September 30, 1993, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1992, Ch. 301, § 61; received in the Office of the Secretary of State October 1, 1993 (Supp. 93-4). New Section made by exempt rulemaking at 13 A.A.R. 1512, effective May 1, 2007 (Supp. 07-2).
 Amended by final expedited rulemaking at 30 A.A.R. 233 (February 2, 2024), with an immediate effective date of January 10, 2024 (Supp. 24-1).

R9-2-108. Outdoor Patio

- A. A proprietor may designate an area as an outdoor patio where smoking is permitted only if the area:
 - 1. Is a contiguous area of a place of employment or public place;
 - 2. Is controlled by the proprietor of the place of employment or public place; and
 - 3. Has:
 - a. At least one side that consists of:
 - i. Open space;
 - ii. Permeable material;
 - iii. A combination of open space and permeable material; or
 - iv. A combination of open space, permeable material, and a non-permeable wall that is not higher than three and one-half feet or the minimum height required by an applicable local ordinance or building code, whichever is greater; or
 - b. No overhead covering or an overhead covering that consists of:
 - i. Permeable material, or
 - ii. A combination of open space and permeable material.
- B. If an outdoor patio where smoking is permitted has a doorway for outdoor patio patrons and does not have a wall that prevents individuals from entering the outdoor patio, the proprietor shall:
 - 1. Inform individuals that the doorway:
 - a. Is not an entrance, and
 - b. Is a doorway for outdoor patio patrons; and
 - 2. Direct individuals who are not outdoor patio patrons to an entrance.
- C. If a proprietor designates an area as an outdoor patio where smoking is permitted, the proprietor shall not permit tobacco smoke to drift into areas where smoking is prohibited through entrances, windows, ventilation systems, or other means.
- D. The reasonable distance required in R9-2-102(A) does not apply to a doorway for outdoor patio patrons, a window, or a ventilation system located in an area designated as an outdoor patio where smoking is permitted.
- E. If an outdoor patio is located less than 20 feet from any entrance of a public place or non-vehicle place of employment, a proprietor may permit smoking on the outdoor patio only if the proprietor uses a method that:
 - 1. Permits an individual to avoid breathing tobacco smoke when using the entrance at the public place or non-vehicle place of employment, and
 - 2. Does not permit tobacco smoke to drift into the public place or non-vehicle place of employment through

entrances, open windows, ventilation systems, or other means.

- F. A proprietor may designate an outdoor patio as an area where smoking is prohibited.

Historical Note

Adopted effective January 6, 1989 (Supp. 89-1).
 Repealed effective September 30, 1993, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1992, Ch. 301, § 61; received in the Office of the Secretary of State October 1, 1993 (Supp. 93-4). New Section made by exempt rulemaking at 13 A.A.R. 1512, effective May 1, 2007 (Supp. 07-2).

R9-2-109. Complaint; Observation; Notification; Inspection

- A. When a person makes a complaint to the Department or the Department's designee under A.R.S. § 36-601.01, the complaint shall include:
 - 1. The name and address of the public place or place of employment that is the subject of the complaint;
 - 2. The date and approximate time of the occurrence that gave rise to the complaint;
 - 3. A description of the occurrence that gave rise to the complaint; and
 - 4. Any other information relevant to the occurrence that gave rise to the complaint.
- B. An individual shall make a complaint according to subsection (A) if the individual:
 - 1. Conducted an inspection pursuant to:
 - a. A.R.S. Title 36, Chapter 4 or Chapter 7.1; or
 - b. A.R.S. § 36-136(D) and 9 A.A.C. 8; and
 - 2. During the inspection, observed a possible violation of A.R.S. § 36-601.01.
- C. Within 15 days after receipt of a complaint made according to subsection (A), the Department or the Department's designee shall:
 - 1. Notify the proprietor at the public place or place of employment about the complaint; or
 - 2. Conduct an inspection, for compliance with A.R.S. § 36-601.01, of the public place or place of employment.
- D. If a complaint made according to subsection (A) is not resolved under subsection (C)(1), the Department or the Department's designee shall conduct an inspection, for compliance with A.R.S. § 36-601.01, of the public place or place of employment that is the subject of the complaint.

Historical Note

Adopted effective January 6, 1989 (Supp. 89-1).
 Repealed effective September 30, 1993, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1992, Ch. 301, § 61; received in the Office of the Secretary of State October 1, 1993 (Supp. 93-4). New Section made by exempt rulemaking at 13 A.A.R. 1512, effective May 1, 2007 (Supp. 07-2).

R9-2-110. Determination of Violation

In determining whether a violation of A.R.S. § 36-601.01 has occurred, the Department or the Department's designee 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;

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3. The presence of smoking in an area where smoking is prohibited;
4. The presence of tobacco ashes, cigarette butts or filters, or cigar stubs in an area where smoking is prohibited;
5. The presence of tobacco smoke that drifts into a place of employment or public place through entrances, windows, ventilation systems, or other means; and
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.

Historical Note

Adopted effective January 6, 1989 (Supp. 89-1).
 Repealed effective September 30, 1993, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1992, Ch. 301, § 61; received in the Office of the Secretary of State October 1, 1993 (Supp. 93-4). New Section made by exempt rulemaking at 13 A.A.R. 1512, effective May 1, 2007 (Supp. 07-2).
 Amended by final expedited rulemaking at 30 A.A.R. 233 (February 2, 2024), with an immediate effective date of January 10, 2024 (Supp. 24-1).

R9-2-111. Notice of Violation; Notice of Assessment

- A. After the Department or the Department's designee determines that a violation of A.R.S. § 36-601.01 has occurred, and based on the criteria in R9-2-112, the Department or the Department's designee may send to the proprietor at the place of employment or public place a written notice of violation that includes:
 1. The nature of the violation;
 2. The date and time that the violation occurred;
 3. The name, telephone number, and e-mail address of the Department contact person or the contact person of the Department's designee; and
 4. If a civil penalty is being assessed, a notice of assessment.
- B. If the Department or the Department's designee issues a notice of violation or a notice of assessment, a person to whom the notice is issued may appeal the determination that a violation has occurred or assessment of a civil penalty:
 1. According to A.R.S. Title 41, Chapter 6, Article 10, if the Department made the determination or assessment; or
 2. According to procedures of the Department's designee that are consistent with A.R.S. Title 41, Chapter 6, Article 10, if the Department's designee made the determination or assessment.

Historical Note

Adopted effective January 6, 1989 (Supp. 89-1).
 Repealed effective September 30, 1993, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1992, Ch. 301, § 61; received in the Office of the Secretary of State October 1, 1993 (Supp. 93-4). New Section made by exempt rulemaking at 13 A.A.R. 1512, effective May 1, 2007 (Supp. 07-2).

R9-2-112. Criteria for Issuing a Notice of Violation or Notice of Assessment

In determining whether to issue a notice of violation under A.R.S. § 36-601.01(G)(5), whether to issue a notice of assessment under A.R.S. § 36-601.01(G)(6), or the amount of a civil penalty that is being assessed, the Department or the Department's designee shall consider:

1. The seriousness of the violation;
2. Any economic benefit that results from the violation;
3. The duration of the violation;

4. The previous violations of A.R.S. § 36-601.01 at the place of employment or public place, including:
 - a. The type and severity of any previous violation,
 - b. The number of individuals affected by the previous violations,
 - c. The total number of previous violations, and
 - d. The length of time from the first violation to the current violation;
5. Any good faith efforts to comply with the requirements of A.R.S. § 36-601.01, including:
 - a. Reporting violations to the Department or the Department's designee; and
 - b. Meeting the requirements of A.R.S. § 36-601.01(I) by:
 - i. Informing an individual who is smoking that smoking is illegal, and
 - ii. Requesting that the individual immediately stop the illegal smoking; and
6. Other factors affecting the public health and safety the Department or the Department's designee deems relevant.

Historical Note

New Section made by exempt rulemaking at 13 A.A.R. 1512, effective May 1, 2007 (Supp. 07-2).

ARTICLE 2. EXPIRED

Editor's Note: The following Section was adopted and amended under an exemption from the provisions of the Administrative Procedure Act which means that these rules were not reviewed by either the Governor's Regulatory Review Council; the agency did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; and the agency was not required to hold public hearings on these rules.

R9-2-201. Expired**Historical Note**

Adopted effective August 30, 1995, under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1995, Ch. 275, § 9. (Supp. 95-3). Amended effective October 20, 1995, under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1995, Ch. 275, § 9 (Supp. 95-4). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 3844, effective July 30, 2001 (Supp. 01-3).

Editor's Note: The following Section was adopted, repealed, renumbered, and amended under an exemption from the provisions of the Administrative Procedure Act which means that these rules were not reviewed by either the Governor's Regulatory Review Council; the agency did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; and the agency was not required to hold public hearings on these rules.

R9-2-202. Expired**Historical Note**

Adopted effective August 30, 1995, under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1995, Ch. 275, § 9. (Supp. 95-3). Former Section R9-2-202 repealed, new Section R9-2-202 renumbered from R9-2-204 and amended effective October 20, 1995, under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1995, Ch. 275, § 9 (Supp. 95-4). Section expired

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under A.R.S. § 41-1056(E) at 7 A.A.R. 3844, effective July 30, 2001 (Supp. 01-3).

Editor's Note: The following Section was adopted, repealed, renumbered, and amended under an exemption from the provisions of the Administrative Procedure Act which means that these rules were not reviewed by either the Governor's Regulatory Review Council; the agency did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; and the agency was not required to hold public hearings on these rules.

R9-2-203. Expired**Historical Note**

Adopted effective August 30, 1995, under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1995, Ch. 275, § 9. (Supp. 95-3). Former Section R9-2-203 repealed, new Section R9-2-203 renumbered from R9-2-205 and amended effective October 20, 1995, under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1995, Ch. 275, § 9 (Supp. 95-4). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 3844, effective July 30, 2001 (Supp. 01-3).

Editor's Note: The following Section was adopted and renumbered under an exemption from the provisions of the Administrative Procedure Act which means that these rules were not reviewed by either the Governor's Regulatory Review Council; the agency did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; and the agency was not required to hold public hearings on these rules.

R9-2-204. Renumbered**Historical Note**

Adopted effective August 30, 1995, under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1995, Ch. 275, § 9. (Supp. 95-3). Former Section R9-2-204 renumbered to R9-2-202 effective October 20, 1995, under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1995, Ch. 275, § 9. (Supp. 95-4).

Editor's Note: The following Section was adopted under an exemption from the provisions of the Administrative Procedure Act which means that these rules were not reviewed by either the Governor's Regulatory Review Council; the agency did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; and the agency was not required to hold public hearings on these rules.

R9-2-205. Renumbered**Historical Note**

Adopted effective August 30, 1995, under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1995, Ch. 275, § 9. (Supp. 95-3). Former Section R9-2-205 renumbered to R9-2-203 effective October 20, 1995, under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1995, Ch. 275, § 9. (Supp. 95-4).

ARTICLE 3. EXPIRED

Editor's Note: The following Section was adopted under an exemption from the provisions of the Administrative Procedure Act which means these rules were not reviewed by the Governor's Regulatory Review Council; and the agency did not submit notice of proposed rulemaking to the Secretary of State for publication

in the Arizona Administrative Register. As determined by the agency, public hearings were conducted before adoption pursuant to A.R.S. § 36-2907.08.

R9-2-301. Expired**Historical Note**

Adopted effective September 20, 1996, under an exemption from A.R.S. Title 41, Chapter 6, pursuant to A.R.S. § 36-2907.08 (Supp. 96-3). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 3844, effective July 30, 2001 (Supp. 01-3).

Editor's Note: The following Section was adopted under an exemption from the provisions of the Administrative Procedure Act which means these rules were not reviewed by the Governor's Regulatory Review Council; and the agency did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register. As determined by the agency, public hearings were conducted before adoption pursuant to A.R.S. § 36-2907.08.

R9-2-302. Expired**Historical Note**

Adopted effective September 20, 1996, under an exemption from A.R.S. Title 41, Chapter 6, pursuant to A.R.S. § 36-2907.08 (Supp. 96-3). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 3844, effective July 30, 2001 (Supp. 01-3).

Editor's Note: The following Section was adopted under an exemption from the provisions of the Administrative Procedure Act which means these rules were not reviewed by the Governor's Regulatory Review Council; and the agency did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register. As determined by the agency, public hearings were conducted before adoption pursuant to A.R.S. § 36-2907.08.

R9-2-303. Expired**Historical Note**

Adopted effective September 20, 1996, under an exemption from A.R.S. Title 41, Chapter 6, pursuant to A.R.S. § 36-2907.08 (Supp. 96-3). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 3844, effective July 30, 2001 (Supp. 01-3).

ARTICLE 4. EXPIRED

Editor's Note: The following Section was adopted under an exemption from the provisions of the Administrative Procedure Act which means these rules were not reviewed by the Governor's Regulatory Review Council; the agency did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; and there were no public hearings conducted on the Section.

R9-2-401. Expired**Historical Note**

Adopted effective February 10, 1997, under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1995, Ch. 275, § 9 (Supp. 97-1). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 3844, effective July 30, 2001 (Supp. 01-3).

Editor's Note: The following Section was adopted under an exemption from the provisions of the Administrative Procedure

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Act which means these rules were not reviewed by the Governor's Regulatory Review Council; the agency did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; and there were no public hearings conducted on the Section.

R9-2-402. Expired**Historical Note**

Adopted effective February 10, 1997, under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1995, Ch. 275, § 9 (Supp. 97-1). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 3844, effective July 30, 2001 (Supp. 01-3).

Editor's Note: The following Section was adopted under an exemption from the provisions of the Administrative Procedure Act which means these rules were not reviewed by the Governor's Regulatory Review Council; the agency did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; and there were no public hearings conducted on the Section.

R9-2-403. Expired**Historical Note**

Adopted effective February 10, 1997, under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1995, Ch. 275, § 9 (Supp. 97-1). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 3844, effective July 30, 2001 (Supp. 01-3).

Editor's Note: The following Section was adopted under an exemption from the provisions of the Administrative Procedure Act which means these rules were not reviewed by the Governor's Regulatory Review Council; the agency did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; and there were no public hearings conducted on the Section.

R9-2-404. Expired**Historical Note**

Adopted effective February 10, 1997, under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1995, Ch. 275, § 9 (Supp. 97-1). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 3844, effective July 30, 2001 (Supp. 01-3).

Editor's Note: The following Section was adopted under an exemption from the provisions of the Administrative Procedure Act which means these rules were not reviewed by the Governor's Regulatory Review Council; the agency did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; and there were no public hearings conducted on the Section.

R9-2-405. Expired**Historical Note**

Adopted effective February 10, 1997, under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1995, Ch. 275, § 9 (Supp. 97-1). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 3844, effective July 30, 2001 (Supp. 01-3).

Editor's Note: The following Section was adopted under an exemption from the provisions of the Administrative Procedure Act which means these rules were not reviewed by the Governor's Regulatory Review Council; the agency did not submit notice of

proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; and there were no public hearings conducted on the Section.

R9-2-406. Expired**Historical Note**

Adopted effective February 10, 1997, under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1995, Ch. 275, § 9 (Supp. 97-1). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 3844, effective July 30, 2001 (Supp. 01-3).

Editor's Note: The following Section was adopted under an exemption from the provisions of the Administrative Procedure Act which means these rules were not reviewed by the Governor's Regulatory Review Council; the agency did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; and there were no public hearings conducted on the Section.

R9-2-407. Expired**Historical Note**

Adopted effective February 10, 1997, under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1995, Ch. 275, § 9 (Supp. 97-1). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 3844, effective July 30, 2001 (Supp. 01-3).

Editor's Note: The following Section was adopted under an exemption from the provisions of the Administrative Procedure Act which means these rules were not reviewed by the Governor's Regulatory Review Council; the agency did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; and there were no public hearings conducted on the Section.

R9-2-408. Expired**Historical Note**

Adopted effective February 10, 1997, under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1995, Ch. 275, § 9 (Supp. 97-1). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 3844, effective July 30, 2001 (Supp. 01-3).

Editor's Note: The following Section was adopted under an exemption from the provisions of the Administrative Procedure Act which means these rules were not reviewed by the Governor's Regulatory Review Council; the agency did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; and there were no public hearings conducted on the Section.

R9-2-409. Expired**Historical Note**

Adopted effective February 10, 1997, under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1995, Ch. 275, § 9 (Supp. 97-1). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 3844, effective July 30, 2001 (Supp. 01-3).

Editor's Note: The following Section was adopted under an exemption from the provisions of the Administrative Procedure Act which means these rules were not reviewed by the Governor's Regulatory Review Council; the agency did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; and there were no public

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hearings conducted on the Section.

R9-2-410. Expired**Historical Note**

Adopted effective February 10, 1997, under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1995, Ch. 275, § 9 (Supp. 97-1). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 3844, effective July 30, 2001 (Supp. 01-3).

Editor's Note: The following Section was adopted under an exemption from the provisions of the Administrative Procedure Act which means these rules were not reviewed by the Governor's Regulatory Review Council; the agency did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; and there were no public hearings conducted on the Section.

R9-2-411. Expired**Historical Note**

Adopted effective February 10, 1997, under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1995, Ch. 275, § 9 (Supp. 97-1). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 3844, effective July 30, 2001 (Supp. 01-3).

ARTICLE 5. RESERVED**ARTICLE 6. RESERVED****ARTICLE 7. REPEALED****R9-2-701. Repealed****R9-2-702. Repealed****R9-2-703. Repealed****R9-2-704. Repealed****R9-2-705. Repealed****R9-2-706. Repealed****R9-2-707. Repealed****R9-2-708. Repealed****R9-2-709. Repealed****R9-2-710. Repealed**

The following Section was repealed effective September 30, 1993, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1992, Ch. 301, § 61; received by the Office of the Secretary of State October 1, 1993.

R9-2-711. Repealed**Historical Note**

Adopted effective November 28, 1977 (Supp. 77-6). Repealed effective September 30, 1993, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1992, Ch. 301, § 61; received in the Office of the Secretary of State October 1, 1993 (Supp. 93-4).

The following Section was repealed effective September 30, 1993, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1992, Ch. 301, § 61; received by the Office of the Secretary of State October 1, 1993.

R9-2-712. Repealed**Historical Note**

Adopted effective November 28, 1977 (Supp. 77-6). Repealed effective September 30, 1993, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1992, Ch. 301, § 61; received in the Office of the Secretary of State October 1, 1993 (Supp. 93-4).

The following Section was repealed effective September 30, 1993, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1992, Ch. 301, § 61; received by the Office of the Secretary of State October 1, 1993.

R9-2-713. Repealed**Historical Note**

Adopted effective November 28, 1977 (Supp. 77-6). Repealed effective September 30, 1993, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1992, Ch. 301, § 61; received in the Office of the Secretary of State October 1, 1993 (Supp. 93-4).

The following Section was repealed effective September 30, 1993, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1992, Ch. 301, § 61; received by the Office of the Secretary of State October 1, 1993.

R9-2-714. Repealed**Historical Note**

Adopted effective November 28, 1977 (Supp. 77-6). Repealed effective September 30, 1993, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1992, Ch. 301, § 61; received in the Office of the Secretary of State October 1, 1993 (Supp. 93-4).