

NOTICES OF EXEMPT RULEMAKING

The Administrative Procedure Act requires the *Register* publication of the rules adopted by the state's agencies under an exemption from all or part of the Administrative Procedure Act. Some of these rules are exempted by A.R.S. §§ 41-1005 or 41-1057; other rules are exempted by other statutes; rules of the Corporation Commission are exempt from Attorney General review pursuant to a court decision as determined by the Corporation Commission.

NOTICE OF PROPOSED EXEMPT RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 2. DEPARTMENT OF HEALTH SERVICES TOBACCO TAX-FUNDED PROGRAMS

[R07-28]

PREAMBLE

1. Sections Affected

Chapter 2
Article 1
R9-2-101
R9-2-102
R9-2-103
R9-2-104
R9-2-105
R9-2-106
R9-2-107
R9-2-108
R9-2-109
R9-2-110
R9-2-111
R9-2-112

Rulemaking Action

Amend
New Article
New Section
New Section
New Section
New Section
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New Section
New Section
New Section

2. The authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statutes: A.R.S. §§ 36-136(A)(7) and 36-136(F)

Implementing statute: A.R.S. § 36-601.01(G)(11)

3. The proposed effective date of the rules:

May 1, 2007

4. A list of all previous notices appearing in the *Register* addressing the proposed exempt rules:

Notice of Public Information: 13 A.A.R. 183, January 19, 2007

5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Diane Eckles, Office Chief

Address: Arizona Department of Health Services
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150 N. 18th Ave., Ste. 430
Phoenix, AZ 85007

Telephone: (602) 364-3142

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or

Name: Kathleen Phillips, Rules Administrator and Administrative Counsel

Address: Arizona Department of Health Services
1740 W. Adams, Ste. 200

Notices of Exempt Rulemaking

Phoenix, AZ 85007

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6. An explanation of the rules, including the agency's reason for initiating the rules, including the statutory citation to the exemption from regular rulemaking procedures:

a. Smoke-Free Arizona Act

On November 7, 2006, Arizona voters approved the Smoke-Free Arizona Act (Act), the initiative measure designated Proposition 201. The measure repealed former A.R.S. §§ 36-601.01 and 36-601.02, added new A.R.S. § 36-601.01, and added A.R.S. § 42-3251.02 (imposing a tax of two cents per cigarette pack).

A.R.S. § 36-601.01 generally becomes effective May 1, 2007, and establishes a statewide prohibition on tobacco smoking in public places and places of employment as defined in §§ 36-601.01(A)(7) and 36-601.01(A)(9). A.R.S. § 36-601.01(B) exempts most private residences from the smoking prohibition and also provides limited exemptions for certain public places and places of employment. A.R.S. § 36-601.01(G) requires the Department of Health Services (Department) to implement and enforce A.R.S. § 36-601.01 and authorizes the Department to make rules for that purpose.

The Department is making rules at Title 9, Chapter 2, Article 1 of the *Arizona Administrative Code*. R9-2-101 provides definitions of terms used in the rules. R9-2-102 establishes an individual's responsibility to stop smoking immediately when requested to do so by a proprietor as defined in R9-2-101(20).

R9-2-103 establishes proprietor responsibilities under the Act, including R9-2-103(B) that allocates responsibilities if a building or facility contains two or more places of employment or public places with different proprietors. Consistent with A.R.S. § 36-601.01(D), R9-2-103(H) authorizes a proprietor to prohibit smoking in an area where smoking is not prohibited by the Act.

R9-2-103(I), R9-2-103(J) and R9-2-104 implement the sign requirements in A.R.S. § 36-601.01(E), including signs in vehicles "owned and operated by the employer during working hours when the vehicle is occupied by more than one person" and used for business purposes. See the definition of "places of employment" in A.R.S. § 36-601.01(A)(7).

The Department also is making the rules explained in the following paragraphs.

b. Private Residences

The Act allows smoking in a private residence "except when used as a licensed child care, adult day care, or health care facility." See A.R.S. § 36-601.01(B)(1). The Department defines "private residence" in R9-2-101(19). R9-2-105, the Department's rule on tobacco smoke at specified private residences, implements the Act's exception to the general rule that smoking is allowed in private residences.

The Department will regulate tobacco smoke at a private residence when the private residence is used as:

- A licensed health care institution, including an area of the private residence that is used as an adult day care [an adult day health care facility as defined in A.R.S. § 36-401(A)(4)] during the hours for which the area is licensed;
- A licensed child care facility or an area of the private residence that is a certified area of a child care group home; or
- A health care facility.

In Section 2, Findings and Declaration of Purpose, the Act states: "[S]econdhand smoke is particularly hazardous to elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease." Consistent with Section 2 of the Act, an area licensed as a health care institution does not qualify for the private residence exemption. Smoking is prohibited in patient or resident rooms and residential units.

R9-2-101(14) lists the health care professionals included in the definition of "health care facility" in A.R.S. § 36-601.01(A)(4). A health care professional's office or the area where the health care professional provides services is generally exempt from licensing by the Department under A.R.S. § 36-402(A)(3). However, as a "health care facility" regulated under the Act, R9-2-105 addresses an office or area where a listed health care professional provides services. "Health care facility" includes an area that is located in or attached to a private residence and that is used by the health care professional to provide services when the health care professional is providing services to an individual. "Health care facility" does not include the private residence of an individual who receives services from the health care professional at the individual's private residence.

An area that is used by a health care professional to provide services to an individual and that is associated with a private residence but that is not located in or attached to the private residence, such as a separate building or structure on the same plot of land as the private residence, is regulated at all times as a place of employment or public place.

c. Retail Tobacco Stores

The Act allows tobacco smoking in retail stores that derive the majority of sales from tobacco products and accessories, are physically separated from smoke-free areas by solid walls or windows, and are independently ventilated from smoke-free areas. See the definition of “physically separated” in A.R.S. § 36-601.01(A)(6). R9-2-101(22), R9-2-103(G), and R9-2-106 implement the Act’s limited exemption for retail tobacco stores from the smoking prohibition.

R9-2-101(22) defines “tobacco products and accessories.” R9-2-103(G) requires a proprietor to prohibit tobacco smoking if a retail store does not derive the majority of its sales from tobacco products and accessories, is not physically separated and independently ventilated, or does not meet the requirements in R9-2-106.

Under R9-2-106, a retail store that permits tobacco smoking under the Act’s retail tobacco store exemption must:

- Prepare an affidavit certifying that the retail tobacco store expects to derive at least 51 percent of its gross income from the sale of tobacco products and accessories during each calendar year, if the retail tobacco store has been in operation for less than an entire calendar year; or
- Annually prepare an affidavit certifying that the retail tobacco store derived at least 51 percent of its gross income from the sale of tobacco products and accessories during the previous calendar year, if the retail tobacco store has been in operation for at least an entire calendar year.

R9-2-106(C) specifies the documents to be provided to the Department by a retail tobacco store that allows smoking if the Department receives a complaint under R9-2-108(A) about the retail tobacco store. R9-2-106(D) specifies the documents that a retail tobacco store must retain and make available to the Department upon request.

d. Outdoor Patios

The Act allows tobacco smoking on outdoor patios “so long as tobacco smoke does not enter areas where smoking is prohibited through entrances, windows, ventilation systems, or other means.” R9-2-101(16), R9-2-101(17), R9-2-103(E), and R9-2-107 implement the Act’s limited exemption for outdoor patios from the smoking prohibition.

R9-2-101(16) defines “outdoor patio” as “an area designated by a proprietor according to R9-2-107(A).” R9-2-101(17) defines “outdoor patio patron.” R9-2-103(E) makes the proprietor responsible for preventing an outdoor patio’s tobacco smoke from entering an area where smoking is prohibited.

R9-2-107(A) provides the criteria for designation of an area as an outdoor patio that allows smoking, including proximity to a place of employment or public place and control of the area by the proprietor of the place of employment or public place. R9-2-107(A)(3) specifies the physical or structural elements that qualify an area for outdoor patio designation.

R9-2-107(B) establishes requirements for an outdoor patio that allows smoking; that individuals can enter from an area other than the place of employment or public place, such as a street, sidewalk, or parking lot; and that has a doorway to the place of employment or public place. The proprietor must provide information that the outdoor patio’s doorway is not an entrance and is for use by outdoor patio patrons only and must direct individuals who are not outdoor patio patrons to an entrance. See the definition of “entrance” in R9-2-101(12), which excludes an outdoor patio doorway.

Under R9-2-107(D), the “reasonable distance,” defined in R9-2-101(21), does not apply to an outdoor patio. However, to qualify for an exemption from the smoking prohibition and to remain violation-free, tobacco smoke from an outdoor patio must not enter a smoke-free area. See R9-2-107(C) and R9-2-103(E). R9-2-107(E) authorizes a proprietor to designate an outdoor patio as an area where smoking is prohibited.

The Act’s limited exemption for outdoor patios and the Department’s rules related to outdoor patios do not replace the requirements in other statutes, rules, or regulations applicable to food or beverage operations.

e. Veterans and Fraternal Clubs and Other Limited Exemptions

In A.R.S. § 36-601(B)(4), the Act exempts veterans and fraternal clubs from the smoking prohibition “when they are not open to the public.” The Act defines “veteran[s] and fraternal clubs” by referencing the definition of “club” in A.R.S. §§ 4-101(7)(a), (7)(b), and (7)(c). Accordingly, veterans or fraternal clubs include:

- A local unit of veterans chartered by the U.S. Congress for patriotic, fraternal, or benevolent purposes, including the local unit’s auxiliary, that operates clubroom facilities in Arizona;
- A local unit of an American national fraternal organization (in active existence in at least 36 states or that has been in active continuous existence for at least 20 years) that operates clubroom facilities in Arizona; and
- A hall or building association, whose capital stock is owned by a local unit of veterans chartered by the U.S. Congress, by a local unit of an American national fraternal organization, or by the local unit’s members, that operates the local unit’s clubroom facilities.

R9-2-101(15) defines when a veterans or fraternal club is open to the public as “any time the proprietor of a veterans or fraternal club announces orally or in writing that the general public is permitted to attend an activity of the veterans or fraternal club.” R9-2-103(F) requires a proprietor to prohibit smoking when a veterans or fraternal club is open to the public.

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In A.R.S. § 36-601.01(B), the Act also provides limited exemptions from the smoking prohibition for:

- Some hotel and motel guest rooms, if not more than 50 percent of the guest rooms in the hotel or motel are designated as smoking rooms; [Note that hotel and motel common areas, such as lobbies, restaurants, shops, and exercise rooms, are included in the definition of “public place” in A.R.S. § 36-601.01(A)(9) and must be smoke-free.]
- Religious ceremonies “practiced pursuant to the American Indian Religious Freedom Act of 1978;” and
- Stage performances or film or television productions “if the smoking is part of the performance or production.”

With regard to any area subject to a limited exemption from the Act’s smoking prohibition, R9-2-103(A) through R9-2-103(C) require proprietors to prohibit smoking in a smoke-free area and to prevent tobacco smoke from entering a smoke-free area.

f. Complaints, Violations, and Penalties

A.R.S. § 36-601.01(G)(3) through (G)(8) authorize the Department to receive complaints alleging violations of the Act, to inspect public places or places of employment for violations of the Act, to determine that a violation of the Act has occurred, and to enforce the Act’s provisions. R9-2-108 through R9-2-112 implement the Act’s regulatory scheme.

In addition to a complaint by a member of the public, R9-2-108(C) provides that an observation by the Department of a possible violation of the Act during an inspection of a licensed health care institution, a licensed child care facility, or a certified child care group home can start the Department’s enforcement process. If a complaint or observation provides reason for the Department to believe that a violation exists, the enforcement process continues through an inspection, determination that a violation has occurred, notice of violation to the place of employment or public place, and possible assessment of a monetary penalty. R9-2-110 lists the factors the Department must consider in determining whether a violation of the Act has occurred. R9-2-112 lists the factors the Department must consider in determining whether to assess a penalty or the amount of the penalty.

g. Proposed Exempt Rulemaking

This rulemaking also is amending the 9 A.A.C. 2 heading from “Tobacco Tax-funded Programs” to “Tobacco-related Programs.”

According to A.R.S. § 36-601.01(G)(11), the Department is exempt from the rulemaking requirements of A.R.S. Title 41, Chapter 6 until May 1, 2007.

The Department will conduct public hearings on the proposed exempt rules according the public hearing schedule set forth in item #10.

7. A reference to any study relevant to the rules that the agency reviewed and either proposes to rely on in its evaluation of or justification for the rules or proposes not to rely on in its evaluation of or justification for the rules, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

The Department did not review any study.

8. A showing of good cause why the rules are necessary to promote a statewide interest if the rules will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

9. The summary of the economic, small business, and consumer impact:

According to A.R.S. § 36-601.01(G)(11), the Department is exempt until May 1, 2007, from the rulemaking requirements of A.R.S. Title 41, Chapter 6, including the requirement to prepare the economic, small business, and consumer impact statement described in A.R.S. § 41-1055. The costs associated with this exempt rulemaking result from the Smoke-Free Arizona Act, Proposition 201, approved by Arizona voters on November 7, 2006. Based on the approval of Proposition 201, the Department believes that many voters decided that the benefits to the health, safety, and welfare of Arizonans from the Smoke-Free Arizona Act outweigh the costs.

10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rules, or if no proceeding is scheduled, where, when, and how persons may request a proceeding on the proposed rules:

The Department has scheduled the following proceedings:

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PUBLIC HEARINGS ON PROPOSED EXEMPT RULES		
LOCATION	DATE	TIME
Department of Health Services State Laboratory First Floor Conference Room 250 N. 17th Ave. Phoenix, AZ 85007	March 6, 2007	10:00 a.m.
Pima County Administration Building Pima County Board of Supervisors Hearing Room 130 W. Congress St. Tucson, AZ 85701	March 7, 2007	11:00 a.m.
Coconino County Administration Building Coconino County Board of Supervisors First Floor Meeting Room 219 E. Cherry Ave. Flagstaff, AZ 86001	March 8, 2007	1:00 p.m.

A person with a disability may request a reasonable accommodation by contacting Lynn Golder at (602) 364-3958 or golderl@azdhs.gov. Requests should be made as early as possible to allow time to arrange the accommodation.

The Department has established the following close of record for the proposed exempt rules:

CLOSE OF RECORD
5:00 p.m., March 8, 2007

Written comments on the proposed exempt rules may be submitted no later than the close of record to an individual listed in item #5.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

12. Incorporations by reference and their location in the rules:

None

13. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

CHAPTER 2. DEPARTMENT OF HEALTH SERVICES

~~TOBACCO TAX FUNDED PROGRAMS~~ TOBACCO-RELATED PROGRAMS

ARTICLE 1. ~~REPEALED~~ SMOKE-FREE ARIZONA

Section

- R9-2-101. ~~Repealed~~ Definitions
- R9-2-102. ~~Repealed~~ Individual Responsibilities
- R9-2-103. ~~Repealed~~ Proprietor Responsibilities
- R9-2-104. ~~Repealed~~ Sign Requirements
- R9-2-105. ~~Repealed~~ Private Residence
- R9-2-106. ~~Repealed~~ Retail Tobacco Store
- R9-2-107. ~~Repealed~~ Outdoor Patio
- R9-2-108. ~~Repealed~~ Complaint: Observation by the Department
- R9-2-109. ~~Repealed~~ Reason to Believe a Violation of A.R.S. § 36-601.01 Has Occurred: Inspection
- R9-2-110. ~~Repealed~~ Determination of Violation

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R9-2-111. ~~Repealed~~ Notice of Violation
R9-2-112. Criteria for Assessing a Penalty

ARTICLE 1. ~~REPEALED~~ SMOKE-FREE ARIZONA

R9-2-101. ~~Repealed~~ 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(A)(4).
2. “Ashtray” means any receptacle that is used for disposing of smoking materials, including ash and cigarette butts or filters.
3. “Child care facility” has the meaning in A.R.S. § 36-881(3).
4. “Child care group home” has the meaning in A.R.S. § 36-897(1).
5. “Clearly and conspicuously” means visible from a minimum distance of five feet.
6. “Complaint” means a written or oral statement of a possible violation of A.R.S. § 36-601.01.
7. “Conspicuous sign” means a display that:
 - a. Contains letters, symbols, or a combination of letters and symbols; and
 - b. Is visible so that the public may read it.
8. “Department” means the Department of Health Services.
9. “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.
10. “Enter” means the physical movement of tobacco smoke, regardless of cause, into any area in which smoking is prohibited by A.R.S. § 36-601.01 through an entrance, window, a ventilation system, or other means.
11. “Entering” means an individual going into or leaving a building or facility.
12. “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 to be used by outdoor patio patrons only.
13. “Health care institution” means a building or facility regulated under A.R.S. Title 36, Chapter 4.
14. “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 denturist;
 - 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. § 32-1668, 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;

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- w. A midwife;
- x. A hearing aid dispenser;
- y. An audiologist; or
- z. A speech-language pathologist or speech-language pathology assistant.
- 15. "Open to the general public" means any time the proprietor of a veterans or fraternal club announces orally or in writing that the general public is permitted to attend an activity of the veterans or fraternal club.
- 16. "Outdoor patio" means an area designated by a proprietor according to R9-2-107(A).
- 17. "Outdoor patio patron" means an individual who is occupying an outdoor patio.
- 18. "Permeable" means permitting tobacco smoke to pass through.
- 19. "Private residence" means a structure where an individual lives and sleeps.
- 20. "Proprietor" means an owner, operator, manager or other person in control of a public place or a place of employment.
- 21. "Reasonable distance" means at least 15 feet in all directions measured from an entrance, a window, or a ventilation system of a public place or non-vehicle place of employment.
- 22. "Tobacco products and accessories" means cigars, cigarettes, pipes, and other devices for smoking tobacco.
- 23. "Vehicle" means motor vehicle as defined in A.R.S. § 28-101(32).
- 24. "Ventilation system" means the natural or mechanical process of supplying air to, or removing air from a space.

R9-2-102. ~~Repealed~~ Individual Responsibilities

An individual in a public place or place of employment shall stop smoking immediately when requested to stop smoking by the proprietor of the public place or a place of employment.

R9-2-103. ~~Repealed~~ Proprietor Responsibilities

A. A proprietor shall:

- 1. Not permit smoking in a public place, place of employment, or a reasonable distance from any entrances, windows, or ventilation systems of a public place or place of employment except according to A.R.S. § 36-601.01(B) and this Article;
- 2. Post signs according to A.R.S. § 36-601.01(E)(1); and
- 3. Remove all ashtrays from all areas where smoking is prohibited, including a vehicle owned and operated by or for a proprietor during working hours when more than one individual occupies the vehicle.

B. If a building or facility contains several places of employment or public places that have different proprietors:

- 1. The proprietor of the entire building or facility shall:
 - a. Not permit smoking in the area controlled by the proprietor of the entire building or facility except according to A.R.S. § 36-601.01(B) and this Article.
 - b. Clearly and conspicuously post signs according to A.R.S. § 36-601.01(E)(1) in the area controlled by the proprietor of the entire building or facility, and
 - c. Remove all ashtrays from the area controlled by the proprietor of the entire building or facility where smoking is prohibited;
- 2. The proprietor of each place of employment or public place shall:
 - a. Not permit smoking in the area controlled by the proprietor of the place of employment or the public place except according to A.R.S. § 36-601.01(B) and this Article.
 - b. Clearly and conspicuously post signs according to A.R.S. § 36-601.01(E)(1) in the place of employment or the public place, and
 - c. Remove all ashtrays from the area controlled by the proprietor of the place of employment or the public place where smoking is prohibited;

C. A proprietor shall not permit smoke to enter a building or facility through an entrance, a window, a ventilation system, or other means.

D. If an individual 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.

E. A proprietor of an outdoor patio shall not permit smoke to enter areas where smoking is prohibited through entrances, windows, ventilation systems, or other means.

F. A proprietor of a veterans or fraternal club shall not permit smoking when the veterans or fraternal club is open to the general public.

G. A proprietor of a retail tobacco store shall not permit smoking if the retail tobacco store does not meet the definition in A.R.S. § 36-601.01(A)(10) or the requirements of A.R.S. § 36-601.01(B)(3) and R9-2-106.

H. A proprietor may prohibit smoking in an area where smoking is not prohibited by A.R.S. § 36-601.01.

I. A proprietor shall post conspicuous signs according to A.R.S. § 36-601.01(E)(2).

J. In a vehicle owned and operated by or for a proprietor during working hours, a proprietor shall:

- 1. Not permit smoking in the vehicle when:

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- 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 R9-2-104(B).

K. A proprietor shall:

1. Communicate the prohibition on smoking in places of employment to all existing employees by the effective date of these rules, and
2. Communicate the prohibition on smoking in places of employment to an applicant for employment at the time of the application for employment.

R9-2-104. ~~Repealed Sign Requirements~~

A. Signs posted by the proprietor to comply with A.R.S. § 36-601.01(E)(1) or A.R.S. § 36-601.01(E)(2) shall:

1. Contain the international no smoking symbol or the words “No Smoking”;
2. State that:
 - a. Smoking is prohibited by A.R.S. § 36-601.01;
 - b. Complaints regarding violations may be made:
 - i. By telephone to 1-877 4AZNOSMOKE,
 - ii. By e-mail to nosmokingarizona@azdhs.gov, or
 - iii. On the Internet at www.smokefreearizona.org;
3. Contain letters and numbers of sufficient size to be clearly legible to an individual of normal vision throughout the areas the signs are intended to mark;
4. If the sign is posted in a non-vehicle place of employment, be no smaller than four inches by six inches; and
5. Be posted at a height and location easily seen by an individual entering the public place or place of employment and not be obscured in any way.

B. Signs posted in a vehicle shall:

1. Meet the requirements in subsections (A)(1) and (A)(2)(b).
2. State that smoking is prohibited by A.R.S. § 36-601.01 during working hours when more than one individual occupies the vehicle and the vehicle is used for business purposes.
3. Be no smaller than two inches by three inches, and
4. Be firmly affixed:
 - a. To one passenger door window, and
 - b. To the vehicle dashboard or another area visible to all passengers.

R9-2-105. ~~Repealed 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, and
4. A health care institution other than an adult day care.

B. 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.

C. 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.

R9-2-106. ~~Repealed Retail Tobacco Store~~

A. A retail tobacco store that allows smoking and that has been in operation for less than an entire 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 affidavit,
6. The signature of the proprietor of the retail tobacco store, and
7. An Arizona notary’s signature certifying the truthfulness of the affidavit signed by the proprietor.

B. A retail tobacco store that allows smoking 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,

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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 affidavit.
 6. The signature of the proprietor of the retail tobacco store, and
 7. An Arizona notary's signature certifying the truthfulness of the affidavit signed by the proprietor.
- C.** If the Department receives a complaint under R9-2-108(A) about a retail tobacco store that allows smoking, the retail tobacco store shall provide to the Department:
1. The affidavit under subsection (A) or the most current affidavit under subsection (B), whichever is appropriate; and
 2. Documents that enable the Department to determine the percent of gross income derived from the sale of tobacco products and accessories:
 - a. For the three-month period immediately preceding and including the date of the complaint; or
 - b. If the retail tobacco store has been in operation for less than three months, for the period beginning on the date the retail tobacco store opened and ending on the date of the complaint.
- D.** A retail tobacco store that allows smoking shall:
1. Retain on the premises of the retail tobacco store:
 - a. The affidavit under subsection (A) or the most current affidavit under subsection (B), whichever is appropriate; and
 - b. The documents that contain the facts supporting the affidavit; and
 2. Make available to the Department upon request:
 - a. The affidavit under subsection (A) or the most current affidavit under subsection (B), whichever is appropriate; and
 - b. The documents that contain the facts supporting the affidavit.

R9-2-107. ~~Repealed Outdoor Patio~~

- A.** A proprietor shall not designate an area as an outdoor patio that allows smoking unless:
1. The area is contiguous to a place of employment or public place;
 2. The area is controlled by the proprietor of the place of employment or public place; and
 3. The area meets one of the following:
 - a. The area's entire overhead covering consists of open space, permeable material, or a combination of open space and permeable material and at least one-half the area's vertical surfaces consist of non-permeable material; or
 - b. At least one-half the area's vertical surfaces consist of open space, permeable material, or a combination of open space and permeable material and the area's overhead covering consists of open space, any material, or a combination of open space and any material; or
 - c. The area has no overhead covering and no vertical surfaces except the vertical surface of the place of employment or public place.
- B.** If an outdoor patio that allows smoking has a doorway to the place of employment or public place and a vertical surface that does not prevent individuals from entering the outdoor patio, the proprietor shall:
1. Inform individuals that the doorway:
 - a. Is not an entrance, and
 - b. Is for use by outdoor patio patrons only; and
 2. Direct individuals who are not outdoor patio patrons to an entrance.
- C.** If a proprietor designates an area as an outdoor patio that allows smoking, the proprietor shall meet the requirement in R9-2-103(E).
- D.** The reasonable distance defined in R9-2-101(21) does not apply to an outdoor patio that allows smoking.
- E.** A proprietor may designate an outdoor patio as an area where smoking is prohibited.

R9-2-108. ~~Repealed Complaint; Observation by the Department~~

- A.** When a person makes a complaint to the Department under A.R.S. § 36-601.01, the complaint shall include:
1. The name and address of the place of employment or public place 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.** Within 15 days after the receipt of a complaint, the Department shall:
1. Send a written notice of the complaint to the public place or place of employment that is the subject of the complaint, or
 2. Conduct an inspection of the public place or place of employment that is the subject of the complaint according to R9-2-108.
- C.** If during an inspection conducted pursuant to A.R.S. Title 36, Chapter 4 or Chapter 7.1 the Department observes a possible violation of A.R.S. § 36-601.01, within 15 days after the date of the observation, the Department shall:
1. Send to the public place or place of employment where the observation was made a notice of the observation of a pos-

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- sible violation by Department personnel, or
2. Conduct an inspection, for compliance with A.R.S. § 36-601.01, of the public place or place of employment according to R9-2-108.

R9-2-109. ~~Repealed~~ Reason to Believe a Violation of A.R.S. § 36-601.01 Has Occurred: Inspection

If the Department determines that the facts of a complaint or a Department observation made under R9-2-102(C) provides reason to believe that a violation of A.R.S. § 36-601.01 exists, the Department shall inspect the public place or place of employment that is the subject of the complaint or the place where the Department observation was made.

R9-2-110. ~~Repealed~~ Determination of Violation

In determining whether a violation of A.R.S. § 36-601.01 has occurred, the Department 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 R9-2-104;
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;
5. The presence of smoke that enters the place of employment or public place through entrances, windows, ventilation systems, or other means; and
6. The presence of smoke within a reasonable distance from entrances, windows, or ventilation systems.

R9-2-111. ~~Repealed~~ Notice of Violation

A. After the Department determines that a violation of A.R.S. § 36-601.01 has occurred, the Department shall send to 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; and
4. If a civil penalty is being assessed, a notice of assessment.

B. A person may appeal the Department's determination that a violation has occurred or assessment of a penalty according to A.R.S. Title 41, Chapter 6, Article 10.

R9-2-112. ~~Repealed~~ Criteria for Assessing a Penalty

In determining whether to assess a penalty under A.R.S. § 36-601.01(G)(6) or the amount of the penalty, the Department 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 place of employment's or public place's previous violations of A.R.S. § 36-601.01, 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; 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 deems relevant.

NOTICE OF EXEMPT RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 25. DEPARTMENT OF HEALTH SERVICES
EMERGENCY MEDICAL SERVICES

[R07-25]

PREAMBLE

- 1. Sections Affected**
R9-25-503

Rulemaking Action
Amend
- 2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
Authorizing statutes: A.R.S. §§ 36-136(F) and 36-2209(A)(2)
Implementing statute: A.R.S. § 36-2205(A)
Statute or session law authorizing the exemption: A.R.S. § 36-2205(C)
- 3. The effective date of the rules:**
January 31, 2007
- 4. A list of all previous notices appearing in the Register addressing the exempt rules:**
None
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name:	Terry Mullins, Bureau Chief
Address:	Arizona Department of Health Services Bureau of Emergency Medical Services and Trauma System 150 N. 18th Ave., Ste. 540 Phoenix, AZ 85007
Telephone:	(602) 364-3150
Fax:	(602) 364-3568
E-mail:	mullint@azdhs.gov
or	
Name:	Kathleen Phillips, Rules Administrator and Administrative Counsel
Address:	Arizona Department of Health Services Office of Administrative Rules and Counsel 1740 W. Adams St., Ste. 200 Phoenix, AZ 85007
Telephone:	(602) 542-1264
Fax:	(602) 364-1150
E-mail:	phillik@azdhs.gov
- 6. An explanation of the rule, including the agency's reasons for initiating the rule:**
The provisions in this rulemaking were created by the Arizona Department of Health Services (ADHS) with recommendations from the Protocols, Medications, and Devices Committee; the Medical Direction Commission; and the Emergency Medical Services Council. This rulemaking revises Table 1 in R9-25-503 by:

 - Adding the class "Antiemetics," with Promethazine, Compazine, and Zofran (generic names) listed, all as optional agents, with EMT-Ps and all three types of EMT-Is authorized to administer;
 - Reducing the minimum quantity of Etomidate required to be carried, if an EMS provider chooses to make the optional agent Etomidate available for EMT administration, from 80 mg to 40 mg;
 - Adding the class "H₂ Blockers" as transport agents for EMT-Ps and all three types of EMT-Is; and
 - Adding Lorazepam as an optional agent, with EMT-Ps and all three types of EMT-Is authorized to administer.
- 7. A reference to any study relevant to the rule that the agency reviewed and either relied on in its evaluation of or**

Notices of Exempt Rulemaking

justification for the rule or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

None

- 8. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**
Not applicable
- 9. The summary of the economic, small business, and consumer impact:**
Not applicable
- 10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):**
Not applicable
- 11. A summary of the comments made regarding the rule and the agency response to them:**
Not applicable
- 12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**
Not applicable
- 13. Incorporations by reference and their location in the rules:**
None
- 14. Was this rule previously made as an emergency rule? If so, please indicate the Register citation.**
No
- 15. The full text of the rules follows:**

TITLE 9. HEALTH SERVICES

CHAPTER 25. DEPARTMENT OF HEALTH SERVICES
EMERGENCY MEDICAL SERVICES

ARTICLE 5. MEDICAL DIRECTION PROTOCOLS FOR EMERGENCY MEDICAL TECHNICIANS

Section

R9-25-503. Protocol for an EMT to Administer, Monitor, or Assist in Patient Self-Administration of an Agent

ARTICLE 5. MEDICAL DIRECTION PROTOCOLS FOR EMERGENCY MEDICAL TECHNICIANS

R9-25-503. Protocol for an EMT to Administer, Monitor, or Assist in Patient Self-Administration of an Agent

- A.** No change
1. No change
 2. No change
 3. No change
 - a. No change
 - b. No change
 4. No change
- B.** No change
1. No change
 2. No change
 3. No change
 4. No change
 5. No change
 6. No change
 7. No change
- C.** No change
- D.** No change
1. No change
 2. No change
 - a. No change

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- b. No change
- c. No change
- d. No change
- e. No change
- f. No change
- g. No change
- h. No change
- i. No change
- j. No change
- ~~j-k~~ No change
- ~~k-l~~ No change
- ~~l-m~~ No change
- ~~m-n~~ No change
- ~~n-o~~ No change
- 3. No change
- 4. No change
- 5. No change
- E.** No change
 - 1. No change
 - 2. No change
 - 3. No change
 - 4. No change

Table 1. Authorization for Administration, Monitoring, and Assistance in Patient Self-Administration of Agents by EMT Certification; Identification of Transport Agents; Administration Requirements; and Minimum Supply Requirements for Agents

KEY:

- A = Authorized to administer the agent
- M = Authorized to monitor IV administration of the agent during interfacility transport, if the IV was started at the sending health care institution
- PA = Authorized to assist in patient self-administration of the agent
- TA = Transport agent for an EMT with the specified certification
- IFIP = Agent shall be administered by infusion pump on interfacility transports
- IP = Agent shall be administered by infusion pump
- SVN = Agent shall be administered by small volume nebulizer
- SVN or MDI = Agent shall be administered by small volume nebulizer or metered dose inhaler
- * = Optional agent for a BLS ambulance that is not primarily serving as the first emergency medical services provider arriving on scene in response to an emergency dispatch
- ** = The minimum supply for an EMT assigned to respond by bicycle or on foot is 2 cubic feet.
- *** = An EMT-B may administer if authorized under R9-25-505.
- [] = Minimum supply required if an EMS provider chooses to make the optional agent available for EMT administration

AGENT	MINIMUM SUPPLY	EMT-P	EMT-I(99) Certified Before 1/ 6/07	EMT-I(99) Certified On or After 1/6/ 07	EMT-I(85)	EMT-B
Adenosine	30 mg	A	A	A	-	-
Albuterol Sulfate ^{SVN or MDI} (sulfite free)	10 mg	A	A	A	A	-
Amiodarone ^{IFIP}	Optional [300 mg]	A	A	-	-	-
Antibiotics	None	TA	TA	TA	TA	-
<u>Antiemetics:</u>	<u>Optional</u>					
<u>Promethazine HCl</u>	<u>[25 mg]</u>	<u>A</u>	<u>A</u>	<u>A</u>	<u>A</u>	<u>=</u>
<u>Ondansetron HCl</u>	<u>[4 mg]</u>	<u>A</u>	<u>A</u>	<u>A</u>	<u>A</u>	<u>=</u>
<u>Prochlorperazine edisylate</u>	<u>[10 mg]</u>	<u>A</u>	<u>A</u>	<u>A</u>	<u>A</u>	<u>=</u>

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Aspirin	324 mg	A	A	A	A	A
Atropine Sulfate	4 prefilled syringes, total of 4 mg	A	A	A	-	-
Atropine Sulfate	8 mg multidose vial (1)	A	A	A	A	-
Blood	None	TA	TA	-	-	-
Bronchodilator, inhaler	None	PA	PA	PA	PA	PA
Calcium Chloride	1 g	A	A	-	-	-
Charcoal, Activated (without sorbitol)	Optional [50 g]	A	A	A	A	A
Colloids	None	TA	TA	TA	TA	-
Corticosteroids ^{IP}	None	TA	TA	TA	TA	-
Dexamethasone	Optional [8 mg]	A	A	A	A	-
Dextrose	50 g	A	A	A	A	-
Dextrose, 5% in H ₂ O	Optional [250 mL bag (1)]	A	A	A	A	M***
Diazepam	20 mg	A	A	A	A	-
Diazepam Rectal Delivery Gel	Optional [20 mg]	A	A	A	A	-
Diltiazem ^{IFIP} or Verapamil HCl	25 mg 10 mg	A A	A A	- -	- -	- -
Diphenhydramine HCl	50 mg	A	A	A	A	-
Diuretics	None	TA	TA	TA	-	-
Dopamine HCl ^{IFIP}	400 mg	A	A	-	-	-
Electrolytes/Crystalloids (Commercial Preparations)	None	TA	TA	TA	TA	M
Epinephrine Auto-Injector	2 adult auto-injectors* 2 pediatric auto-injectors*	-	-	-	-	A
Epinephrine Auto-Injector	Optional [2 adult auto-injectors 2 pediatric auto-injectors]	A	A	A	A	-
Epinephrine HCl, 1:1,000	2 mg	A	A	A	A	-
Epinephrine HCl, 1:1,000	30 mg multidose vial (1)	A	A	A	-	-
Epinephrine HCl, 1:10,000	5 mg	A	A	A	-	-
Etomidate	Optional [80 40 mg]	A	-	-	-	-
Fosphenytoin Na ^{IP} or Phenytoin Na ^{IP}	None	TA	TA	-	-	-
Furosemide or, If Furosemide is not available, Bumetanide	100 mg 4 mg	A A	A A	A A	A A	- -
Glucagon ^{IFIP}	2 mg	A	A	A	A	-
Glucose, oral	Optional [30 gm]	A	A	A	A	A
Glycoprotein IIb/IIIa Inhibitors	None	TA	TA	-	-	-
<u>H₂ Blockers</u>	<u>None</u>	<u>TA</u>	<u>TA</u>	<u>TA</u>	<u>TA</u>	<u>-</u>
Heparin Na ^{IP}	None	TA	TA	-	-	-

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Ipratropium Bromide 0.02% ^{SVN} or MDI	5 mL	A	A	A	A	-
Lactated Ringers	1 L bag (2)	A	A	A	A	M***
Lidocaine HCl IV	3 prefilled syringes, total of 300 mg 1 g vials or premixed infusion, total of 2 g	A	A	A	-	-
<u>Lorazepam</u>	<u>Optional [8 mg]</u>	<u>A</u>	<u>A</u>	<u>A</u>	<u>A</u>	<u>-</u>
Magnesium Sulfate ^{IFIP}	5 g	A	A	-	-	-
Methylprednisolone Sodium Succinate	250 mg	A	A	A	A	-
Midazolam	Optional [10 mg]	A	A	-	-	-
Morphine Sulfate	20 mg	A	A	A	A	-
Nalmefene HCl	Optional [4 mg]	A	A	A	A	-
Naloxone HCl	10 mg	A	A	A	A	-
Nitroglycerin IV Solution ^{IP}	None	TA	TA	-	-	-
Nitroglycerin Sublingual Spray or Nitroglycerin Tablets	1 bottle 1 bottle	A A	A A	A A	A A	PA PA
Nitrous Oxide	Optional [Nitrous oxide 50% / Oxygen 50% fixed ratio setup with O ₂ fail-safe device and self-admin- istration mask, 1 setup]	A	A	A	A	-
Normal Saline	1 L bag (2) 250 mL bag (1) 50 mL bag (2)	A	A	A	A	M***
Oxygen	13 cubic feet**	A	A	A	A	A
Oxytocin	Optional [10 units]	A	A	A	A	-
Phenobarbital Na ^{IP}	None	TA	TA	-	-	-
Phenylephrine Nasal Spray 0.5%	1 bottle	A	A	A	A	-
Potassium Salts ^{IP}	None	TA	TA	-	-	-
Procainamide HCl ^{IP}	None	TA	TA	-	-	-
Racemic Epinephrine ^{SVN}	None	TA	TA	-	-	-
Sodium Bicarbonate 8.4%	100 mEq	A	A	A	A	-
Succinylcholine	Optional [400 mg]	A	-	-	-	-
Theophylline ^{IP}	None	TA	TA	-	-	-
Thiamine HCl	100 mg	A	A	A	A	-
Total Parenteral Nutrition, with or without lipids ^{IFIP}	None	TA	TA	-	-	-
Vasopressin	Optional [40 units]	A	A	-	-	-
Vitamins	None	TA	TA	TA	TA	-