

NOTICES OF FINAL RULEMAKING

The Administrative Procedure Act requires the publication of the final rules of the state's agencies. Final rules are those which have appeared in the *Register* first as proposed rules and have been through the formal rulemaking process including approval by the Governor's Regulatory Review Council. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the *Register* after the final rules have been submitted for filing and publication.

NOTICE OF FINAL RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 4. DEPARTMENT OF HEALTH SERVICES - NONCOMMUNICABLE DISEASES

PREAMBLE

1. Sections Affected

R9-4-101
R9-4-102
R9-4-201
R9-4-201
R9-4-202
R9-4-202

Rulemaking Action

Amend
Repeal
Renumber
New Section
Renumber
Amend

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

Authorizing statute: A.R.S. § 36-136(F)

Implementing statute: A.R.S. § 36-606

3. The effective date for the rule:

The rules will become final when approved by the Governor's Regulatory Review Council and filed with the Office of the Secretary of State.

4. A list of all previous notices appearing in the Register addressing the proposed rule:

Notice of Rulemaking Docket Opening: 5 A.A.R. 4267, November 5, 1999

Notice of Proposed Rulemaking: 6 A.A.R. 1062, March 24, 2000

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

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6. An explanation of the rule, including the agency's reasons for initiating the rule:

The Department is amending the general definitions Section for the Chapter to conform to current rulemaking format and style requirements, to define 2 terms previously undefined, and to define a term previously defined elsewhere. In addition, the Department is repealing the definitions Section pertaining specifically to the Pesticide Illness Article and replacing it with a new definitions Section within the Pesticide Illness Article that will provide clearer definitions of the terms used in the Article. The Department is also renumbering and amending the only Section previously in the Pesticide Illness Article, regarding pesticide illness reporting requirements, to conform to current rulemaking format and style requirements and to clarify the rule. The Department is eliminating the requirement to report race or ethnicity, is requiring that occupation be reported only if a documented pesticide exposure is related to the occupation, and is expressly allowing that reporting be done by a designated representative of the health care professional or poison control center medical director. The Department is otherwise not changing the reporting requirements of the rule.

7. A reference to any study that the agency proposes to rely on in its evaluation of or justification for the rule and where the public may obtain or review the study, all data underlying each study, any analysis of the 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:

The Department expects that this rulemaking will impose no economic burden other than the expense of the rulemaking process to the Department, the Office of the Secretary of State, and the Governor's Regulatory Review Council and the expense to the Department of purchasing 2 copies of ICD-9-CM: International Classification of Diseases, 9th Revision, Clinical Modification (5th ed. 2000), which is incorporated by reference in A.A.C. R9-4-101. The Department anticipates that the public will benefit from the clarification of the rules because the rules will be less confusing to apply.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules:

R9-4-101

The Department added a definition for the term "diagnosis", which is used in Articles 2, 4, and 5 of Chapter 4 and was previously undefined. As a result, the Department renumbered several other definitions.

The Department changed the citation form in the definition of "hospital" from "A.A.C. Title 9, Chapter 10" to "9 A.A.C. 10", to conform to current rulemaking format and style requirements.

R9-4-201

The Department changed the definition of "cluster illness" to make it more clear, concise, and understandable.

The Department deleted the word "defined" from the definition of "pest" to make it more clear, concise, and understandable.

The Department deleted the word "purposes" from the definition of "pesticide" to make it more clear, concise, and understandable.

The Department changed the word "illness" to "sickness" in the definition of "pesticide illness" and reformatted the definition as a displayed list in order to make it more clear, concise, and understandable.

11. A summary of the principal comments and the agency response to them:

The Department did not receive any comments about the proposed rulemaking.

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:

A.A.C. R9-4-101: ICD-9-CM: International Classification of Diseases, 9th Revision, Clinical Modification (5th ed. 2000).

14. Was this rule previously adopted as an emergency rule?

No

15. The full text of the rule follows:

TITLE 9. HEALTH SERVICES

CHAPTER 4. DEPARTMENT OF HEALTH SERVICES - NONCOMMUNICABLE DISEASES

ARTICLE 1. DEFINITIONS

Sections

R9-4-101. Definitions, general

~~R9-4-102. Pesticide Illness Repealed~~

ARTICLE 2. PESTICIDE ILLNESS

Sections

R9-4-201. ~~Pesticide Illness Reporting Requirements Renumbered~~

~~R9-4-201. Definitions~~

~~R9-4-201. R9-4-202. Pesticide Illness Reporting Requirements~~

ARTICLE 1. DEFINITIONS

R9-4-101. Definitions, general

In this Chapter, unless the context otherwise requires ~~specified~~:

1. "Dentist" means ~~any person~~ an individual licensed under ~~the provisions of A.R.S. Title 32, Chapter 11, Article 2.~~
2. "Department" means the Arizona Department of Health Services.
3. "Diagnosis" means the identification of a disease or injury, by an individual authorized by law to make the identification, that is the cause of an individual's current medical condition.
- ~~2-4.~~ "Hospital" means a health care institution licensed by the Department as a general hospital, a rural general hospital, or a special hospital under ~~9 A.A.C. Title 9, Chapter 10.~~
5. "ICD-9-CM" means ICD-9-CM: International Classification of Diseases, 9th Revision, Clinical Modification (5th ed. 2000), incorporated by reference, on file with the Department and the Office of the Secretary of State, and available from Practice Management Information Corporation, 4727 Wilshire Boulevard, Suite 300, Los Angeles, CA 90010 and from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. This incorporation by reference contains no future editions or amendments.
- ~~3-6.~~ "Physician" means ~~any person~~ an individual licensed as a doctor of allopathic medicine under ~~provisions of A.R.S. Title 32, Chapter 13 or~~ as a doctor of osteopathic medicine under A.R.S. Title 32, Chapter 17.

~~R9-4-102. Pesticide Illness Repealed~~

~~In Article 2, unless the context otherwise requires:~~

- ~~1. "Case" means any person with an illness which has been determined by a health care professional to be a result of exposure to a pesticide, on the basis of patient history, signs, symptoms or presentation of illness, laboratory findings or results of treatment.~~
- ~~2. "Cluster illnesses" means two or more cases or suspect cases of pesticide illness which are or may be related.~~
- ~~3. "Documented" means supported by written information, such as applicator reports, patient statements, or medical records.~~
- ~~4. "Health care professional" means any physician, hospital intern or resident, surgeon, dentist, osteopath, chiropractor, podiatrist, county medical examiner, nurse or other professional having responsibility for the diagnosis, care or treatment of human illness.~~
- ~~5. "Pest" means any of the following organisms under circumstances that make it deleterious to man or the environment:
 - a. Any vertebrate animal other than man;
 - b. Any invertebrate animal, including any insect, other arthropod, nematode, or mollusk such as a slug and snail, but excluding any internal parasite of living man or other living animals;
 - c. Any plant growing where not wanted, including moss, alga, liverwort, or other plant of any higher order, and any plant part; or
 - d. Any fungus, bacterium, virus, or other microorganism, except for those on or in living man or other living animals and those on or in processed food or processed animal feed, beverages, drugs and cosmetics.~~
- ~~6. "Pesticide" means any substance or mixture of substances, including inert ingredients, intended for preventing, destroying, repelling or mitigating any pests, or any substance or mixture of substances intended for use as a plant growth regulator, defoliant or desiccant.~~
- ~~7. "Pesticide illness" means disturbance of function, damage to structure or illness in humans which results from the inhalation, absorption or ingestion of any pesticide.~~
- ~~8. "Poison control centers" means entities in the Arizona poison control network which engage in consultations concerning possible pesticide poisonings.~~

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9. ~~“Suspect case” means any person with a syndrome or signs and symptoms of illness which a health care professional believes, based on professional judgement, may be a result of exposure to one or more pesticides, but which does not meet the definition of case.~~

ARTICLE 2. PESTICIDE ILLNESS

R9-4-201. Renumbered

R9-4-201. Definitions

In this Article, unless otherwise specified:

1. “Cluster illness” means sickness in 2 or more individuals that is caused by or may be related to 1 pesticide exposure incident, as determined by the history, signs, or symptoms of the sickness; laboratory findings regarding the individuals; the individuals’ responses to treatment for the sickness; or the geographic proximity of the individuals.
2. “Documented” means evidenced by written information such as pesticide applicator reports, statements of individuals with pesticide illness, or medical records.
3. “Health care professional” means a physician, a registered nurse practitioner, a physician assistant, or any other individual who is authorized by law to diagnose human illness.
4. “Medical director” means the individual designated by a poison control center as responsible for providing medical direction for the poison control center or for approving and coordinating the activities of the individuals who provide medical direction for the poison control center.
5. “Pest” has the same meaning as in A.R.S. Title 3, Chapter 2, Article 5 or as used in A.R.S. Title 3, Chapter 2, Article 6 and A.R.S. Title 32, Chapter 22.
6. “Pesticide” means any substance or mixture of substances, including inert ingredients, intended for preventing, destroying, repelling, or mitigating any pest or intended for use as a plant regulator, defoliant, or desiccant, but does not include an antimicrobial agent, such as a disinfectant, sanitizer, or deodorizer, used for cleaning.
7. “Pesticide illness” means any sickness reasonably believed by a health care professional or medical director to be caused by or related to documented exposure to any pesticide, based upon professional judgment and:
 - a. The history, signs, or symptoms of the sickness;
 - b. Laboratory findings regarding the individual; or
 - c. The individual’s response to treatment for the sickness.
8. “Physician assistant” has the same meaning as in A.R.S. § 32-2501.
9. “Poison control center” means an organization that is a member of and may be certified by the American Association of Poison Control Centers.
10. “Registered nurse practitioner” has the same meaning as in A.R.S. § 32-1601.

R9-4-201, R9-4-202. Pesticide Illness Reporting Requirements

~~Any Δ health care professional or poison control center, who medical director who participates in the diagnosis of or identifies a case of an individual with pesticide illness, or determines that an illness may be related to documented exposure to a pesticide, shall file a report of pesticide illness with the Department as follows:~~

1. ~~Reports of cases and suspect cases of pesticide illness shall be made~~ The health care professional or medical director shall report a pesticide illness within five 5 working days of from the date of determining that an illness is or may be a result of documented exposure to a pesticide diagnosis or identification, except:
 - a. ~~Any case or suspect case which results in hospitalization or death shall be filed immediately or~~ The health care professional or medical director shall report a pesticide illness where the individual with pesticide illness is hospitalized or dies no later than 24 hours 1 working day from the time of hospital admission or death; and
 - b. ~~Reports of cluster illnesses shall be filed immediately or~~ The health care professional or medical director shall report cluster illnesses no later than 24 hours 1 working day from the time the second case or suspected case 2nd individual with pesticide illness is diagnosed or identified.
2. ~~Reports shall be made~~ The health care professional or medical director shall submit the report to the Department by telephone; in person; or in a writing sent by fax, delivery service, or mail; or by an electronic reporting system if an electronic reporting system is developed by the Department. The report shall contain the following information:
 - a. ~~Patient’s~~ The name, address, and telephone number of the individual with pesticide illness;
 - b. ~~Date~~ The date of birth of the individual with pesticide illness;
 - e. ~~Race or ethnicity;~~
 - d.c. ~~Gender~~ The gender of the individual with pesticide illness;
 - e.d. ~~Occupation~~ The occupation of the individual with pesticide illness, if the documented pesticide exposure is related to the occupation;
 - f.e. ~~Dates~~ The dates of onset of illness and of diagnosis or identification as pesticide illness;
 - g.f. ~~Name~~ The name of the pesticide, if known;
 - h.g. ~~Name~~ The name, business address, and telephone number of the person health care professional or medical director making the report;

- h. A statement specifying whether the illness is caused by a documented pesticide exposure or is related to a documented pesticide exposure; and
 - i. The health care professional's or medical director's reason for believing that the illness is caused by or related to documented exposure to a pesticide.
 - j. ~~Statement specifying whether the illness is caused by or related to a documented pesticide exposure.~~
3. The health care professional or medical director may designate a representative to make the report to the Department on behalf of the health care professional or medical director.

NOTICE OF FINAL RULEMAKING

TITLE 15. REVENUE

**CHAPTER 5. DEPARTMENT OF REVENUE
TRANSACTION PRIVILEGE AND USE TAX SECTION**

PREAMBLE

1. Sections Affected

Article 9
R15-5-901
R15-5-901
R15-5-902
R15-5-903
R15-5-904
R15-5-905
R15-5-906
R15-5-908

Rulemaking Action

Renumber
Amend
Amend
Renumber
Amend
Amend
Repeal
Amend

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

Authorizing statutes: A.R.S. §§ 42-1005 and 42-5003
Implementing statute: A.R.S. § 42-5072

3. The effective date of the rules:

July 18, 2000

4. A list of all previous notices appearing in the Register addressing the final rule:

Notice of Rulemaking Docket Opening: 5 A.A.R. 3233, September 17, 1999
Notice of Proposed Rulemaking: 6 A.A.R. 1421, April 14, 2000

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

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6. An explanation of the rule, including the agency's reasons for initiating the rule:

The rules provide guidance in the application of transaction privilege tax to persons engaged in business under the mining classification. As a result of changes in statute and in preparation for the Department's 5-year review of Article 9, which is due November 2000, the Department is proposing to amend the rules to conform to current statutes and rulemaking guidelines.

When these rules were written metal and non-metal mining were both part of the mining classification. However, since that time the mining classification was amended to include only non-metal mining. Metal mining is now taxed under severance tax (A.R.S. § 42-5202). Therefore, all of the rules in this Article are amended to remove anything that applies to metal mining. Severance tax is not part of this rule package.

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R15-5-903 contains definitions that apply to all of Article 9, therefore, the Department proposes to renumber R15-5-903 to R15-5-901. In addition, the Department proposes to amend the rule to provide references to the statutory definitions, remove references to metal mining, and remove the definition of "mineral products," which is no longer needed.

R15-5-902 is intended to provide general information regarding taxation under the mining classification. The Department proposes to amend the rule to use active voice and to conform to the requirements of the Governor's Regulatory Review Council. Also, the Department is proposing to repeal R15-5-906 and incorporate the issue it addressed into a new subsection (C). This is being proposed so that all the basic information regarding the taxation of non-metal is in one rule.

The Department proposes to amend R15-5-904 to remove everything that relates to metal mining. In addition, the balance of the rule is amended to use active voice and to conform to the requirements of the Governor's Regulatory Review Council.

The Department proposes to amend R15-5-905 to use the active voice and to conform to the requirements of the Governor's Regulatory Review Council. In addition, subsection (B)(2)(a) was amended to change "common carrier freight actually paid" to "actual freight paid as provided in R15-5-908."

R15-5-908 currently requires that freight costs must actually be paid to a third party carrier to be deductible from the tax base. Deliveries in the seller's own conveyance does not qualify for deduction. The Department proposes to amend the rule to provide that all actual freight costs incurred by a mining business in connection with a sale that are included in the sales price may be deducted if the actual freight costs incurred is separately stated in the billing to the customer. If the mining business does not separately state the actual freight costs incurred in the billing to its customer then only the freight costs paid to a third party would be deductible. The Department also proposes to amend the rule to use the active voice and to conform to the requirements of the Governor's Regulatory Review Council.

7. Reference to any study that the agency relied on in its evaluation of or justification for the final rule and where the public may obtain or review the study, all data underlying each study, any analysis of the 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:

It is expected that the benefits of the rules will be greater than the costs. The amendment of these rules will benefit the public by making the rules conform to current statute and rulemaking guidelines, which will make the rules more accurate as well as clearer and easier to understand. In addition, the amendment of R15-5-908 will benefit mining businesses by allowing them to deduct certain freight costs even if the mining business uses its own conveyance. These rules only provide guidance in the application of the statute; the statute imposes the tax and establishes any deductions. The Department will incur the costs associated with the rulemaking process. Taxpayers are not expected to incur any expense in the amendment of these rules.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

Based on the review performed by the staff of the Governor's Regulatory Review Council, the Department made various nonsubstantive grammatical and formatting changes.

11. A summary of the principal comments and the agency response to them:

The Department did not receive any written or verbal comments on the rule action after the publication of the rulemaking in the Notice of Proposed Rulemaking.

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

None

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

None

14. Was the rule previously adopted as an emergency rule?

No

15. The full text of the rules follows:

TITLE 15. REVENUE

CHAPTER 5. DEPARTMENT OF REVENUE
TRANSACTION PRIVILEGE AND USE TAX SECTION

ARTICLE 9. SALES TAX— MINING CLASSIFICATION

Sections

- ~~R15-5-903.~~ R15-5-901. Definitions
R15-5-902. General
R15-5-903. ~~Definitions~~ Renumbered
R15-5-904. Manufacturing or Processing Service Charges
R15-5-905. Products Shipped Out ~~shipped out of Arizona state~~
R15-5-906. ~~Retail sale of processed products~~ Repealed
R15-5-908. Actual Freight Paid ~~Cost of freight~~

ARTICLE 9. SALES TAX— MINING CLASSIFICATION

~~R15-5-903.~~ R15-5-901. Definitions

In addition to the definitions provided in A.R.S. § 42-5001, the following definitions apply to this Article:

- ~~A.~~ 1. "Mining" means the operations involving the extraction of nonmetalliferous mineral products ~~ores, minerals, and mineral deposits~~ from beneath or at the surface of the earth for commercial use and includes underground, surface, and open-pit operations.
2. "Nonmetalliferous mineral product" has the same meaning as prescribed in A.R.S. § 42-5072.
- ~~B.~~ "Mineral products" include all substances which can be extracted from the earth. Examples include: metals, gravel, shale, clay, building stone, oil, helium, and natural gas.

R15-5-902. General

The tax is imposed on the gross income derived from the business of mining within the State.

- ~~1. A.~~ A person engaged in the business of mining is subject to tax under the mining classification on the gross proceeds of sales or gross income received from the sale of a nonmetalliferous mineral product to a purchaser that resells the product in the ordinary course of business. Sales to retailers or others for resale are taxable under this classification. For example, sales to manufacturers or processors of mineral products, when the material is incorporated or fabricated into a manufactured or processed item are subject to the tax under this classification.
2. ~~B.~~ A person engaged in the business of mining is not subject to tax under the mining classification on the gross proceeds of sales or gross income received from the sale of a nonmetalliferous mineral product to a person engaged in business classified under the prime contracting classification if the nonmetalliferous mineral product is to be incorporated into a structure or project as part of the business. Sales to licensed contractors of products to be incorporated into a structure are fully exempt. However, sales to licensed contractors of products for their own use are taxable as retail sales (see Article 18).
- ~~C.~~ A person engaged in the business of mining is subject to tax under the retail classification on the gross income received from the sale of a nonmetalliferous mineral product to a final consumer.
3. ~~D.~~ A person engaged in the business of mining shall not deduct from the tax base amounts paid as royalties. ~~Royalties paid are not deductible.~~

R15-5-903. Renumbered

R15-5-904. Manufacturing or Processing Service Charges

- A. A person engaged in the business of mining is subject to tax on the ~~The~~ gross proceeds of sales or gross income from ~~eastern~~ smelting of ores, refining of petroleum products, ~~producing the production of~~ a combination of nonmetalliferous mineral products, as well as other manufacturing or processing service charges derived from contracts with the owner of the products, is subject to tax.
- B. Persons engaged in smelting of mineral products who purchase the product are taxable on the difference between the purchase price and the selling price of the processed material, representing the value added by the smelting process.
- ~~C.~~ A person ~~Persons~~ who ~~mines mine and processes process the~~ nonmetalliferous mineral products ~~is are~~ subject to tax ~~taxable~~ on the gross proceeds of sales or gross income from ~~the sale~~ sales of the first marketable product. For example, a person who mines clay and processes the material into bricks is taxable on the gross proceeds of sales or gross income from the sale of the bricks.

R15-5-905. Products shipped out of Arizona State

- A. For purposes of this Rule, the term "product" shall mean those items enumerated in A.R.S. § 42-1313.
- ~~B.~~ A person engaged in the business of mining that ships a nonmetalliferous mineral ~~When any product is transported~~ out-of-state without making a sale within this State, Arizona shall include in the tax base the market value of the nonmetalliferous mineral product ~~material~~ before it enters interstate commerce ~~is the taxable base.~~

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- B.** Unless otherwise provided in subsection (D), ~~the taxpayer shall calculate in calculating~~ the market value of a nonmetalliferous mineral product shipped out-of-state ~~in the following manner; the taxpayer shall:~~
1. Establish the total selling price of the product ~~at the time of the sale outside this State Arizona.~~
 2. ~~The taxpayer having established the total selling price as provided in Paragraph 1. above, may deduct~~ Deduct, from the total selling price, costs incurred out-of-state ~~that which~~ increase the value of the product. These costs include, ~~but are not limited to:~~
 - a. The cost of ~~common carrier~~ actual freight ~~actually~~ paid, as provided in R15-5-908, to the point of sale outside this State Arizona;
 - b. The refining or processing cost incurred before ~~if it occurs prior to~~ the first sale; and,
 - c. The cost of sales commissions, ~~if~~ paid or accrued, in connection with ~~making~~ the sale.
- C.** The market value of the product shipped out-of-state shall not include the cost of processing if the processor has paid the Arizona ~~Transaction Privilege Tax~~ transaction privilege tax on the gross proceeds of sales or gross income derived from the processing. (See R15-5-904)
- D.** ~~With the prior written approval of the Department, the~~ A taxpayer may compute the market value of a nonmetalliferous mineral product ~~products~~ shipped out-of-state in any manner that which accurately reflects the value of ~~such material~~ the nonmetalliferous mineral product at the point it enters interstate commerce ~~if the taxpayer gives prior written notification to the Department and the Department approves the computation method.~~

R15-5-906. ~~Retail sale of processed products~~ Repealed

~~Income derived from sales of mineral products to final consumers is taxable under the retail classification (Article 18), and not under this classification.~~

R15-5-908. Actual Freight Paid ~~Cost of freight~~

~~When the sale price includes a charge for freight, from the place of production to the place of delivery, such charge is deductible. The cost of freight must be actually incurred by the seller and paid to a carrier. Delivery of products in the seller's own conveyance does not qualify for this deduction.~~

- A.** A person engaged in the business of mining may deduct from the tax base under the mining classification actual freight costs incurred in connection with the sale that are included in the sales price if the actual freight costs incurred are separately stated in the billing to its customer.
- B.** A person engaged in the business of mining that does not separately state the actual freight costs incurred in the billing to the customer may still deduct the actual freight costs paid to a third party, provided the person keeps books and records to show separately the actual freight paid to the third party.
- C.** A taxpayer shall not deduct the cost incurred by the taxpayer before a sale for freight from the mining or production location to the sales location.