

**NOTICE OF PROPOSED EXPEDITED RULEMAKING**

**TITLE 18. ENVIRONMENTAL QUALITY**

**CHAPTER 4. DEPARTMENT OF ENVIRONMENTAL QUALITY – SAFE DRINKING WATER**

**PREAMBLE**

<b><u>1. Article, Part, or Section Affected (as applicable)</u></b>	<b><u>Rulemaking Action</u></b>
R18-4-107	Amend
Article 4	New Article
R18-4-402	New Section

**2. Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):**

Authorizing statute: A.R.S. § 49-353(A)(2)(c)

Implementing statute: A.R.S. § 49-353.01(A)

**3. Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the proposed rule:**

Notice of Rulemaking Docket Opening: 28 A.A.R. 2062.

**4. The agency's contact person who can answer questions about the rulemaking:**

Name: Scott Geiger  
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Phoenix, Arizona 85007  
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**5. An agency's justification and reason why a rule should be made, amended, repealed or renumbered under A.R.S. § 41-1027(A), to include an explanation about the rulemaking:**

**Summary**

The purpose of this Arizona Department of Environmental Quality (ADEQ) rulemaking is to protect public health by ensuring water distribution materials are free of lead. Additionally, this rulemaking effort also ensures continued receipt of the full allotment of Public Water System Supervision grants. ADEQ proposes to update the safe drinking water rules in A.A.C. Title 18, Chapter 4 to conform with the U.S. Environmental Protection Agency's (EPA) final regulation entitled "Use of Lead Free Pipes, Fittings, Fixtures, Solder, and Flux for Drinking Water" (Lead Free Rule). 85 FR 54235 (Sept. 1, 2020).

An expedited rulemaking is appropriate pursuant to A.R.S. § 41-1027(A)(4) because this rulemaking will only incorporate by reference without material change federal regulations pursuant to A.R.S. § 41-1028 and does not increase regulatory burden beyond what is required by the Safe Drinking Water Act, as amended (SDWA), and the Lead Free Rule.

**Legal Background**

### **Lead Free Rule**

In its final rule, the EPA codified revisions to the Safe Drinking Water Act's prohibition on use and introduction into commerce of certain products that are not lead free (SDWA lead prohibitions). 85 FR 54235, 54237. EPA also established requirements to certify plumbing products introduced into commerce to help ensure that only lead free pipes, fittings, and fixtures are used in repairs and new installations of a public water system or in a residential or nonresidential facility providing water for human consumption. *Id.* In addition to codifying the revised requirements under the Reduction of Lead in Drinking Water Act of 2011 (RLDWA) and the Community Fire Safety Act of 2013 (CFSA), EPA established regulations for product certification and information collection to help ensure consistent implementation and enforcement of the SDWA lead prohibitions. *Id.*

The final rule also contains language in 40 CFR 143.14 to clarify that SDWA section 1417(b)'s direction for States to enforce the use prohibition on pipe, pipe fittings, or fixtures, any solder, or any flux that are not lead free to further protect public health is also a condition of receiving a full Public Water System Supervision (PWSS) grant allocation. *Id.* Under SDWA section 1417(b)(1), the State enforcement provision applies only to the use prohibition in section 1417(a)(1); it does not apply to the introduction into commerce prohibition in section 1417(a)(3), nor does it apply to the final rule requirements for product certification. *Id.*

Specifically, EPA's final rule amended 40 CFR part 143 by (1) retitling it as "Other Drinking Water Regulations," (2) adding Subpart A, which consists of the existing National Secondary Drinking Water Regulations, and (3) creating Subpart B, titled "Use of Lead Free Pipes, Fittings, Fixtures, Solder, and Flux for Drinking Water." 85 FR 54235, 54239. New Subpart B replaced similar regulatory language in 40 CFR 141.43, which had codified parts of section 1417 of the SDWA, but did not reflect the current version of section 1417, as amended by the RLDWA and the CFSA, or the introduction into commerce prohibitions, which were established in the 1996 amendments to the SDWA. 85 FR 54235, 54237.

### **Factual Background**

#### **Human Health Effects of Lead**

Exposure to lead has been associated with adverse neurological effects, reproductive effects, cardiovascular effects, immunological effects, renal effects, and cancer. 85 FR 54235, 54238; *see also* the U.S. Department of Health and Human Services' National Toxicology Program Monograph on Health Effects of Low-Level Lead (National Toxicology Program, 2012); Integrated Science Assessment for Lead (EPA, 2013). EPA's final rule will help ensure that only lead free plumbing products and components of public water systems are used in repairs and new installations in potable use applications. The benefits of this final rule are the resulting incremental reduction in exposure to lead in drinking water. ADEQ's proposed rulemaking will further ensure the protection of Arizona residents' public health.

#### **Public Water System Supervision Grants**

The Public Water System Supervision (PWSS) grants assist states in carrying out PWSS programs. *Public Water System Supervision (PWSS) Grant Program*, EPA, <https://www.epa.gov/dwreginfo/public-water-system-supervision-pwss-grant-program> (last visited Oct. 19, 2022). Arizona's PWSS program must be adequate to enforce the requirements of the SDWA and ensure that water systems comply with the National Primary Drinking Water Regulations. *Id.* Key activities of Arizona's PWSS program include: maintaining state drinking water regulations;

conducting sanitary surveys of public water systems; developing and maintaining an inventory of public water systems throughout the state; and more. *Id.* In 2021, Arizona received \$1,615,000 in PWSS grant monies. EPA Memorandum regarding Final Allotments for the FY2021 Public Water System (PWSS) State and Tribal Support Program Grants, dated March 2, 2021, available at [https://www.epa.gov/sites/default/files/2021-06/documents/fy21\\_pwss\\_allotment\\_memo\\_030421.pdf](https://www.epa.gov/sites/default/files/2021-06/documents/fy21_pwss_allotment_memo_030421.pdf). In addition to its primary purpose to protect public health, ADEQ's proposed rulemaking is also necessary to ensure continued receipt of the full allotment of PWSS grant monies. *See* 40 C.F.R 143.14 (clarifying that SDWA section 1417(b)'s direction for States to enforce the use prohibition on pipe, pipe fittings, or fixtures, any solder, or any flux that are not lead free is a condition of receiving a full Public Water System Supervision (PWSS) grant allocation).

**Section by Section Explanation of Proposed Rules:**

ADEQ proposes to update the safe drinking water rules in A.A.C. Title 18, Chapter 4 to conform with EPA's Lead Free Rule, specifically:

- R18-4-107 Amend R18-4-107 to update the incorporation by reference to 40 CFR 141, Subpart E (40 CFR 141.40 through 141.42) and retitle this section to "Special Regulations, Including Monitoring – 40 CFR 141, Subpart E" to align with changes made to 40 CFR Part 141.
- Article 4 Add a new article titled "Other Safe Drinking Water Act Regulations," to align with changes made to 40 CFR Part 143.
- R18-4-402 Add a new section titled "Use of Lead Free Pipes, Fittings, Fixtures, Solder, and Flux for Drinking Water – 40 CFR 143, Subpart B," which incorporates by reference 40 CFR 143, Subpart B (40 CFR 143.10-143.20) to reflect current federal regulations.

**6. A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or not to 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:**

Not Applicable

**7. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:**

Not Applicable

**8. The preliminary summary of the economic, small business, and consumer impact:**

Not applicable. The agency is exempt from the requirements to prepare and file an economic, small business, and consumer impact statement under A.R.S. § 41-1055(D)(2).

**9. The agency's contact person who can answer questions about the economic, small business and consumer impact statement:**

Not applicable.

**10. Where, when, and how persons may provide written comment to the agency on the proposed expedited rule under A.R.S. § 41-1027(C):**

Close of record: January 23, 2023.

Written comments may be sent to the individual listed in Item 4 by the close of record.

No oral proceeding is scheduled at this time. An oral proceeding may be requested pursuant A.R.S. § 41-1027(C) by submitting a written request to the Individual listed in Item 4 by the close of record.

**11. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:**

There are no other matters prescribed by statutes applicable specifically to ADEQ or this specific rulemaking.

**a. Whether the rule requires a permit, license, or agency authorization under A.R.S. § 41-1037(A), and whether a general permit is used and if not, the reasons why a general permit is not used:**

This rule does not require a permit, license or agency authorization under A.R.S. § 41-1037(A).

**b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:**

The Safe Drinking Water Act, as amended, and the Lead Free Rule are applicable to the subject of this rule. This rulemaking is not more stringent than is required by federal law.

**c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:**

Not applicable.

**12. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:**

40 CFR 141, Subpart E (40 CFR 141.40 through 141.42), revised as of July 1, 2021	R18-4-107
40 CFR 143, Subpart B (40 CFR 143.10 through 143.20), revised as of July 1, 2021	R18-4-402

**13. The full text of the rules follows:**

**TITLE 18. ENVIRONMENTAL QUALITY**  
**CHAPTER 4. DEPARTMENT OF ENVIRONMENTAL QUALITY – SAFE DRINKING WATER**  
**ARTICLE 1. PRIMARY DRINKING WATER STANDARDS**

Section

R18-4-107. ~~Special Regulations, Including Monitoring Regulations and Prohibition on Lead Use – 40 CFR 141, Subpart E~~

**ARTICLE 4. REPEALED OTHER SAFE DRINKING WATER ACT REGULATIONS**

Section

R18-4-402. Use of Lead Free Pipes, Fittings, Fixtures, Solder, and Flux for Drinking Water – 40 CFR 143, Subpart B

**ARTICLE 1. PRIMARY DRINKING WATER STANDARDS**

**R18-4-107      ~~Special Regulations, Including Monitoring Regulations and Prohibition on Lead Use - 40 CFR 141, Subpart E~~**

40 CFR 141, Subpart E (40 CFR 141.40 through ~~141.43~~ 141.42), is incorporated by reference as of the date specified in R18-4-102; this incorporation does not include any later amendments or editions. revised as of July 1, 2021 and published by the Office of the Federal Register, National Archives and Records Administration is incorporated by reference. This rule does not include any later amendments or editions of the incorporated material. Copies of the incorporated material are available for inspection at the Arizona Department of Environmental Quality, 1110 W. Washington, Phoenix, AZ 85007 or may be obtained from the U.S. Government Publishing Office, bookstore.gpo.gov, P.O. Box. 979050, St. Louis, MO 63197-9000.

**ARTICLE 4. REPEALED OTHER SAFE DRINKING WATER ACT REGULATIONS**

**R18-4-402.      ~~Repealed Use of Lead Free Pipes, Fittings, Fixtures, Solder, and Flux for Drinking Water – 40 CFR 143, Subpart B~~**

40 CFR 143, Subpart B (40 CFR 143.10 through 143.20) revised as of July 1, 2021 and published by the Office of the Federal Register, National Archives and Records Administration is incorporated by reference. This rule does not include any later amendments or editions of the incorporated material. Copies of the incorporated material are available for inspection at the Arizona Department of Environmental Quality, 1110 W. Washington, Phoenix, AZ 85007 or may be obtained from the U.S. Government Publishing Office, bookstore.gpo.gov, P.O. Box. 979050, St. Louis, MO 63197-9000.