

also be faxed to EPA at (202) 565-2065. Requests to participate in the hearing should include an outline of the topics to be addressed, the amount of time requested (20 minutes or less; if requests exceed currently scheduled time, additional hearing time may be added), and the names and addresses of the participants. EPA may also allow testimony to be given at the hearing without prior notice, subject to time restraints and at the discretion of the hearing officer. Three (3) copies of the testimony should be submitted at the time of appearance at the public hearing.

Dated: June 19, 2000.

**Steve Page,**

*Director, Office of Radiation and Indoor Air, Air and Radiation.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 141 and 142

[FRL-6721-6]

RIN 2040-AA94

#### Additional Option for Tribal Implementation of the Proposed National Primary Drinking Water Regulation for Radon-222

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule; availability of supplemental information.

**SUMMARY:** On November 2, 1999, EPA published the National Primary Drinking Water Regulation; Radon-222; Proposed Rule in the **Federal Register** (64 FR 59246). The public comment period on this proposal was open until February 4, 2000. Under the proposal, States can choose to develop State-wide multimedia mitigation (MMM) programs to reduce radon in indoor air in addition to drinking water. EPA also proposed the same opportunity for Indian Tribes by authorizing Tribes to develop MMM programs where the Tribe first obtained primacy or qualified for treatment as a State. Subsequently, however, EPA recognized the difficulties Tribes would experience in obtaining primacy or qualifying for treatment as a State in time to develop MMM programs and in actually implementing the MMM programs. As a result, EPA is proposing an alternative approach that would allow Tribes to work with EPA to develop MMM programs without obtaining primacy or qualifying for treatment as a State. This notice describes an additional option in which EPA would play a direct role in

developing the MMM programs in Indian Country. The goal of the additional option is to provide Tribes with an opportunity to implement the most cost-effective method to maximize radon risk reduction.

**DATES:** EPA must receive public comment, in writing, on the notice of data availability by August 7, 2000.

**ADDRESSES:** Send written comments to the Radon-222, W-99-08 Comment Clerk, Water Docket (MC-4101); U.S. Environmental Protection Agency; 1200 Pennsylvania Avenue, NW, Washington, DC 20460. Comments may be hand-delivered to the Water Docket, U.S. Environmental Protection Agency; 401 M Street, SW., East Tower Basement, Washington, DC 20460. Comments may be submitted electronically to [ow-docket@epamail.epa.gov](mailto:ow-docket@epamail.epa.gov). Electronic comments must be submitted as an ASCII or WordPerfect 8 file avoiding the use of special characters and form of encryption.

Please submit copies of all references cited in your comments. Facsimiles (faxes) cannot be accepted. Send one original and three copies of your comments and enclosures (including any references). Commenters who would like EPA to acknowledge receipt of their comments should include a self-addressed, stamped envelope.

The proposed rule, supporting documentation and public comments on the proposal are available for inspection at the docket. For information on how to access docket materials, please call the Water Docket at (202) 260-3027 between 9 a.m. and 3:30 p.m. Eastern Standard Time, Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** For technical inquiries regarding this notice contact Nicole Foley, Office of Ground Water and Drinking Water (mailcode 4606), EPA, 1200 Pennsylvania Avenue NW, Washington, DC, 20460; Phone: (202) 260-0875; E-mail: [foley.nicole@epa.gov](mailto:foley.nicole@epa.gov). For technical inquiries regarding the proposed regulation contact Mike Osinski, Office of Ground Water and Drinking Water (mailcode 4607), EPA, 1200 Pennsylvania Avenue NW, Washington, DC, 20460; Phone: (202) 260-6252; E-mail: [osinski.michael@epa.gov](mailto:osinski.michael@epa.gov). For general information, contact the Safe Drinking Water Hotline, phone (800) 426-4791. The Safe Drinking Water Hotline is open Monday through Friday, excluding Federal holidays, from 9:00 a.m. to 5:30 p.m. Eastern Standard Time.

## SUPPLEMENTARY INFORMATION:

### Table of Contents

- I. Statutory and Regulatory Framework
- II. Background
- III. Additional Option for Tribal Implementation

### I. Statutory and Regulatory Framework

Section 1412(b)(13) of the Safe Drinking Water Act (SDWA) directs EPA to propose and promulgate a maximum contaminant level (MCL) for radon in drinking water, and also to make available a higher alternative MCL accompanied by a multimedia mitigation (MMM) program to address radon risks from indoor air, in addition to drinking water. EPA is encouraging States to develop State-wide MMM programs as the most effective and cost efficient way to reduce the risk of radon. Section 1451 of the SDWA authorizes EPA to treat Tribes in the same manner as States for purposes of meeting provisions of the SDWA. If EPA determines that treatment in the same manner as a State is inappropriate or administratively infeasible, EPA may include in its regulations other means for administering SDWA provisions in a manner that will achieve the purpose of the provision. In the proposed regulation (64 FR 59246), EPA wanted to encourage Indian Tribes to implement MMM programs comparable to State-wide programs, and proposed that Tribes obtain primacy or qualify for treatment as States for the limited purpose of the MMM program. EPA now has reason to believe that requiring Tribes to obtain primacy or qualify for treatment as a State and to develop MMM programs in the time required may be administratively infeasible for many Tribes. If these requirements are retained, Indian Tribes may not be able to achieve the objective of widespread use of MMM programs in Indian Country. Therefore, EPA is proposing an additional option for Tribes that don't have time to obtain primacy or qualify for treatment as a State and develop an MMM program. Under this option, EPA would play a more active role and provide greater assistance to interested Indian Tribes in developing MMM programs. This additional option is discussed in more detail in Section III.

### II. Background

On November 2, 1999, EPA published in the **Federal Register** the National Primary Drinking Water Regulations; Radon-222; Proposed Rule (64 FR 59246). The proposed National Primary Drinking Water Regulation (NPDWR) for radon in drinking water contains an optional MMM approach following the framework provided by the SDWA. The MMM approach allows States to

develop and implement a State-wide MMM plan to achieve greater radon risk reduction by addressing radon in indoor air in addition to drinking water. In States with an EPA-approved MMM plan, community water systems (CWSs) using ground water (in whole or in part) would be required to meet the alternative MCL of 4,000 picocuries per liter (pCi/L) for radon in their ground water supplies, instead of the MCL of 300 pCi/L. In the absence of a State-wide MMM plan, a CWS using ground water (in whole or in part) could develop its own State-approved MMM plan for its service area. If a CWS does not choose the MMM approach, it would be required to comply with the MCL of 300 pCi/L. With respect to Tribes, the proposed regulation provided the following implementation options:

(1) A Tribe with Public Water Supply Supervision (PWSS) program primacy or Treatment in the same manner as a State (TAS) under section 1451 of the SDWA and EPA regulations at 40 CFR 142.72, could develop and implement an EPA-approved MMM program in Indian country, and the Tribal CWSs would comply with the 4,000 pCi/L alternative MCL; or

(2) Individual Tribal CWSs could develop a MMM program for their service area and comply with the alternative MCL. Each CWS would send their MMM program to EPA for review as provided by section 1412(b)(13)(G)(vi) of the SDWA; or

(3) Individual Tribal CWSs comply with the 300 pCi/L MCL.

### III. Additional Option for Tribal Implementation

EPA strongly supports the MMM/alternative MCL option as the most cost-effective means to achieve the greatest reduction in risk from radon exposure. The proposed MMM program is based on radon in indoor air programs that most States have had in place for many years. It is EPA's expectation that most States will be able to build on their current programs to meet the requirements of the MMM programs. Most States have the resources, expertise, and infrastructure to implement a successful State-wide radon reduction effort. However, only around ten Tribes received State Indoor Radon Grant Program monies this fiscal year to address radon in indoor air. Moreover, resources and expertise to develop a MMM plan vary greatly among Tribal authorities.

Nationwide there are 556 Federally recognized Tribes and only four have

obtained TAS and none have obtained primacy. Therefore, the proposed rule may not allow the vast majority of Tribal governments to immediately choose the MMM/alternative MCL option. EPA is concerned that the time and resources required to apply for PWSS primacy or TAS could prohibit many Tribes from establishing a MMM program.

Further, infrastructure needs for Tribes are significant, and on average are greater for Tribal CWSs than for like-sized, non-tribal CWSs. EPA's 1996 Drinking Water Infrastructure Needs Survey (Needs Survey) showed that American Indian and Alaska Native water systems needed \$1.3 billion for the 20-year period beginning in January 1995. The survey did not include radon needs. The Needs Survey data shows the average 20-year per-household infrastructure need for safe drinking water for American Indians and Alaska Natives is \$6,200 and \$43,500, respectively, compared to \$3,300 for State regulated small systems (serving 25 to 3,300 people). Limiting Tribes' opportunity to choose the MMM/alternative MCL option will most likely require them to incur infrastructure costs in order to comply with the MCL and to install treatment.

For these reasons, EPA is proposing an option that would increase the number of Tribes able to take advantage of the MMM/alternative MCL approach. This option would allow Tribes to implement an MMM program without obtaining primacy or qualifying for treatment as a State. Under this option, EPA would provide direct assistance to Tribes interested in developing and implementing a MMM program. As part of this additional approach, EPA would develop national guidance suggesting ideas for a Tribal MMM program, identifying available partnership activities with other Federal agencies that provide support to Tribes, and addressing reporting. In collaboration with the Tribes in each EPA Region (*i.e.*, individual Tribes and/or Tribal coalitions), EPA could tailor the national guidance and develop Tribal MMM programs for the Tribe(s). Under this approach, the Tribes agreeing to the MMM program would be responsible for implementing it, but this would not preclude EPA from providing technical assistance. EPA believes that the additional option presented in today's notice recognizes the differences between a State and a Tribe, and allows the flexibility needed to respect these differences in designing Tribal MMM programs. The additional option

described today does not provide any additional funding, but EPA would provide guidance to identify what funding could be available to assist the Tribes.

If a Tribe or Tribal coalition chooses to implement the Tribal MMM program, then all Tribal CWSs within their jurisdiction would have to comply with the alternative MCL of 4,000 pCi/L instead of the MCL of 300 pCi/L. If a Tribe has no interest in participating in the MMM program, then the Tribal CWSs within their jurisdiction could choose to develop an EPA-approved local MMM plan for their service area and comply with the alternative MCL or to comply with the MCL.

As is the case with State-wide MMM programs, EPA would grant the statutory 18 month extension on the effective date of the rule for the Tribes that elect to participate in the MMM within 90-days of promulgation of the rule.

In summary, EPA is proposing to provide another option to ease the resource demand on Tribes that desire to choose the MMM/alternative MCL approach to reduce the overall risk from radon by reducing radon levels in indoor air, as well as drinking water. The additional implementation option described in this notice would allow Tribes the opportunity to consider the MMM/alternative MCL option under the rule without the added responsibility of obtaining PWSS primacy or qualifying for treatment as a State. EPA would provide technical assistance during the preliminary stages of planning and developing a MMM program to ease the burden for those Tribes interested in developing a MMM program. The planning efforts and Tribal implementation would be assisted by national guidance. This option would not increase the costs of implementing the radon rule and would be expected to result in increased risk reduction at a lower cost compared to complying with the MCL of 300 pCi/L. EPA requests comment on this proposed additional approach for Tribes to develop and implement a MMM program.

Dated: June 16, 2000.

**Dana D. Minerva,**

*Acting Assistant Administrator, Office of Water.*

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