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## Preamble

- I. Statutory Authority
- II. Background
- III. Proposed Negotiating Procedures
- IV. Comments Requested

### I. Statutory Authority

This notice announcing EPA's intent to negotiate a proposed regulation setting federal standards for the conduct of all appropriate inquiry was developed under the authority of sections 563 and 564 of the Negotiated Rulemaking Act of 1996 (5 U.S.C. 561, Public Law 104-320). The proposed regulation setting standards for the conduct of all appropriate inquiry that EPA is proposing to develop under a negotiated rulemaking process will be developed under the authority of section 101(35)(B) of CERCLA (42 U.S.C. 9601(35)(B)(ii)).

### II. Background

As required by the Federal Advisory Committee Act (5 U.S.C. App. 2, section 9(a)(2)), and the Negotiated Rulemaking Act of 1996 (5 U.S.C. 561, Pub. L. 104-320), we are giving notice that the Environmental Protection Agency is establishing a Negotiated Rulemaking Committee to develop proposed standards and practices for conducting all appropriate inquiry.

On January 11, 2002, President Bush signed the Small Business Liability Relief and Brownfields Revitalization Act ("the Brownfields Law"). In general, the Brownfields Law amends CERCLA and provides funds to assess and clean

up brownfields sites, clarifies CERCLA liability provisions for certain landowners, and provides funding to enhance State and Tribal clean up programs. Subtitle B of Title II of the Brownfields Law revises some of the provisions of CERCLA Section 101(35) clarifying the requirements necessary to establish the innocent landowner defense under CERCLA in addition to providing Superfund liability limitations for bona fide prospective purchasers and contiguous property owners. Among the requirements added to CERCLA is the requirement that such parties undertake "all appropriate inquiry" into prior ownership and use of a property at the time at which a party acquires the property.

The Brownfields Law requires EPA to develop regulations establishing standards and practices for how to conduct all appropriate inquiry and promulgate the standards within two years of its enactment. Congress included in the Brownfields Law a list of criteria that the Agency must address in the regulations establishing standards and practices for conducting all appropriate inquiry (section 101(35)(2)(B)(ii)). The Brownfields Law also requires that parties receiving funding under the federal brownfields program to conduct site assessments must conduct the site assessment in accordance with the standards and practices for all appropriate inquiry established under the same provision of the Brownfields Law.

#### A. Negotiated Rulemaking

EPA has decided to use the negotiated rulemaking process to develop proposed federal standards for conducting all appropriate inquiry. In the Brownfields Law, Congress mandated that EPA develop regulations establishing standards and practices for conducting all appropriate inquiry and set forth a series of criteria for the Agency to follow in developing the federal regulations. The most important reason for using the regulatory negotiation process for developing a proposed federal standard is that all stakeholders strongly support a consensual rulemaking effort. EPA believes a regulatory negotiation process will be less adversarial than the regulatory rulemaking process and that a regulatory negotiation will result in a proposed rule that will effectively reflect Congressional intent.

A regulatory negotiation process will allow EPA to solicit direct input from informed, interested, and affected parties when drafting the regulation, rather than delay public input until the public comment period provided after