

correct nomenclature is ASTM E1527–00 and we made the corresponding correction in today's final rule.

The statutory cite referencing the award of brownfields assessment grants was corrected to reflect the appropriate cite.

V. Response to Comments

On January 24, 2003, EPA published a proposed rule (68 FR 3478) clarifying that both the 1997 and the 2000 version of ASTM's E1527 Phase I environmental site assessment standard may be used to comply with the interim standard for all appropriate inquiry established by Congress in the Brownfields Law. We received several comments on the proposed rule. A discussion of the significant comments follows. A complete copy of the comments and EPA's response are included in the docket for today's final rule.

One commenter, the Utah Professional Environmental Consultants Association, stated that EPA's proposal was inappropriate and biased because the site assessment method cited by EPA (the ASTM–E1527–00 standard) “excludes methods of site auditing that do not conform to or acknowledge ASTM standards.” The commenter also stated that “States should be setting the standards for site assessment, not the Federal EPA, especially when the Agency is using the auditing style of a for-profit organization.”

The Ohio Department of Transportation (ODOT) commented that Ohio did not adopt the ASTM Phase I site assessment standards because it is designed for private commercial/ industrial transactions and does not address ODOT's needs.

Section 101(35)(B)(iv)(II) of CERCLA provides that until EPA promulgates the regulations under (B)(ii), “the procedures of the American Society for Testing and Materials * * * shall satisfy the requirements in clause (i).” Thus, the decision to accept ASTM procedures was made by Congress, and not by EPA. The narrow purpose of today's rule is to recognize that there is a more recent ASTM standard than the one mentioned in the statute. In addition, EPA is developing a regulation pursuant to section 101(35)(B) that will establish new Federal standards for conducting all appropriate inquiry for the purposes of establishing liability and conducting property assessments with brownfields grants. States also are free to promulgate any standards they feel are appropriate for use in their State programs. To the extent any State has regulations establishing standards for all appropriate inquiry, EPA may consider

the merits of such standards during the development of the Federal standard.

Another commenter, INTERTOX, stated that the ASTM standard “inadequately accounts for regional differences in the availability of historical documents for the characterization of past uses of a site.” The commenter also stated that all appropriate inquiry “should vary according to the geographic location of the site under investigation.”

As stated in the proposed rule, the interim ASTM standard, as provided by Congress in the Brownfields Law, will be effective only until EPA promulgates regulations setting a federal standard for all appropriate inquiry. The issue of “historical sources” will be addressed in the subsequent rule, consistent with the statutory criteria for those standards and practices. While developing the “all appropriate inquiry” standards, EPA intends to consider multiple sources of information regarding technical standards and “historical sources” of site use.

Phase Engineering, Inc. submitted a comment pointing out that EPA incorrectly cited the most recent version of the ASTM Phase I site assessment standards as “ASTM E1527–2000.” The commenter pointed out that the correct nomenclature is “ASTM E1527–00.” Today's final rule includes the correct nomenclature.

VI. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a “significant regulatory action” and is therefore not subject to review by the Office of Management and Budget.

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 FR U.S.C. 3501 *et seq.*).

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the APA or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This action will not have a significant impact on a substantial number of small entities because it does not create any new requirements.

Because the purpose of today's action is to make a clarification that does not create any new requirements it has no economic impact and is not subject to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a

significant intergovernmental mandate, as described in sections 203 and 204 of UMRA.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). In addition, this rule also does not have tribal implications, as specified by Executive Order 13175 (65 FR 67249, November 6, 2000).

This rule also is not subject to Executive Order 13045 (62 FR 1985, April 23, 1997), because it is not economically significant.

This rule is not subject to Executive Order 13211, “Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

This action does involve technical standards. Therefore, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) apply. The NTTAA was signed into law on March 7, 1996, and, among other things, directs the National Institute of Standards and Technology (NIST) to bring together Federal agencies as well as state and local governments to achieve greater reliance on voluntary standards and decreased dependence on in-house standards. It states that use of such standards, whenever practicable and appropriate, is intended to achieve the following goals: (a) Eliminate the cost to the government of developing its own standards and decrease the cost of goods procured and the burden of complying with agency regulation; (b) provide incentives and opportunities to establish standards that serve national needs; (c) encourage long-term growth for U.S. enterprises and promote efficiency and economic competition through harmonization of standards; and (d) further the policy of reliance upon the private sector to supply government needs for goods and services. The Act requires that Federal agencies adopt private sector standards, particularly those developed by standards developing organizations (SDOs), wherever possible in lieu of creating proprietary, non-consensus standards. Today's action is compliant with the spirit and requirements of the NTTAA, given that the interim standard for all appropriate inquiry that is the subject of today's action is a private sector standard developed by a standard developing organization. Today's action