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Regulated Entities

Entities potentially regulated by this action include public and private parties who, as bona fide prospective purchasers, contiguous property owners, or innocent landowners, purchase property and intend to claim a limitation on CERCLA liability in conjunction with the property purchase. In addition, any entity conducting a site characterization or assessment with a brownfields grant awarded under CERCLA section 104(k)(2)(B)(ii) will be

affected by today's action. This includes state, local and Tribal governments that receive brownfields site assessment grants. A summary of the potentially affected industry sectors (by NAICS codes) is displayed in the table below.

Industry category	NAICS code
Real Estate	531
Insurance	52412
Banking/Real Estate Credit	52292
Environmental Consulting Services	54162
State, Local and Tribal Government	N/A

The list of potentially affected entities in the above table may not be exhaustive. Our aim is to provide a guide for readers regarding those entities that EPA is aware potentially could be affected by this action. However, this action may affect other entities not listed in the table. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding section entitled **FOR FURTHER INFORMATION CONTACT.**

Preamble

- I. Statutory Authority
- II. Background
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- IV. Future Rulemaking Setting Standards for "All Appropriate Inquiry"
- V. Statutory and Executive Order Reviews

I. Statutory Authority

This direct final rule clarifies provisions included in section 223 of the Small Business Liability Relief and Brownfields Revitalization Act which amends section 101(35)(B) of CERCLA (42 U.S.C. 9601(35)) and clarifies interim standards for the conduct of "all appropriate inquiry" for obtaining CERCLA liability relief and for conducting site characterizations and assessments with the use of brownfields grant monies.

II. Background

On January 11, 2002, President Bush signed the Small Business Liability Relief and Brownfields Revitalization Act ("the Brownfields Law"). In general, the Act amends CERCLA and provides funds to assess and clean up brownfields sites; clarifies CERCLA liability provisions related to innocent purchasers of contaminated properties; and provides funding to enhance State and Tribal clean up programs. In part, subtitle B of Title II of the Act revises some of the provisions of CERCLA section 101(35) and provides some Superfund liability limitations for bona fide prospective purchasers and

contiguous property owners, in addition to clarifying the requirements necessary to establish the innocent landowner defense under CERCLA. Among the requirements added to CERCLA is the requirement that such parties undertake "all appropriate inquiry" into prior ownership and use of certain property.

The Act requires EPA to develop regulations within two years which will establish standards and practices for how to conduct all appropriate inquiry. In addition, in the Brownfields Law, Congress established, as the Federal interim standard for conducting all appropriate inquiry, the procedures of the American Society for Testing and Materials (ASTM) including Standard E1527-97 (entitled "Standard Practice for Environmental Site Assessment: Phase 1 Environmental Site Assessment Process"). This interim standard applies to properties purchased on or after May 31, 1997 until EPA promulgates Federal regulations establishing standards and practices for conducting all appropriate inquiry.

Today's direct final rule clarifies that persons may use the current ASTM standard, E1527-2000 for conducting all appropriate inquiry and establishing the innocent landowner defense under CERCLA section 101(35)(B) for properties purchased on or after May 31, 1997, while continuing also to recognize use of ASTM's previous standard, E1527-97.

Following enactment of the Brownfields Law, EPA received inquiries from interested parties expressing concerns that the ASTM standard for all appropriate inquiry that was cited in the Act (*i.e.*, ASTM's 1997 standard) has been updated and consequently is no longer available from ASTM. The ASTM standard cited in the Brownfields Law has been updated and replaced with ASTM's revised standard, "Standard E1527-2000." The revised standard has the same name as the previous standard. The revised standard is not significantly different from the previous standard. Revisions to the 1997 standard that are incorporated into the E1527-2000 updated standard include provisions for potential expansion of an assessment, guidance for better identification of the purpose of the assessment, a provision for inquiring about historical remediation, a provision for facilitating reconstruction of the assessment by a different assessor, and amended guidance for selecting an environmental professional. A summary of the revisions made to the 1997 ASTM standard and included in the 1527-2000 standard is provided in the document "Overview of Additions and Modifications to ASTM 1527-2000