

Standard from the 1997 ASTM Standard." A copy of this document, as well as an annotated copy of the 1997 ASTM standard identifying the specific modifications incorporated into the ASTM 2000 standard, is included in the regulatory docket for today's rule.

EPA believes that it is consistent with Congressional intent to require the use of the most current standards available until EPA has promulgated its standard and not to require the use of standards that have been superseded or that generally are not available. In addition, Congress did not intend to place an undue burden on interested parties seeking to obtain and implement the standard. Given that the version of the ASTM standard cited in the Brownfields Law is no longer available, such an undue burden may occur, if EPA does not undertake today's action. In particular, recipients of grant monies awarded under the new Brownfields Law may experience an undue burden, if required to comply with the ASTM standard that no longer is available or recognized as the current industry standard. Therefore, with today's action, EPA is clarifying that for the purposes of CERCLA section 101 (35)(B), until the Agency promulgates regulations implementing standards for all appropriate inquiry, parties may use either the procedures provided in ASTM E1527-2000, entitled "Standard Practice for Environmental Site Assessment: Phase I Environmental Site Assessment Process," or the standard ASTM E1527-97. EPA has determined that it is reasonable to promulgate this clarification as a direct final rule that is effective immediately, rather than delay promulgation of the clarification until after receipt and consideration of public comments, to avoid any further confusion with regard to the acceptable standard for conducting all appropriate inquiry and to ensure that new grant recipients are not placed under any undue burden.

III. Today's Action

EPA is publishing this direct final rule because the Agency wants to reduce any undue burden placed upon grant recipients. In addition, the Agency views this as a noncontroversial action and anticipates no adverse comment. We believe that today's action is reasonable and can be promulgated without consideration of public comment because it: (1) Allows for the use of the updated version of the standard cited in the Brownfields Law, while also allowing the use of the former version, and the updated version of the standard is similar to, and not significantly different than, the previous

standard; (2) reduces the burden of obtaining an appropriate standard, given that the standard cited in the Brownfields Law is no longer available; and (3) this action merely clarifies an interim standard that is effective only until EPA promulgates a final rule replacing the interim standard.

Although we view today's action as noncontroversial, in the "Proposed Rules" section of today's **Federal Register**, we are publishing a separate proposed rule containing the clarification summarized above. That proposed rule will serve as the proposal to be revised, if adverse comments are received. If EPA does not receive adverse comment in response to this rule prior to February 24, 2003, this rule will become effective on March 25, 2003, without further notice. If EPA receives adverse comment, we will publish a timely withdrawal of this rule in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time and before February 24, 2003.

IV. Future Rulemaking Setting Standards for "All Appropriate Inquiry"

EPA also is announcing today its progress in developing regulatory standards for conducting "all appropriate inquiry." The Brownfields Law requires that EPA promulgate such standards within two years of enactment of the law, or by January 2004. 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 Act 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 Act.

EPA is soliciting the advice and input of public and private stakeholder groups in developing the regulations for conducting all appropriate inquiry in accordance with the criteria set forth by Congress. We understand that voluntary standards developed by standards developing organizations, such as the ASTM 1527-2000 standard, are available and are currently being used to conduct all appropriate inquiry in conjunction with private real estate property transactions. In addition, site assessment protocols have been

established under the Federal Superfund remedial action and RCRA corrective action programs, as well as within State clean up programs. We intend to develop Federal regulations that build upon the depth of experience accrued in both the public and private sectors in implementing these standards and programs. We believe that building upon currently available private sector standards for undertaking all appropriate inquiry as well as building on the experience of state and Federal government site assessment programs is the most efficient and economical way to develop Federal regulatory standards that will both meet the criteria set in the Brownfields Law and ensure minimal disruption to the private market and State and Federal site assessment programs.

To ensure that we obtain a diverse array of input from both private sector stakeholders and state program officials, EPA is developing the federal regulations by soliciting private and public sector input under the convening stage of the negotiated rulemaking process, and may supplement our information gathering through the conduct of public meetings. We initiated the convening stage of a negotiated rulemaking process to identify appropriate stakeholder groups and solicit advice and input from experienced public and private sector users of similar standards. Following an evaluation of stakeholder interests and input during the convening process, we either will announce our intent to continue with a negotiated rulemaking process, or announce our intent to solicit public input, by way of an additional notice or a public meeting, on options for a proposed rulemaking that will set standards for all appropriate inquiry. We anticipate announcing our intended approach for the development of a proposed rulemaking in the **Federal Register** during the winter of 2003. Any questions regarding our future regulatory effort should be directed to the parties listed above in the section entitled **FOR FURTHER INFORMATION CONTACT**.

V. Statutory and Executive Order Reviews

a. 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.

b. 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.*)