

c. 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.

d. 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) (Pubic 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.

e. 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).

f. This rule does not have tribal implications, as specified by Executive Order 13175 (65 FR 67249, November 6, 2000).

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

h. 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.

i. 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 allows for the use of the American Society for Testing and Materials (ASTM) standard known as Standard E1527-2000 and entitled "Standard Practice for Environmental Site Assessment: Phase 1 Environmental Site Assessment Process" as the interim standard for conducting all appropriate inquiry for properties purchased on or after May 31, 1997, or in the alternative, the use of Standard E1527-97, and entitled "Standard Practice for Environmental Site Assessment: Phase 1 Environmental Site Assessment Process."

j. Today's action does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

k. The Congressional Review Act (5 U.S.C. 801 *et seq.*), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective March 25, 2003 unless EPA publishes a withdrawal in the **Federal Register**.

List of Subjects in 40 CFR Part 312

Environmental protection, Administrative practice and procedure, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: January 17, 2003.

Christine Todd Whitman,
Administrator.

For the reasons set out in the preamble, title 40 chapter J of the code of Federal Regulations is amended as follows:

1. Title 40 Chapter J is amended by adding new part 312 to read as follows:

PART 312—INNOCENT LANDOWNERS, STANDARDS FOR CONDUCTING ALL APPROPRIATE INQUIRY

Subpart A—Introduction

Sec.

312.1 Purpose and applicability.

312.2 Standards and practices for all appropriate inquiry.

Subpart B—[Reserved]

Authority: Section 101(35)(B) of CERCLA, as amended, 42 U.S.C. 9601(3)(B).

Subpart A—Introduction

§ 312.1 Purpose and applicability.

(a) *Purpose.* The purpose of this section is to provide standards and procedures for "all appropriate inquiry" for the purposes of CERCLA section 101(35)(B).

(b) *Applicability.* This section is applicable to: potential innocent landowners conducting all appropriate inquiry under section 101(35)(B) of CERCLA; bona fide prospective purchasers defined under section 101(40) of CERCLA; contiguous property owners under section 107(q) of CERCLA; and persons conducting site characterization and assessments with the use of a grant awarded under CERCLA section 104(k)(2)(B)(ii).

§ 312.2 Standards and practices for all appropriate inquiry.

(a) With respect to property purchased on or after May 31, 1997, the procedures of the American Society for Testing and Materials (ASTM) 1527-97 and the procedures of the American Society for Testing and Materials (ASTM) 1527-2000, both entitled "Standard Practice for Environmental Site Assessment: Phase 1 Environmental Site Assessment Process," shall satisfy the requirements for conducting "all appropriate inquiry" under section 101(35)(B)(i)(I) of CERCLA, as amended