

5305T, 1200 Pennsylvania Ave., NW, Washington, DC, 20460, Attention Docket ID No. SFUND-2002-0007.

5. *By Hand Delivery or Courier.* Deliver your comments to: EPA Docket Center, EPA West Building Room No. B-102, 1301 Constitution Ave., NW., Washington, DC, 20004. Attention Docket ID No. SFUND-2002-0007. Such deliveries are only accepted during the Docket's normal hours of operation as identified above.

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
- III. Today's Action
- IV. Future Rulemaking Setting Standards for "All Appropriate Inquiry"
- V. Statutory and Executive Order Reviews

I. Statutory Authority

This proposed 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 proposes to clarify 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 Act"). 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 Brownfields Law requires EPA to develop regulations within two years which will establish standards and practices for how to conduct all appropriate inquiry. In addition, the Brownfields Law establishes interim standards for conducting all appropriate inquiry that will remain in effect until EPA promulgates regulations. 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.

EPA is proposing to clarify 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 law (*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 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 proposed 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 proposing 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