



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 312

[EPA-HQ-SFUND-2014-0474; FRL-9911-81-OSWER]

Amendment to Standards and Practices for All Appropriate Inquiries.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to amend the standards and practices for conducting all appropriate inquiries under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) to remove the reference to ASTM International's E1527-05 standard practice. This 2005 standard practice recently was replaced with updated standard E1527-13 by ASTM International, a widely recognized standards development organization. Specifically, EPA is proposing to amend the "All Appropriate Inquiries Rule" to remove the reference to ASTM International's E1527-05 "Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process."

DATES: Written comments must be received by **[Insert date 30 days after**

date of publication in the Federal Register].

ADDRESSES: Submit your comments, identified by Docket ID No. **EPA-HQ-SFUND-2014-0474** by one of the following methods:

- www.regulations.gov: Follow the on-line instructions for submitting comments.
- Email: superfund.docket@epa.gov
- Mail: Superfund Docket, Environmental Protection Agency,
Mailcode: 2822T, 1200 Pennsylvania Ave., NW, Washington, DC
20460.
- Hand Delivery: EPA Headquarters West Building, Room 3334,
located at 1301 Constitution Ave., NW, Washington, DC. Such
deliveries are only accepted during the Docket's normal hours of
operation, and special arrangements should be made for deliveries of
boxed information. The EPA Headquarters Public Reading Room
hours of operation are 8:30 a.m. to 4:30 p.m. Eastern Standard Time,
Monday through Friday, excluding federal holidays.

Instructions: Direct your comments to Docket ID No. EPA-HQ-SFUND-2014-0474. EPA's policy is that all comments received will be included in

the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov website is an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA’s public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>

Docket: All documents in the docket are listed in the www.regulations.gov index. Certain types of information claimed as CBI, and other information whose disclosure is restricted by statute, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material, such as ASTM International's E1527-13 "Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process" will not be placed in EPA's electronic public docket but will be publicly available only in printed form in the official public docket. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the **HQ EPA Docket Center**, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, DC. The Public Reading Room at this docket facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Superfund Docket is (202) 566-9744.

FOR FURTHER INFORMATION CONTACT: For general information, contact the CERCLA Call Center at 800-424-9346 or TDD 800-553-7672 (hearing impaired). In the Washington, DC metropolitan area, call 703-412-

9810 or TDD 703-412-3323. For more detailed information on specific aspects of this rule, contact Patricia Overmeyer, Office of Brownfields and Land Revitalization (5105T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460-0002, 202-566-2774, overmeyer.patricia@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Regulated Entities

The EPA is proposing to remove the reference to the 2005 ASTM standard in the All Appropriate Inquiries Rule at 40 CFR part 312. In November 2013, ASTM International replaced its 2005 standard (ASTM E1527-05 “Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process”) with an updated standard, ASTM E1527-13 “Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process.” The updated 2013 standard is a currently recognized industry consensus-based standard to conduct all appropriate inquiries under CERCLA. In December 2013, EPA published a final rule indicating that parties who purchase potentially contaminated properties may use the ASTM E1527-13 standard practice when conducting all appropriate inquiries pursuant to CERCLA. Today’s proposed rule does not propose changes to the standards and practices included in the All

Appropriate Inquiries Rule. Any party who wants to conduct all appropriate inquiries under CERCLA may follow the standards and procedures set forth in the All Appropriate Inquiries Rule at 40 CFR part 312 (70 FR 66070) or use the new ASTM E1527-13 standard.

Parties potentially affected by this action are those who perform all appropriate inquiries, including public and private parties who intend to claim protection from CERCLA liability as bona fide prospective purchasers, contiguous property owners, or innocent landowners. In addition, any party conducting a site characterization or assessment on a property with a brownfields grant awarded under CERCLA section 104(k)(2)(B)(ii) may 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 North American Industry Classification System (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	926110, 925120
Federal Government	925120, 921190, 924120

The list of potentially affected parties 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 parties not listed in the table and EPA welcomes comments on this issue.

Content of Today’s Proposed Rule

- I. Regulated Entities
- II. Statutory Authority
- III. Background
- IV. Overview of Today’s Action
- V. Effective Date of Final Action
- VI. Statutory and Executive Order Reviews

II. Statutory Authority

This proposed rule, which proposes to amend the All Appropriate Inquiries Rule at 40 CFR part 312 setting Federal standards for the conduct

of “all appropriate inquiries,” is authorized under section 101(35)(B) of CERCLA (42 U.S.C. 9601), as amended by the Small Business Liability Relief and Brownfields Revitalization Act of 2002.

III. Background

On January 11, 2002, President Bush signed the Small Business Liability Relief and Brownfields Revitalization Act, Public Law 107-118 (“the Brownfields Amendments”), which amended CERCLA. In general, the Brownfields Amendments provide funds to assess and clean up brownfields sites; clarify CERCLA liability provisions related to certain purchasers of contaminated properties; and provide funding to enhance state and tribal cleanup programs. Subtitle B of the Brownfields Amendments revises some of the provisions of CERCLA section 101(35) and limits CERCLA liability under Section 107 (42 U.S.C. 9607) for bona fide prospective purchasers and contiguous property owners, in addition to clarifying the requirements necessary to establish the innocent landowner defense under CERCLA. The Brownfields Amendments provide that parties purchasing potentially contaminated property must undertake “all appropriate inquiries” into prior ownership and use of the property at issue prior to purchase in order to qualify for protection from CERCLA liability.

The Brownfields Amendments also require EPA to develop regulations establishing standards and practices for conducting all appropriate inquiries. On November 1, 2005, EPA promulgated regulations that set standards and practices for all appropriate inquiries (70 FR 66070). In that rule, EPA referenced the ASTM E1527-05 “Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process” and authorized its use to comply with the rule. On December 23, 2008, EPA amended the rule to recognize another ASTM International standard as compliant with the rule, ASTM E2247-08 “Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process for Forestland or Rural Property” (73 FR 78716).

In November 2013, ASTM International published ASTM E1527-13, “Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process.” In early 2013, at ASTM International’s request, EPA reviewed this standard and determined that a party’s use of the standard would be compliant with the All Appropriate Inquiries Rule.

On December 30, 2013, EPA published a final rule which provided that persons conducting all appropriate inquiries may use the procedures included in ASTM E1527-13 to comply with the All Appropriate Inquiries

Rule (78 FR 79319). In the final rule, EPA indicated that it intended to publish a proposed rule to amend the All Appropriate Inquiries Rule to remove the reference to ASTM E1527-05 Phase I Environmental Site Assessment Standard.

With today's action, EPA is proposing to amend the All Appropriate Inquiries Rule to remove the reference to the historical 2005 ASTM standard (ASTM E1527-05). EPA is retaining the reference to the recently revised ASTM standard, E1527-13.

IV. Overview of Today's Action

EPA is proposing to amend the All Appropriate Inquiries Rule at 40 CFR 312 to remove the reference to ASTM International's E1527-05 "Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process." In November 2013, ASTM International designated this standard an "historical standard" and replaced it with the updated ASTM E1527-13 "Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process."

Today's proposed action would not prevent parties from continuing to use other standards, methods, or customary business practices for conducting all appropriate inquiries, so long as they comply with the standards and

procedures set forth in the All Appropriate Inquiries Rule. Instead, today's proposed action removes the reference to a standard that ASTM International no longer recognizes as current and that it no longer represents as reflecting its current consensus-based standard.

EPA is proposing this action because the Agency wants to reduce any confusion associated with the regulatory reference to a historical standard that is no longer recognized by its own promulgating organization as meeting its standards for good customary business practice. In addition, we believe that today's proposed action would promote the use of the standard currently recognized by ASTM International as the consensus-based, good customary business standard.

For properties acquired between November 1, 2005 and the effective date of this proposed action, should it be finalized, the 2005 ASTM standard (ASTM E1527-05) complies with the All Appropriate Inquiries Rule as it was in effect at the time the property was acquired.

EPA's proposed action includes no proposed changes to the All Appropriate Inquiries Rule other than to remove a reference to the historical ASTM E1527-05 standard. It does not impact the reference to the recently revised ASTM standard, E1527-13 in the All Appropriate Inquiries Rule.

EPA seeks comments on today's proposed action. EPA is not seeking comments on the standards and practices included in the All Appropriate Inquiries Rule published at 40 CFR 312, nor on the references to any other standards included in 40 CFR 312.11.

V. Effective Date of Final Action

Today's action is a proposed rule. The Agency is seeking comment on the proposal to remove the current reference to the ASTM E1527-05 Phase I Environmental Site Assessment Standard in the All Appropriate Inquiries Rule. After considering all public comments received in response to the proposed action, EPA may publish a final rule that will result in the removal of the current reference to the ASTM E1527-05 standard. The EPA anticipates that some parties, at the time that EPA publishes a final rule to remove the reference to the ASTM E1527-05 standard, may still be using the historical standard to comply with the provisions of all appropriate inquiries. Therefore, the Agency anticipates providing for a delayed effective date of the final action to provide parties with an adequate opportunity to complete AAI investigations that may be ongoing and to become familiar with the updated industry standard (ASTM E1527-13). EPA proposes an effective date for removing the reference to ASTM E1527-05 in the AAI rule as one year after the publication of the final rule. EPA is

soliciting comments on the proposal to delay the effective date of a final rule removing the reference to the ASTM E1527-05 standard for one year following publication of the final rule.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This proposed action is not a "significant regulatory action" under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

This proposed action will not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. Burden is defined at 5 CFR 1320.3(b). The current regulation does not have an information collection burden and today's action's only change to the regulation is to delete the reference to a historical standard that recently was replaced with an updated version of the standard. A final rule referencing the updated version of the standard was published by EPA on December 30, 2013 (78 FR 79319).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis for any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act 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. Small entities include small business, small organizations, and small governmental jurisdictions.

Today's proposed action does not change the current regulatory status quo and does not impose any regulatory requirements. After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

This proposed action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531-1538 for state, local, or tribal governments or the private sector. This proposed action imposes no enforceable duty on any state, local or tribal governments or the private sector. This proposed action merely removes a reference to a historical voluntary consensus standard. The proposed action imposes no new regulatory requirements and will result in no additional

burden to any entity. Therefore, this action is not subject to the requirements of sections 202 or 205 of UMRA.

As stated above, this proposed rule also is not subject to the requirements of section 203 of UMRA because it contains no new regulatory requirements that might significantly or uniquely affect small governments.

E. Executive Order 13132: Federalism

This proposed action does not have federalism implications. Today's proposed action will not substantially change the current regulation; it merely removes a reference to a historical voluntary consensus standard. It 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 EO 13132. Thus, EO 13132 does not apply to this rule.

In the spirit of EO 13132, and consistent with EPA policy to promote communication between EPA and state and local governments, EPA specifically solicits comment on this proposed action from state and local officials.

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This proposed action does not have tribal implications, as specified

in EO 13175 (65 FR 67249, November 9, 2000). This proposed action merely removes a reference to a historical voluntary consensus standard. Today's proposed action does not change any current regulatory requirements and therefore will not impose any impacts upon tribal entities. Thus, EO 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5-501 of the EO has the potential to influence the regulation. This proposed action is not subject to EO 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This proposed action is not subject to EO 13211 (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under EO 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 104-113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action involves technical standards. Therefore, the requirements of section 12(d) of the NTTAA (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 proposed rule complies with the NTTAA as it allows persons conducting all appropriate inquiries to use the procedures included in the updated ASTM International standard known as Standard E1527-13 and entitled "Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process to comply with the All Appropriate Inquiries Rule." The rule also deletes reference to a standard that is no longer recognized as current by the standards developing organization responsible for its development.

The EPA welcomes comments on this aspect of the proposed rulemaking.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income

Populations

Executive Order 12898 (59 FR 7629, Feb. 16, 1994), establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. Today's action merely removes a reference to a historical voluntary consensus standard and does not impose any new requirements.

List of Subjects in 40 CFR Part 312

Environmental protection, Administrative practice and procedure,
Hazardous substances.

Dated: June 6, 2014

Mathy Stanislaus,

Assistant Administrator,

Office of Solid Waste and Emergency Response.

For the reasons set out in the preamble, title 40, chapter I, of the Code of Federal Regulations proposes to amend as follows:

Part 312 – INNOCENT LANDOWNERS, STANDARDS FOR CONDUCTING ALL APPROPRIATE INQUIRIES

1. The authority citation for part 312 continues to read as follows:

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

Subpart B—Definitions and References

§ 312.11 [Amended]

2. Section 312.11 is amended by removing paragraph (a) and redesignating paragraphs (b) and (c) as paragraphs (a) and (b).

**[FR Doc. 2014-14032 Filed 06/16/2014 at 8:45 am; Publication Date:
06/17/2014]**