



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 312

[EPA-HQ-OLEM-2016-0786; FRL-9958-47-OLEM]

Amendment to Standards and Practices for All Appropriate Inquiries under CERCLA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to amend the Standards and Practices for All Appropriate Inquiries to update an existing reference to a standard practice recently revised by ASTM International, a widely recognized standards development organization. Specifically, this direct final rule amends the All Appropriate Inquiries Rule to reference ASTM International's E2247-16 "Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process for Forestland or Rural Property" and allow for its use to satisfy the statutory requirements for conducting all appropriate inquiries under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA).

DATES: This rule is effective on [INSERT DATE 90 DAYS FOLLOWING DATE OF PUBLICATION], without further notice, unless EPA receives adverse comment by [INSERT DATE 30 DAYS FOLLOWING DATE OF PUBLICATION]. If EPA receives such comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OLEM-2016-0786 at <http://www.regulations.gov>. Follow the online instructions for submitting comments.

Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may

publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

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, D.C. 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, D.C. 20460-0002, 202-566-2774, or overmeyer.patricia@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Why is EPA Using a Direct Final Rule?

EPA is publishing this rule without a prior proposed rule because we view this as a noncontroversial action and anticipate no adverse comment as this action is just revising an existing reference in part 312 to the updated version of a standard practice recently made available by ASTM International (E2247-16). However, in the “Proposed Rules” section of this

Federal Register, we are publishing a separate document that will serve as the proposed rule if adverse comments are received on this direct final rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, see the **ADDRESSES** section of this document.

If EPA receives adverse comment, we will publish a timely withdrawal in the Federal Register informing the public that this direct final rule will not take effect. We would address all public comments in any subsequent final rule based on the proposed rule.

B. Does this Action Apply to Me?

This action offers certain parties the option of using an available industry standard to conduct all appropriate inquiries at certain properties. Parties purchasing large tracts of forested land and parties purchasing large rural properties may use the ASTM E2247-16 standard practice to comply with the all appropriate inquiries requirements of CERCLA. This rule does not require any entity to use this standard. Any party who wants to claim protection from liability under CERCLA may follow the regulatory requirements of the All Appropriate Inquiries Rule at 40 CFR part 312, use the ASTM E1527-13 Standard Practice for Phase I Environmental Site Assessments to comply with the all appropriate inquiries provision of CERCLA, or use the standard recognized in this direct final rule, the ASTM E2247-16 standard.

Entities potentially affected by this action, or who may choose to use the newly referenced ASTM standard to perform all appropriate inquiries, include public and private parties who, as bona fide prospective purchasers, contiguous property owners, or innocent landowners, are purchasing large tracts of forested lands or large rural properties 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 on a property that consists of large

tracts of forested land or a large rural property with a brownfields grant awarded under CERCLA Section 104(k)(2)(B)(ii) may be affected by this 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 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.”

C. Statutory Authority

This direct final rule amends the All Appropriate Inquiries Rule setting federal standards for the conduct of “all appropriate inquiries” at 40 CFR part 312. The All Appropriate Inquiries Rule sets forth standards and practices necessary for fulfilling the requirements of CERCLA section 101(35)(B) as required to obtain CERCLA liability relief and for conducting site

characterizations and assessments with the use of brownfields grants per CERCLA section 104(k)(2)(B)(ii).

II. Background

On January 11, 2002, President Bush signed the Small Business Liability Relief and Brownfields Revitalization Act (“the Brownfields Amendments”). In general, the Brownfields Amendments to CERCLA provide 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 cleanup programs. In part, subtitle B of the Brownfields Amendments revises some of the provisions of CERCLA section 101(35) and limits Superfund liability under Section 107 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 clarified the requirement that parties purchasing potentially contaminated property undertake “all appropriate inquiries” into prior ownership and use of property prior to purchasing the property in order to qualify for protection from CERCLA liability.

The Brownfields Amendments required EPA to develop regulations establishing standards and practices for how to conduct all appropriate inquiries. EPA promulgated regulations that set standards and practices for all appropriate inquiries on November 1, 2005 (70 FR 66070). In the final regulation, EPA referenced, and recognized as compliant with the final rule, the ASTM E1527-05 “Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process.” The regulation was amended in December 2013 to recognize the revised ASTM E1527-13, “Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process” (78 FR 79319). EPA also amended the All

Appropriate Inquiries Rule in December 2008 to recognize another ASTM standard as compliant with the final rule, the ASTM E2247-08 “Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process for Forestland or Rural Property” (73 FR 78716). Therefore, the All Appropriate Inquiries Rule (40 CFR part 312) currently allows for the use of both the ASTM E1527-13 and the ASTM E2247-08 standards to conduct all appropriate inquiries, in lieu of following requirements included in the final rule. Note that in October 2014, EPA withdrew the reference to the ASTM E1527-05 standard from the AAI rule (79 FR 60087).

Since EPA promulgated the All Appropriate Inquiries Rule setting standards and practices for the conduct of all appropriate inquiries, ASTM International published a revised Phase I site assessment standard for conducting Phase I environmental site assessments of large tracts of rural and forestland properties. This standard, ASTM E2247-16, “Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process for Forestland or Rural Property,” was reviewed by EPA, in response to a request for its review by ASTM International, and determined by EPA to be compliant with the requirements of the All Appropriate Inquiries Rule.

II. What Does This Action Do?

This direct final rule amends the All Appropriate Inquiries Rule to allow the use of the recently revised ASTM standard, E2247-16, for conducting all appropriate inquiries, as required under CERCLA for establishing the innocent landowner defense, as well as qualifying for the bona fide prospective purchaser and contiguous property owner liability protections.

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (Public Law 104-113, section 12(d) (15U.S.C. 272)) directs agencies to use technical standards that are developed or adopted by voluntary consensus standards bodies, unless their use would be

inconsistent with applicable law or otherwise impracticable. ASTM International is an internationally recognized voluntary consensus standard body. The ASTM E2247-16 “Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process for Forestland or Rural Property” includes an environmental site assessment process that EPA finds is not inconsistent with the standards and practices included in the All Appropriate Inquiries Rule.

With this action, EPA is establishing that, parties seeking liability relief under CERCLA’s landowner liability protections, as well as recipients of brownfields grants for conducting site assessments, will be considered to be in compliance with the requirements for all appropriate inquiries, as required in the Brownfields Amendments to CERCLA, if such parties satisfy the applicability requirements and comply with the procedures provided in the ASTM E2247-16, “Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process for Forestland or Rural Property.” EPA determined that it is reasonable to promulgate this clarification as a direct final rule that is effective 90 days from the date of publication in the Federal Register, rather than delay promulgation of the clarification until after receipt and consideration of public comments. EPA made this determination based upon the Agency’s finding that the ASTM E2247-16 standard is “not inconsistent with,” and compliant with the All Appropriate Inquiries Rule and the Agency sees no reason to delay allowing for its use in conducting all appropriate inquiries. The Agency notes that this action does not require any party to use the ASTM E2247-16 standard. Any party conducting all appropriate inquiries to comply with the CERCLA requirements at section 101(35)(B) for the innocent landowner defense, the contiguous property owner liability protection, or the bona fide prospective purchaser liability protection may continue to follow the provisions of the All Appropriate

Inquiries Rule at 40 CFR part 312, use the ASTM E1527-13 Standard or use the ASTM E2247-16 standard, as applicable.

In taking this action, the Agency is allowing for the use of an additional recognized standard or customary business practice, in complying with a federal regulation. This action does not require any person to use the newly revised standard. This action merely allows for the use of ASTM International's E2247-16 "Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process for Forestland or Rural Property" for those parties purchasing relatively large tracts of rural property or forestlands who want to use the ASTM E2247-16 standard in lieu of the following specific requirements of the all appropriate inquiries rule or the ASTM E1527-13 standard.

The Agency notes that there are no significant differences between the regulatory requirements in the All Appropriate Inquiries Rule and the standards and practices included in the two ASTM standards (ASTM E1527-13 and ASTM E2247-16). To facilitate an understanding of the revisions to the ASTM E2247-08 Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Standard for Forestland or Rural Property, which was recognized by EPA as compliant with the requirements of the all appropriate inquiries regulation in 2013, and the revised ASTM E2247-16 Standard, which replaces the ASTM E2247-08 standard, EPA developed, and placed in the docket for this action, the document "Summary of Updates and Revisions to ASTM E2247 Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process for Forestland or Rural Property." Also in the docket for this action is the document "Comparison of the All Appropriate Inquiries Regulation, the ASTM E1527-13 Phase I Environmental Site Assessment Process and the ASTM E2247-16 Phase I Environmental Site Assessment Process for Forestland or Rural Property

Standard.” This document provides an overview of the similarities and slight differences between the AAI regulatory requirements and the requirements included in the two ASTM phase I environmental site assessment standards.

This action includes no changes to the All Appropriate Inquiries Rule other than to update the reference in the regulation for the ASTM E2247 standard. This action replaces the reference to the ASTM E2247-08 “Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process for Forestland or Rural Property” in the All Appropriate Inquiries Rule with the updated ASTM E2247-16 standard of the same name. EPA is not seeking comments on the standards and practices included in the final rule published at 40 part 312. Also, EPA is not seeking comments on the ASTM E2247-16 standard. EPA’s only action with this direct final rule is recognition of the ASTM E2247-16 standard as compliant with the final rule, and therefore it is only this action on which the Agency is seeking comment.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993) and Executive Order 13563 (76 FR 3821, January 21, 2011), this action is not a “significant regulatory action” and is therefore not subject to OMB review. Further, this action will not have a significant impact on a substantial number of small entities and, as a result, is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Because this action does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate or the private sector in any one year, and does not contain regulatory requirements that might significantly or uniquely affect small governments, it is not subject to Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1999 (UMRA) (Pub. L. 104-4). This action does not create new binding legal requirements that substantially and directly affect Tribes under

Executive Order 13175 (65 FR 67249, November 9, 2000). This action does not have significant Federalism implications under Executive Order 13132 (64 FR 43255, August 10, 1999). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq., nor does it require any special considerations under Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994).

A. National Technology Transfer and Advancement Act (NTTAA)

This action involves technical standards. This action allows for the use of the ASTM International Standard known as Standard E2247-16 and entitled “Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process for Forestland or Rural Property.”

B. Congressional Review Act

This action is subject to the Congressional Review Act (CRA), and the EPA will submit a rule report to each House of Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 312

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

Dated: June 12, 2017.

Barry N. Breen,
Acting Assistant Administrator,
Office of Land and Emergency Management.

For the reasons set out in the preamble, the Environmental Protection Agency amends title 40 chapter I of the code of Federal Regulations 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).

2. Section 312.11 is amended by revising paragraph (a) to read as follows:

§312.11 References.

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(a) The procedures of ASTM International Standard E2247-16 entitled “Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process for Forestland or Rural Property.” This standard is available from ASTM International at www.astm.org, 1-610-832-9585.

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[FR Doc. 2017-12841 Filed: 6/19/2017 8:45 am; Publication Date: 6/20/2017]