



6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 312

[EPA-HQ-SFUND-2013-0513; FRL-9845-9]

#### Amendment to Standards and Practices for All Appropriate Inquiries

**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 reference a standard practice recently made available 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 E1527-13 "Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process" and allow for its use to satisfy the requirements for conducting all appropriate inquiries under the Comprehensive Environmental Response, Compensation and Liability Act.

**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 rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-SFUND-2013-0513 by one of the following methods:

- [www.regulations.gov](http://www.regulations.gov): Follow the on-line instructions for submitting comments.
- Email: [superfund.docket@epa.gov](mailto:superfund.docket@epa.gov)
- Fax: 202-566-9744
- 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-2013-0513. 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](http://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](http://www.regulations.gov) or e-mail. The [www.regulations.gov](http://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](http://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 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](http://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](http://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, D.C. metropolitan area, call 703-412-9810 or TDD 703-412-3323. For more detailed information on specific aspects of this rule, contact Rachel Lentz, Office of Brownfields and Land Revitalization (5105T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, D.C. 20460-0002, 202-566-2745, or [lentz.rachel@epa.gov](mailto:lentz.rachel@epa.gov).

## **SUPPLEMENTARY INFORMATION**

### **I. Regulated Entities**

Today's action offers certain parties the option of using an available industry standard to conduct all appropriate inquiries. Parties purchasing potentially contaminated properties may use the ASTM E1527-13 standard practice to comply with the all appropriate inquiries requirements of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). Today's rule does not require any entity to use this standard. Any party who wants to claim protection from liability under one of CERCLA's landowner liability protections may follow the regulatory requirements of the All Appropriate Inquiries Final Rule at 40 CFR 312, use the ASTM E1527-05 Standard Practice for Phase I Environmental Site Assessments to comply with the all appropriate inquiries provision of CERCLA, use the ASTM E2247-08 "Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment

Process for Forestland or Rural Property,” or use the recognized in today’s direct final rule, the ASTM E1527-13 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 potentially contaminated properties and wish to establish a limitation on CERCLA liability in conjunction with the property purchase. In addition, any entity 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 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.”

## **II. Statutory Authority**

This direct final rule amends the All Appropriate Inquiries Final Rule setting federal standards for the conduct of “all appropriate inquiries” at 40 CFR 312. The All Appropriate Inquiries Final Rule sets forth standards and practices necessary for fulfilling the requirements of CERCLA section 101(35)(B) as required to obtain CERCLA liability protection and for conducting site characterizations and assessments with the use of brownfields grants per CERCLA section 104(k)(2)(B)(ii).

### **III. 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 existing and establishes new CERCLA liability provisions related to certain types of owners contaminated properties; and provides funding to establish or enhance State and Tribal cleanup programs. The Brownfields Amendments revised some of the provisions of CERCLA Section 101(35) and limit 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 liability protection under CERCLA. The Brownfields Amendments clarified the requirement that parties purchasing potentially contaminated property undertake “all appropriate inquiry” 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 Fed. Reg. 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.” In December 2008, EPA amended the final rule to recognize another ASTM standard as compliant with the final rule, ASTM E2247-08 “Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process for Forestland or Rural Property.” Therefore, the final rule (40 CFR part 312) allows for the use

of the ASTM E1527-05 standard or the ASTM E2247-08 standard to conduct all appropriate inquiries, in lieu of following requirements included in the final rule.

Since EPA promulgated the All Appropriate Inquiries Final Rule setting standards and practices for the conduct of all appropriate inquiries, ASTM International published a revised standard for conducting Phase I environmental site assessments. This standard, ASTM E1527-13, “Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process,” 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 Final Rule.

Today’s direct final rule amends the All Appropriate Inquiries Final Rule to allow the use of the recently revised ASTM standard, E1527-13, for conducting all appropriate inquiries, as required under CERCLA for establishing the bona fide prospective purchaser, contiguous property owner, and innocent landowner liability protections.

With today’s action, 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, if such parties comply with the procedures provided in the ASTM E1527-13, “Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process.” EPA 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. EPA made this determination based upon the Agency’s finding that the ASTM E1527-13 standard is compliant with the All Appropriate Inquiries Final



Rule and the Agency sees no reason to delay allowing for its use in conducting all appropriate inquiries.

The Agency notes that today's action does not require any party to use the ASTM E1527-13 standard. Any party conducting all appropriate inquiries to comply with the CERCLA's bona fide prospective purchaser, contiguous property owner, and innocent landowner liability protections may continue to follow the provisions of the All Appropriate Inquiries Final Rule at 40 CFR part 312, use the ASTM E1527-05 Standard or use the ASTM E2247-08 standard.

In taking today's action, the Agency is allowing for the use of an additional recognized standard or customary business practice, in complying with a federal regulation. Today's action does not require any person to use the newly revised standard. Today's action merely allows for the use of ASTM International's E1527-13 "Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process" for those parties purchasing potentially contaminated properties who want to use the ASTM E1527-13 standard in lieu of the following specific requirements of the all appropriate inquiries final rule.

The Agency notes that there are no legally significant differences between the regulatory requirements and the two ASTM E1527 standards. To facilitate an understanding of the slight differences between the All Appropriate Inquiries Final Rule, the ASTM E1527-05 Phase I Environmental Site Assessment Standard and the revised ASTM E1527-13 "Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process," as well as the applicability of the E1527-13 standard to certain types of properties, EPA developed, and placed in the docket for today's action, the document "Summary of Updates and Revisions to ASTM E1527 Standard Practice for Environmental Site Assessments: Phase I Environmental

Site Assessment Process: How E1527-13 Differs from E1527-05.” The document provides a comparison of the two ASTM E1527 standards.

By taking today’s action, EPA is fulfilling the intent and requirements of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113.

Today’s action includes no changes to the All Appropriate Inquiries Rule other than to add an additional reference to the new ASTM E1527-13 standard. EPA is not seeking comments on the standards and practices included in the final rule published at 40 CFR part 312. Also, EPA is not seeking comments on the ASTM E1527-13 standard. EPA’s only action with today’s direct final rule is recognition of the ASTM E1527-13 standard as compliant with the final rule and, therefore it is only this action on which the Agency is seeking comment.

#### **IV. This Action**

EPA is publishing this direct final rule without prior proposal because the Agency wants to provide additional flexibility for grant recipients or other entities that may benefit from the use of the ASTM E1527-13 standard. 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 allows for the use of a tailored standard developed by a recognized standards developing organization and that was reviewed by EPA and determined to be equivalent to the Agency’s final rule. Today’s action does not disallow the use of the previously recognized standards (ASTM E1527-05 or ASTM E2247-08) and it does not alter the requirements of the previously promulgated final rule. In addition, today’s action will potentially increase flexibility for some parties who may make use

of the new standard, without placing any additional burden on those parties who prefer to use either the ASTM E1527-05 standard, the ASTM E2247-08 standard, or follow the requirements of the All Appropriate Inquiries Final Rule when conducting all appropriate inquiries.

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 direct final rule prior to [insert date 30 days from date of publication of this rule], this rule will become effective on [insert date 90 days from publication of this rule], without further notice. If EPA receives adverse comment, we will publish a timely withdrawal of this direct final 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 [insert date 30 days from date of publication of this rule].

#### **V. 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. This action merely amends the All Appropriate Inquiries Rule to reference ASTM International's E1527-13 "Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process" and allow for its use to satisfy the requirements for conducting all appropriate inquiries under CERCLA. This action does not impose any requirements on any entity, including small entities. Therefore, pursuant to the

Regulatory Flexibility Act (5 U.S.C. 601 et seq.), after considering the economic impacts of this action on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This action does not contain any unfunded mandates or significantly or uniquely affect small governments as described in Sections 202 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 (63 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 action 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 action 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).

This action does involve technical standards; thus, the requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) does 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), whenever possible in lieu of creating proprietary, non-consensus standards.

Today's action is compliant with the spirit and requirements of the NTTAA. Today's action allows for the use of the ASTM International standard known as Standard E1527-13 and entitled "Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process."

The Congressional Review Act, 5 U.S.C. 801 et seq., generally provides that before certain actions may take effect, the agency promulgating the action must submit a report, which includes a copy of the action, 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**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule is effective on [insert date 90 days after publication of

this rule], unless EPA receives adverse comment by [insert date 30 days from publication of this rule].

**List of Subjects in 40 CFR Part 312**

Administrative practice and procedure, Hazardous substances.

Dated: August 5, 2013

Mathy Stanislaus,

Assistant Administrator,

Office of Solid Waste and Emergency Response.

For the reasons set out in the preamble, title 40 CFR chapter I is amended as follows:

**Part 312 – [AMENDED]**

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(3)(B).

**Subpart B—Definitions and References**

2. Section 312.11 is amended by adding paragraph (c) to read as follows:

**§312.11 References.**

\* \* \* \* \*

- (c) The procedures of ASTM International Standard E1527-13 entitled “Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process.” This standard is available from ASTM International at [www.astm.org](http://www.astm.org), 1-610-832-9585.

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