request a retest. If, on the other hand, the variation in test results is judged to reflect normal variability in test measurements, then the rule provides for averaging of three test runs, as is appropriate to enhance the reliability of the results.

III. EPA Action

EPA is approving the revisions to Illinois' rules for emissions averaging. EPA concludes that these rules codify standard practice in preparation and review of test plans and in averaging of three test runs in assessing compliance with mass emission limits.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state rules as meeting Federal requirements and imposes no additional requirements beyond those imposed under state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does 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). This action merely approves a state rule implementing Federal standards, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 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 will submit 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. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 8, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

Dated: April 11, 2003.

Bharat Mathur,

Acting Regional Administrator, Region 5.

■ For the reasons set out in the preamble, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart O—Illinois

■ 2. Section 52.720 is amended by adding paragraph (c)(164) to read as follows:

§ 52.720 Identification of plan.

* * * * *

(c) * * *

(164) On October 9, 2001, the State of Illinois submitted new rules regarding emission tests.

(i) Incorporation by reference.

(A) New rules of 35 Ill. Admin. Code Part 283, including sections 283.110, 283.120, 283.130, 283.210, 283.220, 283.230, 283.240, and 283.250, effective September 11, 2000, published in the Illinois Register at 24 Ill. Reg. 14428.

(B) Revised section 283.120 of 35 Ill. Admin. Code, correcting two typographical errors, effective September 11, 2000, published in the Illinois Register at 25 Ill. Reg. 9657.

* * * * *

[FR Doc. 03–11471 Filed 5–8–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 312

[FRL–7496–2]

RIN 2050–AF05

Clarification to Interim Standards and Practices for All Appropriate Inquiry Under CERCLA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule clarifies a provision included in recent amendments to the Comprehensive

Environmental Response, Compensation, and Liability Act (CERCLA). Specifically, today's final rule addresses the interim standard set by Congress in the Small Business Liability Relief and Brownfields Revitalization Act (''The Brownfields Law'') for conducting ''all appropriate inquiry.'' Today's action clarifies that, in the case of property purchased on or after May 31, 1997, the requirements for conducting ''all appropriate inquiry,'' including the conduct of such activities to qualify as a *bona fide* prospective purchaser and to establish an innocent landowner defense under CERCLA, can be satisfied through the use of ASTM Standard E1527–00, entitled ''Standard Practice for Environmental Site Assessment: Phase I Environmental Site Assessment Process.'' In addition, recipients of brownfields site assessment grants will be in compliance with the all appropriate inquiry requirements if they comply with either the ASTM Standard E1527–97, or the ASTM E1527–00 Standard.

DATES: This final rule is effective June 9, 2003.

ADDRESSES: The record for this rulemaking has been established under docket number SFUND–2002–0007. Copies of public comments received, EPA response, and all other supporting documents are available for review at the U.S. Environmental Protection Agency Docket Center located at 1301 Constitution Ave., NW., Washington, DC 20004. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. To review docket material, it is recommended that the public make an appointment by calling (202) 566–0276.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA/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 Cleanup and Redevelopment (5105T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0002, 202–566–2774. *overmeyer.patricia@epa.gov.*

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially affected 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) 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 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 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 or 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 INFORMATON CONTACT.**

Preamble

I. Statutory Authority

This final 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 clarifies 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 Law''). The Brownfields Law revises CERCLA section 101(35) and provides 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 that will establish standards and practices for how to conduct all appropriate inquiry. In addition, in the Brownfields Law, 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.

On January 24, 2003, EPA published a proposed rule (68 FR 3478) that would clarify for the purposes of CERCLA section 101(35)(B), and until the Agency promulgates regulations implementing standards for all appropriate inquiry, parties may use either the procedures provided in ASTM E1527–00, entitled ''Standard Practice for Environmental Site Assessment: Phase I Environmental Site Assessment Process,'' or the standard ASTM E1527–97. Today's rulemaking constitutes EPA's final action on the proposed rule.

III. Summary of Final Rule

Today's final rule clarifies that persons may use the current ASTM standard, E1527–00 for conducting all appropriate inquiry under CERCLA section 101(35)(B) for properties purchased on or after May 31, 1997. Such property owners also may continue to use ASTM's previous standard, E1527–97 for conducting all appropriate inquiry. In addition, parties receiving federal grant monies for the characterization and assessment of brownfields properties, may use either the 1997 or the 2000 version of the ASTM Phase I Site Assessment Standard when conducting site assessments using brownfields grant monies.

IV. Changes From the January 24, 2003 Proposed Rule

We made one minor change in the rule text. One commenter pointed out that the most recent version of the ASTM Phase I Environmental Site Assessment Standard was incorrectly referenced as ''ASTM E1527–2000'' in the proposed rule. We agree that the

correct nomenclature is ASTM E1527–00 and we made the corresponding correction in today's final rule.

The statutory cite referencing the award of brownfields assessment grants was corrected to reflect the appropriate cite.

V. Response to Comments

On January 24, 2003, EPA published a proposed rule (68 FR 3478) clarifying that both the 1997 and the 2000 version of ASTM's E1527 Phase I environmental site assessment standard may be used to comply with the interim standard for all appropriate inquiry established by Congress in the Brownfields Law. We received several comments on the proposed rule. A discussion of the significant comments follows. A complete copy of the comments and EPA's response are included in the docket for today's final rule.

One commenter, the Utah Professional Environmental Consultants Association, stated that EPA's proposal was inappropriate and biased because the site assessment method cited by EPA (the ASTM–E1527–00 standard) ''excludes methods of site auditing that do not conform to or acknowledge ASTM standards.'' The commenter also stated that ''States should be setting the standards for site assessment, not the Federal EPA, especially when the Agency is using the auditing style of a for-profit organization.''

The Ohio Department of Transportation (ODOT) commented that Ohio did not adopt the ASTM Phase I site assessment standards because it is designed for private commercial/industrial transactions and does not address ODOT's needs.

Section 101(35)(B)(iv)(II) of CERCLA provides that until EPA promulgates the regulations under (B)(ii), ''the procedures of the American Society for Testing and Materials * * * shall satisfy the requirements in clause (i).'' Thus, the decision to accept ASTM procedures was made by Congress, and not by EPA. The narrow purpose of today's rule is to recognize that there is a more recent ASTM standard than the one mentioned in the statute. In addition, EPA is developing a regulation pursuant to section 101(35)(B) that will establish new Federal standards for conducting all appropriate inquiry for the purposes of establishing liability and conducting property assessments with brownfields grants. States also are free to promulgate any standards they feel are appropriate for use in their State programs. To the extent any State has regulations establishing standards for all appropriate inquiry, EPA may consider the merits of such standards during the development of the Federal standard.

Another commenter, INTERTOX, stated that the ASTM standard ''inadequately accounts for regional differences in the availability of historical documents for the characterization of past uses of a site.'' The commenter also stated that all appropriate inquiry ''should vary according to the geographic location of the site under investigation.''

As stated in the proposed rule, the interim ASTM standard, as provided by Congress in the Brownfields Law, will be effective only until EPA promulgates regulations setting a federal standard for all appropriate inquiry. The issue of ''historical sources'' will be addressed in the subsequent rule, consistent with the statutory criteria for those standards and practices. While developing the ''all appropriate inquiry'' standards, EPA intends to consider multiple sources of information regarding technical standards and ''historical sources'' of site use.

Phase Engineering, Inc. submitted a comment pointing out that EPA incorrectly cited the most recent version of the ASTM Phase I site assessment standards as ''ASTM E1527–2000.'' The commenter pointed out that the correct nomenclature is ''ASTM E1527–00.'' Today's final rule includes the correct nomenclature.

VI. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is therefore not subject to review by the Office of Management and Budget.

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 FR U.S.C. 3501 *et seq.*).

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.

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) (Public 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.

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). In addition, this rule also does not have tribal implications, as specified by Executive Order 13175 (65 FR 67249, November 6, 2000).

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

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.

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 E1527–00 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.''

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).

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 June 9, 2003.

List of Subjects in 40 CFR Part 312

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

Dated: May 2, 2003.

Christine Todd Whitman,

Administrator.

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

■ 1. Subchapter 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.

Subpart B—[Reserved]

Authority: Section 101(35)(B) of CERCLA, as amended, 42 U.S.C. 9601(35)(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 103(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).

§ 312.2 Standards and practices for all appropriate inquiry.

With respect to property purchases 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) 1527–00, 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 by the Small Business Liability Relief and Brownfields Revitalization Act.

[FR Doc. 03–11473 Filed 5–8–03; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 209

[Docket No. FRA 1999–6086]

RIN 2130–AB15

Final Policy Statement Concerning Small Entities Subject to the Railroad Safety Laws

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule; final statement of agency policy.

SUMMARY: On August 11, 1997, in compliance with the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), FRA issued an Interim Policy Statement Concerning Small Entities Subject to the Railroad Safety Laws. This document discusses comments received in response to the Interim Policy Statement and adopts the Interim Policy Statement as the Final Policy Statement Concerning Small Entities Subject to the Railroad Safety Laws, with minor edits required to update the language. The Final Policy Statement contains FRA's communication and enforcement policy statements concerning small entities subject to the railroad safety laws. FRA has in place programs that devote special attention to the unique concerns and operations of small entities in the administration of the national railroad safety compliance and enforcement program.

DATES: This policy statement is effective May 9, 2003.

FOR FURTHER INFORMATION CONTACT: (1) *Principal Program Person:* Jeffrey Horn, Office of Safety Planning and Evaluation, Federal Railroad Administration, 1120 Vermont Ave. NW., Mail Stop 25, Washington, DC 20590 (tel: (202) 493–6283) (2) *Principal Attorney:* Melissa Porter, Office of Chief Counsel, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 10, Washington, DC 20590 (tel: (202) 493–6034) (3) *Enforcement Issues:* Douglas Taylor, Operating Practices Division, 1120 Vermont Ave., NW., Mail Stop 25, Washington, DC 20590 (tel: (202) 493–6255).

SUPPLEMENTARY INFORMATION:

I. Background

On August 11, 1997, FRA issued an Interim Policy Statement Concerning Small Entities Subject to the Railroad Safety Laws (62 FR 43024, August 11, 1997) (Interim Policy Statement) in compliance with the requirements of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) (SBREFA). SBREFA establishes requirements for federal agencies to follow with respect to small businesses, creates duties for the Small Business Administration (SBA), and amends portions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) and the Equal Access to Justice Act (EAJA) (5 U.S.C. 501, *et seq.*). The primary purposes of SBREFA are to implement recommendations developed at the 1995 White House Conference on Small Business, to provide small businesses enhanced opportunities for judicial review of final agency action, to encourage small business participation in the regulatory process, to develop accessible sources of information on