

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 312

[SFUND-2004-0001; FRL-7989-7]

RIN 2050-AF04

Standards and Practices for All Appropriate Inquiries

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) today is establishing federal standards and practices for conducting all appropriate inquiries as required under sections 101(35)(B)(ii) and (iii) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Today's final rule establishes specific regulatory requirements and standards for conducting all appropriate inquiries into the previous ownership and uses of a property for the purposes of meeting the all appropriate inquiries provisions necessary to qualify for certain landowner liability protections under CERCLA. The standards and practices also will be applicable to persons conducting site characterization and assessments with the use of grants awarded under CERCLA section 104(k)(2)(B).

DATES: This final rule is effective November 1, 2006.

ADDRESSES: EPA established a docket for this action under Docket ID No. SFUND-2004-0001. All documents in the docket are listed in the EDOCKET index at <http://www.epa.gov/edocket>. Although listed in the index, some information is not publicly available, i.e., information labeled Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the EPA Docket Center, EPA West Building, Room B102, 1301 Constitution Ave., NW., Washington, DC. 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 OSWER Docket is (202) 566-0276.

FOR FURTHER INFORMATION CONTACT: For further information on specific aspects

of today's rule, contact Patricia Overmeyer of EPA's Office of Brownfields Cleanup and Redevelopment at (202) 566-2774 or at overmeyer.patricia@epa.gov. Mail inquiries may be directed to the Office of Brownfields Cleanup and Redevelopment (5105T), 1200 Pennsylvania Ave. NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Who Potentially May be Affected by Today's Rule?

This regulation may affect most directly those persons and businesses purchasing commercial property or any property that will be used for commercial or public purposes and who may, after purchasing the property, seek to claim protection from CERCLA liability for releases or threatened releases of hazardous substances. Under section 101(35)(B) of CERCLA, as amended by the Small Business Liability Relief and Brownfields Revitalization Act (Pub. L. 107-118, 115 stat. 2356, "the Brownfields Amendments") such persons and businesses are required to conduct all appropriate inquiries prior to or on the date on which the property is acquired. Prospective landowners who do not conduct all appropriate inquiries prior to or on the date of obtaining ownership of the property may lose their ability to claim protection from CERCLA liability as an innocent landowner, bona fide prospective purchaser, or contiguous property owner.

In addition, today's rule will affect any party who receives a brownfields grant awarded under CERCLA section 104(k)(2)(B) and uses the grant money to conduct site characterization or assessment activities. This includes state, local and tribal governments that receive brownfields site assessment grants for the purpose of conducting site characterization and assessment activities. Such parties are required under CERCLA section 104(k)(2)(B)(ii) to conduct such activities in compliance with the standards and practices established by EPA for the conduct of all appropriate inquiries. EPA notes that today's rule also may affect other parties who apply for brownfields grants under the provisions of CERCLA section 104(k), since such parties may have to qualify as a bona fide prospective purchaser to ensure compliance with the statutory prohibitions on the use of grant funds under Section 104(k)(4)(B)(I). Any party seeking liability protection as a bona fide prospective purchaser, including

eligible brownfields grantees, must conduct all appropriate inquiries prior to or on the date of acquiring a property.

The background document, "Economic Impacts Analysis for the Proposed All Appropriate Inquiries Final Regulation" and the Addendum to this document provide a comprehensive analysis of all potentially impacted entities. These documents are available in the docket established for today's rule. A summary of potentially affected businesses is provided in the table below.

Our aim in the table below is to provide a guide for readers regarding entities likely to be directly regulated or indirectly affected by today's action. This action, however, may affect other entities not listed in the table. To determine whether you or your business is regulated or affected by this action, you should examine the regulatory language amending CERCLA. This language is found at the end of this **Federal Register** notice. 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**.

Industry category	NAICS code
Manufacturing	31-33
Wholesale Trade	42
Retail Trade	44-45
Finance and Insurance	52
Real Estate	531
Professional, Scientific and Technical Services	541
Accommodation and Food Services	72
Repair and Maintenance	811
Personal and Laundry Services	812
State, Local and Tribal Government	N/A

B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA established an official public docket for this action under Docket ID No. SFUND-2004-0001. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to today's action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Documents in the official public docket are listed in the index list in EPA's electronic public docket and comment system, EDOCKET. Documents may be available either electronically or in hard copy. Electronic documents may be viewed through EDOCKET. Hard copy