

VI. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA) of 1980 (Pub. L. 96-354), which amends the Administrative Procedure Act, requires Federal regulatory agencies to consider "small entities" throughout the regulatory development process. Section 603 of the RFA requires an initial screening analysis to be performed to determine whether a substantial number of small entities will be significantly affected by a regulation. Under current internal EPA guidance, however, any economic impact is considered a significant impact, and any number of small entities is a substantial number.¹⁴

In keeping with this policy, EPA has performed an initial evaluation of the domestic cement industry to determine whether or not there are small entities operating U.S. cement plants. The results of this analysis show that 23 of the 115 operating domestic cement plants are owned and operated by companies that are defined as small entities.¹⁵ These 23 plants are owned/operated by 16 of the 40 companies comprising the domestic cement industry.

Because in today's regulatory determination EPA does not establish new regulatory controls, the Agency has not conducted a full Regulatory Flexibility Analysis in support of today's action. EPA will, however, consider the potential impacts of the new regulations that will be developed

as a result of this action on these small entities. In the process, the Agency will examine potential impacts of regulatory alternatives on these entities, and identify and evaluate alternative approaches that could mitigate such impacts, as required by the RFA.

VII. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, 10/4/93), the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

- (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
- (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a "significant regulatory action" because it raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. This action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

VIII. Regulatory Determination Docket

Documents related to this regulatory determination, including EPA's response to the public comments, are available for inspection in the docket. The relevant docket numbers are: F-95-RCKD-FFFFF for the regulatory determination, F-94-RCKA-FFFFF for the RTC and F-94-RC2A-FFFFF for the NODA. The EPA RCRA docket is located at the following address: United States Environmental Protection Agency, EPA RCRA Docket, Room M2616, 401 M Street SW., Washington, DC 20460. The docket is open from 9 a.m. to 4 p.m., Monday through Friday, except for Federal holidays. The public must make an appointment to review docket materials. Call the docket clerk at (202) 260-9327. Copies are free up to 100 pages and thereafter cost \$0.15 per page.

In addition to the data and information that was included in the docket to support the RTC on CKD and the Technical Background Documents, the docket also includes the following documents:

- Analysis of and Responses to Public Comments on the Report To Congress; and
- Analysis of and Response to Comments on the Notice of Data Availability.

List of Subjects in 40 CFR Part 261

Environmental protection, Bevill exemption, Cement kiln dust, Incineration, Special wastes.

Dated: January 31, 1995.

Carol M. Browner,
Administrator.

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¹⁴ USEPA, 1992. *EPA Guidelines for Implementing the Regulatory Flexibility Act*, Office of Regulatory Management and Evaluation, Office of Policy, Planning, and Evaluation.

¹⁵ The definition of small entity is established by the Federal Small Business Administration, which has promulgated regulations found at 13 CFR 121.601. The criterion for determining small business status in the hydraulic cement industry (SIC Code 3241) is company-wide employment of less than 750 employees.