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[3125-01-M]

**COUNCIL ON ENVIRONMENTAL
QUALITY****ENVIRONMENTAL EFFECTS ABROAD OF
MAJOR FEDERAL ACTIONS****Executive Order 12144; Implementing and
Explanatory Documents**

MARCH 21, 1979.

AGENCY: Council on Environmental
Quality, Executive Office of the President.**ACTION:** Information Only: Publication
of Implementing Documents Concerning
Executive Order 12114.**SUMMARY:** On January 4, 1979, the
President signed Executive Order
12114, Environmental Effects Abroad
of Major Federal Actions (44 FR 1957
(Jan. 9, 1979)). The Council has received
numerous requests for the implementing
and explanatory documents. In order
efficiently to respond to such public
requests, the relevant documents are
reprinted in this issue of the **FEDERAL
REGISTER**. They include: (1) Memorandum
for Heads of Agencies With International
Activities, from Charles Warren, Chairman,
Council on Environmental Quality, and
Thomas R. Pickering, Assistant Secretary
of State for Oceans and International
Environmental and Scientific Affairs
(February 27, 1979), and (2) White
House Fact Sheet, Executive Order on
Environmental and Scientific Effects
Abroad (January 5, 1979).**FOR FURTHER INFORMATION
CONTACT:**Nicholas C. Yost, General Counsel,
Council on Environmental Quality,
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D.C.; 202-395-5750.NICHOLAS C. YOST,
General Counsel.

FEBRUARY 27, 1979.

**MEMORANDUM FOR HEADS OF AGENCIES
WITH INTERNATIONAL ACTIVITIES****From:** Charles Warren, Chairman,
Council on Environmental Quality;
Thomas R. Pickering, Assistant
Secretary of State for Oceans and
International Environmental and
Scientific Affairs.**Subject:** Implementation of Executive
Order 12114.On January 4, 1979, President
Carter signed Executive Order 12114,
entitled Environmental Effects
Abroad of Major Federal Actions. The
purpose of this memorandum is to
initiate the consultation process
required by this Executive Order.Section 2-1 of the Order provides
that every Federal agency taking
major federal actions encompassed
by and not exempted from the Order,which have significant effects on the
environment outside the geographical
borders of the United States, its
territories and possessions, shall
within 8 months after January 4,
1979, have in effect procedures for
implementing the Order. This Section
requires agencies to consult with the
Department of State and the Council
on Environmental Quality concerning
their implementing procedures before
placing them in effect.Categories of federal activities or
programs encompassed by the Order
are listed below. The Executive Order
defines the activities or programs as
those which significantly harm the
natural and physical environment
even though on balance the agency
believes the action to be beneficial
to the environment.1. Major Federal actions significantly
affecting the environment of the
global commons outside the jurisdiction
of any nation. This category includes
major federal actions significantly
affecting Antarctica, and the oceans
and weather and stratospheric
conditions in areas outside the
jurisdiction of any nation. Section
2-3(a).2. Major Federal actions significantly
affecting the environment of a
foreign nation which is not participating
with the United States in the activity
and which is not otherwise involved
in the action. This would include,
inter alia, planning, financing,
programming or implementing the
action. Section 2-3(b).3. Major Federal actions significantly
affecting the environment of a
foreign nation which provide to that
nation:(a) A product, or physical project
producing a principal product or an
emission or effluent, which is
prohibited or strictly regulated by
Federal law in the United States
because its toxic effects on the
environment create a serious public
health risk. Attached to this
memorandum is an illustrative list
showing the kinds of products,
emissions or effluents which are
covered by the Order and those that
are not. Section 2-3(c)(1).(b) A physical project which in the
United States is prohibited or
strictly regulated by Federal law to
protect the environment against
radioactive substances except for
actions exempted by Section 2-5(a)(v).
This category includes nuclear
reactors and nuclear waste
management facilities, and excludes
nuclear fuel. The Department of
State will act as lead agency for
conducting environmental reviews
for this category of actions. Section
2-3(c)(2).4. Major Federal action outside the
United States, its territories and
possessions significantly affecting
natural or ecological resources of
global importance that are
designated for protection.

tion by the President or, in the case of such a resource protected by international agreement binding on the United States by the Secretary of State. There have been no designations by the President or the Secretary of State as yet. Any agency making a recommendation to the President under Section 2-3(d) shall first consult with the Council on Environmental Quality and the Department of State. Agencies will be promptly advised of any designations made by the President and the Secretary of State under Section 2-3(d).

The State Department and the Council on Environmental Quality will be available to assist agencies in preparing their implementing procedures. Questions should be directed to: Foster Knight, 395-4616, Council on Environmental Quality; William H. Mansfield, 632-2418, Department of State.

It would be helpful in planning the consultations under the Executive Order if agencies would inform the Department of State and the Council on Environmental Quality as soon as feasible if they determine their authorities, programs, and activities are not encompassed by the Order.

ILLUSTRATIVE LIST¹ for Determining Compliance With Section 2-3(c)(1) OF EXECUTIVE ORDER 12114

1. The following is an illustrative list of the products, emissions, and effluents encompassed by Section 2-3(c)(1): asbestos, vinyl chloride, acrylonitrile, isocyanates, polychlorinated biphenyls, pesticides, mercury, beryllium, arsenic, cadmium, and benzene.

2. The following is an illustrative list of the products, emissions and effluents not encompassed by Section 2-3(c)(1): chlorine, caustic soda, ammonia, sulphuric acid, phosphoric acid, nitric acid, sulfur dioxide, nitrogen oxides, and sulfate and sulfite liquors.

[For Immediate Release, January 5, 1979]

Office of the White House Press Secretary

WHITE HOUSE FACT SHEET—EXECUTIVE ORDER ON ENVIRONMENTAL EFFECTS ABROAD

Better understanding of the effects which U.S. actions may have on the world's environment is important both for the nation's welfare and for the welfare of present and future generations of mankind. The President has signed an Executive Order which will help to carry out his Administration's strong commitment to global environmental protection through environmental review of U.S. actions affecting the rest of the world.

This Executive Order establishes for the first time government wide procedures for review of environmental effects abroad of

¹These illustrative lists are non-inclusive, for guidance in complying with Section 2-3(c)(1) of E.O. 12114. At the request of the White House these lists were prepared and agreed on by the Council on Environmental Quality and the Export-Import Bank.

major federal actions. The Order reconciles competing but legitimate goals of environmental protection and those of foreign and export policy and national security. The Order is based on my independent Constitutional authority, and also furthers the purpose of the National Environmental Policy Act and other environmental laws.

There is growing concern that governments are undertaking major actions without enough consideration of the environmental consequences. The unintended results may be to endanger health, safety, and the human environment. Under this Executive Order, federal agencies taking certain kinds of actions which may have significant environmental effects abroad will now establish procedures for taking these effects into consideration before taking action. When appropriate, agencies will make this information available to affected foreign nations.

At the same time, consideration of environmental impacts abroad bears on important foreign, economic and national security policy goals and interests. The Order is designed to minimize any adverse effects upon U.S. exports and to further the Administration's nuclear non-proliferation, national security and other foreign policy objectives.

The Executive Order applies to all federal agencies with activities outside the United States. Within eight months these agencies are to put into effect procedures for implementing the Order. The Council on Environmental Quality and the Department of State will work with agencies in preparing their implementing procedures, and will remain available to provide any advice or information that agencies may request to help them review environmental effects of their actions.

TYPES OF FEDERAL ACTIONS COVERED BY THE ORDER

For the *global commons* (such as oceans or Antarctica), the Order provides that environmental impact statements will be prepared for all major federal actions having significant environmental effects.

For *foreign countries* when their environments are significantly affected by major federal actions, agency procedures are to provide for the preparation of environmental review documents in the following situations:

—When the foreign nation affected is not participating with the United States and is not otherwise involved in the project (for example, a U.S.-financed dam in one country that cuts off water to another "innocent bystander" country);

—When the federal action provides a facility which is prohibited or strictly regulated in the United States to protect against radioactive hazards (for example, U.S. exports of nuclear reactors);

—When the federal action provides products or facilities whose principal products, emissions or effluents are prohibited or strictly regulated in the United States because their toxic effects on the environment create a serious public health risk. To clarify the kinds of products and discharges in this category, the President has directed the Export-Import Bank and the Council on Environmental Quality to prepare illustrative lists;

—When the federal action significantly affects natural or ecological resources of global importance that may in the future be designated by the President, or, in the case

of resources protected by International agreement, by the Secretary of State.

Where the environmental effects of federal actions are within foreign countries, agencies have flexibility under the Executive Order to prepare either concise environmental reviews of the issues involved, or to undertake bilateral or multilateral environmental studies. Environmental Impact Statements will not be required in these circumstances. The Order does not limit agencies from providing in their procedures for measures in addition to the government-wide requirements in the Order to further the purpose of the National Environmental Policy Act and other environmental laws.

The Order provides agencies with flexibility in developing their procedures. Certain kinds of actions or categories of actions are exempted by the Order altogether. Agencies will also be able to provide for categorical exclusions. Thus, for example, Eximbank may exclude its Exporter Credits, Guarantee and Insurance Program from the procedures that it establishes to implement the Order. The Order also allows agencies to modify their procedures for individual actions to take account of certain important national interests and considerations which are specified in the Order. These decisions will be made by each agency for its own actions. In addition, agencies may provide for other exemptions to meet emergency circumstances or situations involving exceptional foreign policy or national security sensitivities.

The Executive Order clarifies the kinds of environmental reviews required for U.S. actions abroad, and removes uncertainties faced by the agencies and exporters. The Order states that it is not to be construed to create a cause of action. A minor fraction of the dollar volume of U.S. exports will require environmental reviews under this Order. The Order's procedures define and focus on those export actions which should receive special scrutiny because of their serious impacts on the environment and public health.

Nuclear reactors are subject to the environmental review requirements of the Order, but exports of nuclear fuel are not. The President has designated the Department of State as the lead agency to work with other relevant agencies to develop unified procedures for environmental reviews of nuclear exports covered by the Order. These procedures will provide for consideration of environmental issues without impairing U.S. reliability as a nuclear supplier.

This Executive Order supplements the United States efforts to promote international measures to protect the environment. Very recently, Secretary Vance signed the new Great Lakes Water Quality Agreement with Canada—a major element in our continuing cooperation with Canada in environmental protection. Earlier this year, in response to an administration initiative, the major shipping nations undertook stringent new obligations in the protection of the marine environment from oil pollution. The treaty embodying these obligations has been forwarded to the Senate for its action. We have made similar efforts—and progress—in the draft law of the sea treaty. In negotiations now under way, the United States has been pressing strongly for protection of porpoises by all countries involved in Pacific tuna fishing. We are currently working on a number of other international programs in the environmental area, such as

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transboundary pollution with Canada and the European states, prevention of desertification with Mexico and implementation of Senate Resolution 49. International cooperation in environmental protection has proved increasingly effective, and the United States intends to continue its strong role in this sphere.

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