

## NOTICES

[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 Presi-  
dent.**ACTION:** Information Only: Publica-  
tion of Implementing Documents Con-  
cerning 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 re-  
ceived numerous requests for the im-  
plementing and explanatory docu-  
ments. In order efficiently to respond  
to such public requests, the relevant  
documents are reprinted in this issue  
of the **FEDERAL REGISTER**. They in-  
clude: (1) Memorandum for Heads of  
Agencies With International Activi-  
ties, from Charles Warren, Chairman,  
Council on Environmental Quality,  
and Thomas R. Pickering, Assistant  
Secretary of State for Oceans and In-  
ternational Environmental and Scien-  
tific 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,  
722 Jackson Place, NW., Washing-  
ton, 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 ini-  
tiate 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 terri-  
tories and possessions, shall within 8  
months after January 4, 1979, have in  
effect procedures for implementing  
the Order. This Section requires agen-  
cies to consult with the Department of  
State and the Council on Environmen-  
tal Quality concerning their imple-  
menting 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 be-  
lieves the action to be beneficial to the  
environment.1. Major Federal actions significant-  
ly affecting the environment of the  
global commons outside the jurisdic-  
tion of any nation. This category in-  
cludes major federal actions signifi-  
cantly affecting Antarctica, and the  
oceans and weather and stratospheric  
conditions in areas outside the jurisdic-  
tion of any nation. Section 2-3(a).2. Major Federal actions significant-  
ly affecting the environment of a for-  
eign 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, program-  
ming or implementing the action. Sec-  
tion 2-3(b).3. Major Federal actions significant-  
ly affecting the environment of a for-  
eign nation which provide to that  
nation:(a) A product, or physical project  
producing a principal product or an  
emission or effluent, which is prohib-  
ited or strictly regulated by Federal law  
in the United States because its toxic  
effects on the environment create a se-  
rious public health risk. Attached to  
this memorandum is an illustrative list  
showing the kinds of products, emis-  
sions 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 ex-  
cludes 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 pos-  
sessions significantly affecting natural  
or ecological resources of global impor-  
tance that are designated for protec-

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 LIST<sup>1</sup> 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

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

<sup>1</sup>These 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.

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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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