NOTICES

[3125-01-M]

COUNCIL ON ENVIRONMENTAL QUALITY

ENVIRONMENTAL EFFECTS ABROAD OF MAJOR FEDERAL ACTIONS

Executive Order 12114: 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, 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 protec-
This Executive Order establishes for the first time government wide procedures for export policy and national security. 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.

**ILLUSTRATIVE LIST 1** 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 sulfur containing liquids.

**TYPES OF FEDERAL ACTIONS COVERED BY THE ORDER**

For foreign countries when their 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, agencies 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.

1 These illustrative lists are non-inclusive, for guidance in compliance 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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