

Department of State

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Part III

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**Unified Procedures Applicable to Major
Federal Actions Relating to Nuclear
Activities Subject to Executive Order
12114**

DEPARTMENT OF STATE

[Public Notice 690]

Unified Procedures Applicable to Major Federal Actions Relating to Nuclear Activities Subject to Executive Order 12114

Executive Order 12114, "Environmental Effects Abroad of Major Federal Actions," was signed by the President on January 4, 1979. The Order represents the exclusive and complete determination by the United States Government of the procedural and other actions to be taken by Federal agencies to further the purposes of the National Environmental Policy Act with respect to the environment outside the United States, its territories and possessions. The following unified procedures are established to satisfy the requirement of the Executive Order for implementing procedures concerning nuclear export activities of Federal agencies.

A Fact Sheet released on January 5, 1979, 44 FR 18723, by the Office of the White House Press Secretary states: "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."

It should be noted that the time limitations established in section 9 and 10(b) are designed to result in the completion of environmental reviews within time limits set by the Nuclear Non-Proliferation Act of 1978 for Executive branch consideration of export license applications as well as within a time which will permit the Export-Import Bank to take into account the review and still make effective financing decisions for covered actions.

With respect to section 14(a), it is noted that since under Article XI E.3 of the Statute of the International Atomic Energy Agency IAEA has a special responsibility with respect to Agency projects, pertinent documentation will be prepared by the Agency for such projects.

Section 19(a) provides that these procedures do not apply retroactively. However, consistent with the second sentence of that paragraph, it is the Department of State's intention that an environmental document will be prepared and taken into account for any

future Executive branch judgments concerning export license applications covered by these procedures.

The Order and these procedures are intended solely for the purpose of establishing internal guidance and are not intended to create or enlarge any procedural rights against any Federal agency. However, these procedures are not advisory; the Department of State, as lead agency, intends to ensure they are complied with.

Any comments on these procedures should be directed to the Director of the Office of Export and Import Control in the Nuclear Energy and Energy Technology Division of the Bureau of Oceans and International Environmental and Scientific Affairs, Department of State, Washington, D.C. 20520.

Dated: November 5, 1979.

Thomas R. Pickering,

Assistant Secretary of State for Oceans and International Environmental and Scientific Affairs.

Part A, General Provisions

Section 1. Purpose and Scope of Unified Procedures.—a. These procedures are established jointly by the Department of State, the Department of Energy, the Export-Import Bank to implement Executive Order 12114 (44 FR 1957), with respect to the actions defined in section 3.

b. These procedures apply to all Federal agencies.

c. These procedures have been agreed to by the Departments of State, Energy, Defense and Commerce and the Arms Control and Disarmament Agency, and the Export-Import Bank. The Council on Environmental Quality has been consulted concerning these procedures.

Section 2. Definitions.—For the purposes of these procedures: a. "Environment" means the natural and physical environment and excludes social, economic, and other environments; an action significantly affects the environment if it does significant harm to the environment even though on balance the agency believes the action to be beneficial to the environment;

b. "Environmental document" means any of the types of documents described in section 4;

c. "Federal action" means an action that is implemented, funded or approved directly by the United States Government. It does not include actions in which the United States participates in an advisory, information-gathering, representational, or diplomatic capacity but does not implement, fund or approve:

d. "Foreign nation" means any territory (land, water, and airspace) that is under the jurisdiction of a foreign government and any area under military occupation by the United States alone or jointly with any other foreign government. "Foreign government" in this context includes authorities, regardless of whether recognized by the United States, that exercise governmental power outside the United States;

e. "Global commons" means any territory (land, water and airspace) that is outside the territorial jurisdiction of any nation, and includes the oceans outside the territorial limits of any nation and Antarctica;

f. "Office of Export and Import Control" means the Office of Export and Import Control in the Nuclear Energy and Energy Technology Division of the Bureau of Oceans and International Environmental and Scientific Affairs, Department of State;

g. "Physical project" means

(1) Any nuclear reactor capable of producing more than 15 thermal megawatts.

(2) Any nuclear steam supply system for such a reactor.

(3) Any production facility as defined in section 50.2(a) of title 10 of the Code of Federal Regulations, or

(4) Any separate nuclear waste management facility;

h. "United States" means all States, territories, and possessions of the United States, and all waters and airspace subject to the territorial jurisdiction of the United States.

Section 3. Actions Included.—Officers of Federal agencies who have ultimate responsibility for authorizing and approving actions in one of the following categories shall take into consideration in making decisions concerning such actions a document described in section 4:

a. Major Federal actions which provide to a foreign nation a physical project and which significantly affect the environment of that or any other foreign nation;

b. Major Federal actions which provide to a foreign nation a physical project and which significantly affect the global commons.

Section 4. Environmental Document Required.—a. For actions described in section 3(a), either of the following types of environmental documents shall be prepared and taken into consideration in accordance with these procedures in making decisions concerning such actions:

(1) A bilateral or multilateral environmental study, relevant or related to the proposed action, prepared by the

United States and the nation or group of nations that is the proposed recipient of the export or by an international body or organization in which the United States is a member or participant (such as the International Atomic Energy Agency); or

(2) A concise review of the environmental issues involved, i.e., an environmental assessment, a summary environmental analysis, or other appropriate document.

b. For actions described in section 3(b), the following type of environmental document shall be taken into consideration in accordance with these procedures in making decisions concerning such actions: an environmental impact statement (including, as appropriate, generic, program and specific statements).

Section 5. Exemptions.—Notwithstanding section 3 or any other provision of these procedures, the following actions are exempt from these procedures:

- a. Actions not having a significant effect on the environment outside the United States, as determined in accordance with these procedures;
- b. Actions taken by the President;
- c. Actions taken by or pursuant to the direction of the President or a Cabinet officer when the national security or interest is involved or when the action occurs in the course of an armed conflict;
- d. Intelligence activities and arms transfer;
- e. Export licenses or permits or export approvals (for the purposes of these procedures, "export approval" does not mean or include (i) direct loans to finance exports or (ii) the action of the Department of State of submitting to the Nuclear Regulatory Commission an Executive branch judgment under section 126a(1) of the Atomic Energy Act of 1954, as amended);
- f. Votes and other actions in international conferences and organizations;
- g. Disaster and emergency relief action;
- h. Actions taken under sections 54, 55, 57, 64, 82, 123, 161t and 161v of the Atomic Energy Act of 1954, as amended, and sections 104, 402(a) and 404(a) of the Nuclear Non-Proliferation Act of 1978;
- i. Actions taken under section 131 of the Atomic Energy Act of 1954, as amended, except those which provide to a foreign nation a physical project which would significantly affect the environment of a foreign nation;
- j. Actions of the Executive branch relating to any export subject to licensing by the Nuclear Regulatory

Commission under any authority other than section 103 or 104 of the Atomic Energy Act of 1954, as amended;

k. Approval of United States participation in international agreements for cooperation in nuclear energy research, development and demonstration which do not commit the United States to any specific projects or activities;

l. Approval of technical exchange arrangements for information, data or personnel with foreign nations or international organizations;

m. Approval of arrangements to assist other countries in identifying and analyzing their energy resources, needs and options; and

n. Any particular action for which the appropriate official of that agency determines that an exemption is necessary with respect to that agency to meet emergency circumstances, situations involving exceptional foreign policy and national security sensitivities, or other such special circumstances. In making such an exemption, the official shall, as soon as feasible, consult with the Assistant Secretary of State for Oceans and International Environmental and Scientific Affairs and the Council on Environmental Quality.

PART B—ENVIRONMENTAL PROCEDURES

Section 6. Initiating the Process.—Unless not required pursuant to section 11 or 14(a), the Office of Export and Import Control shall promptly arrange for the preparation of an appropriate environmental document upon the earliest of any of the following:

- a. Notice from the Export-Import Bank of an application for a preliminary commitment under the Bank's direct lending program for the financing of a physical project. However, if at the time the application is received, the Office of Export and Import Control and the Export-Import Bank consider that there is insufficient likelihood that the preliminary commitment will be converted into a final commitment, the Office shall only initiate preparation of the document (i) when the Office and the Bank determine there is sufficient likelihood of conversion, or (ii) when the Office determines preparation of the document should be initiated in order that it may be ready in time to be taken into account with respect to an anticipated action of an agency other than the Export-Import Bank of the kind specified in section 3, whichever is earlier. If no preliminary commitment has been issued and preparation of the document has not otherwise been

initiated, the Office shall initiate preparation of the document upon notice from the Export-Import Bank of an application for a final commitment under the Bank's direct lending program for the financing of a physical project;

b. Receipt from the Nuclear Regulatory Commission of an export license application for the export of a physical project; or

c. Notice from any Federal agency of a proposed agency action involving funding or approval for which environmental review is required under section 3.

Section 7. Determination of Whether the Action is Included.—Each Federal agency shall determine in writing whether a proposed action by that agency would require environmental review because:

- a. The action provides to a foreign nation a physical project and significantly affects the environment of that or any other foreign nation;
- b. The action provides to a foreign nation a physical project and significantly affects the environment of the global commons; or
- c. The action provides to a foreign nation a physical project and significantly affects the environment of the United States.

For purposes of making this determination, the following factors shall be taken into account as appropriate: the percentage that any financing or funding represents of the total cost of such project, the percentage that any such support represents of the total financing for the United States goods and services that are being purchased, the likelihood that the project will go forward whether or not the action is taken, and the degree of control and responsibility which the agency has over the planning and execution of the project. Any agency that makes such a determination shall notify the Office of Import and Export Control as promptly as possible. Where an action is determined to fall under paragraph a or b, the Office shall record whether the environmental effects are being or have been reviewed in accordance with section 8, 11 or 14 of these procedures. Where an action is determined to fall under paragraph c, the Office shall record whether these effects are being or have been reviewed in accordance with the National Environmental Policy Act.

Section 8. Preparation of the Environmental Document.—a. The Office of Import and Export Control shall be responsible for arranging for the preparation of an environmental document initiated pursuant to section 6.

It shall communicate, as appropriate, with concerned foreign governments and international organizations. Where Export-Import Bank financing is requested and a determination has been made by the Bank that such financing would constitute a major Federal action, the Bank shall, to the maximum extent feasible, assist in the preparation of the document by making available appropriate technical staff and by contributing to the cost of preparation. The Department of Energy shall, to the maximum extent feasible, assist in the preparation of the document by making available appropriate technical staff and by contributing to the cost of preparation. Where the appropriate environmental document is an environmental impact statement, responsibility for the preparation and processing of the document may be transferred from the Department of State to another agency by agreement of the concerned agencies.

b. An environmental document of the type described in section 4(a) shall concisely review the anticipated significant environmental effects of the physical project. In particular, it shall, to the extent to which the required information is available and as appropriate, include the following:

- (1) A general description of the recipient country's overall energy program, including its current energy mix for power generation, projected power requirements and indigenous energy resources, if any;
- (2) A description of the power level, type, purpose and location of the physical project;
- (3) A description of any cooperative programs relating to regulatory or environmental matters between the recipient country and the United States, other countries or international organizations which relate to the physical project directly or indirectly;
- (4) A discussion of the extent to which the recipient country has adopted a regulatory review mechanism or procedures that apply to the physical project;
- (5) A discussion of the extent to which the recipient country has adopted environmental standards applicable to the physical project and their relationship to IAEA standards and recommended measures or to other internationally recognized standards and measures;
- (6) Based on a summary review of the literature and any other technical information in the possession of the United States Government or otherwise readily available, in particular any environmental review that has been undertaken for the physical project—

(a) A discussion of the salient characteristics of the site (including any natural hazards) and an assessment of whether there are any special or unique considerations which could pose a significant threat to the environment;

(b) A discussion of significant radioactive, chemical or thermal effects on the environment that would normally be considered in United States environmental reviews; and

(c) A description of any plans for spent fuel disposition and any waste disposal plans;

(7) A discussion of whether the equipment to be exported from the United States is being or will be manufactured to quality assurance standards comparable to those used for a similar facility in the United States;

(8) A discussion of whether significant environmental effects in the recipient country of the kind normally considered in United States environmental reviews and which are identified under item (6) are being taken into account in the planning of the physical project; and

(9) A discussion of whether significant environmental effects on the environment of any foreign nation not participating or otherwise involved in the project with the United States and the recipient nation of the kind normally considered in United States environmental reviews and which are identified under item (6) are being taken into account in the planning of the physical project.

Section 9. Completion of the Environmental Document.—An environmental document prepared pursuant to these procedures shall be prepared and circulated no later than 80 days after its preparation is initiated pursuant to section 6: *Provided, however,* That the environmental document shall be prepared and circulated no later than 10 days prior to the time when any related Executive branch judgment must be completed under section 126a (1) of the Atomic Energy Act, as amended. Additional time may be authorized by the Deputy Assistant Secretary of State for Nuclear Energy and Energy Technology: *Provided,* That if the Export-Import Bank, the Department of Energy or another agency is involved, such additional time may be authorized only with the concurrence of the Bank, that Department or that agency. If additional time is authorized for consideration by the Executive branch of an application for a license for the export of a physical project in accordance with section 126 a (1) of the Atomic Energy Act of 1954, as amended, an appropriated period of additional time shall also be authorized for preparation and circulation of the

environmental document relating to that physical project. Notwithstanding section 13, if time is extending pursuant to the previous sentence, the Export-Import Bank may make a decision on a final commitment, if such a decision is needed before the document is completed, taking into account the environmental documentation developed up to that time pursuant to these procedures.

Section 10. Circulation of the Environmental Document.—a. The Office of Import and Export Control shall circulate the environmental document to the following offices:

- (1) The Office of Nuclear Affairs, in the Office of International Affairs, Department of Energy;
- (2) The Office of International Programs, Nuclear Regulatory Commission;
- (3) The Engineering Division, Export-Import Bank;
- (4) The Office of Environmental Affairs, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State;
- (5) Any agency that has provided notice to the Office of Import and Export Control pursuant to sections 6 and 7;
- (6) The Office of International Activities, Environmental Protection Agency; and
- (7) Any other agency involved in the proposed action or which has appropriate expertise.

b. These offices shall provide within 20 days of their receipt of the document any agency written views concerning the document to the Office of Export and Export Control and all agencies that have received the document under paragraph a: *Provided, however,* That such views shall be provided no later than the time when any related Executive branch judgment must be completed under section 126 a (1) of the Atomic Energy Act, as amended.

c. In addition to the requirements of paragraphs a and b, in the case of an environmental impact statement prepared pursuant to these procedures the Office of Export and Import Control shall make appropriate efforts to make the document available in draft form and to obtain views from the public and any other appropriate Federal agency.

Section 11. Generic Documents.—Generic documents of the types specified in section 4 may be prepared. If environmental issues involved in a particular action covered by these procedures are adequately addressed in such a document, that document shall satisfy all the requirements of these procedures.

Section 12. Availability of the Environmental Document.—a. The

Department of State shall, as appropriate, provide copies of an environmental document, as well as views related to it, to concerned nations or groups of nations.

b. An environmental document may be classified in whole or in part if classification is warranted under the criteria in Executive Order 12065. In this event, the Department of State shall, if possible, prepare an unclassified summary of any classified portions of the document.

Section 13. *Taking the Environmental Document into Account.*—Where any Federal agency has determined pursuant to section 7 that a proposed action by that agency requires environmental review, that agency shall, consistent with applicable law, take the environmental document prepared pursuant to these procedures and any related views into account in making its decision on that action. The Export-Import Bank may approve a preliminary commitment before receiving such document but shall not approve a final commitment without taking into account such document and related views.

Part C, Technical Provisions

Section 14. *Duplication of Resources.*—a. The Department of State shall not arrange for the preparation of an environmental document required by these procedures if an appropriate environmental document already exists that covers the proposed action. In any such case, the Department shall record this fact in its files.

b. When an environmental document is prepared in accordance with these procedures, it shall also address any related major Federal action for which an independent environmental review would otherwise be prepared by the agency contemplating such action pursuant to the procedures established by it to implement Executive Order 12114.

c. If a major Federal action having significant effect on the environment of the United States requires preparation of an environmental impact statement, and if the action also has significant effects upon the environment of a foreign nation or the global commons, the latter effects shall be addressed in accordance with these procedures.

Section 15. *Compliance with Executive Order 12114.*—The preparation and taking into account of an environmental document in accordance with these procedures shall constitute full compliance with Executive Order 12114 with respect to physical projects and any other export in connection with such projects.

Section 16. *Modifications.*—The content, timing and availability of documents may be modified by the Assistant Secretary of State for Oceans and International Environmental and Scientific Affairs and the appropriate official of any other agency involved in the proposed action where necessary to:

a. Enable the Federal Government to decide and act promptly as and when required;

b. Avoid adverse impacts on foreign relations or infringement in fact or appearance of other nations' sovereign responsibilities; or

c. Ensure appropriate reflection of:

- (1) Diplomatic factors;
- (2) International commercial, competitive and export promotion factors;
- (3) Needs for governmental or commercial confidentiality;
- (4) National security considerations;
- (5) Difficulties of obtaining information and agency ability to analyze meaningfully environmental effects of a proposed action; or
- (6) The degree to which the agency is involved in or able to affect a decision to be made.

Section 17. *Right of Action.*—These procedures are solely for the purpose of establishing internal procedures for Federal agencies to consider significant effects of covered actions on the environment outside the United States, its territories and possessions, and nothing in these procedures shall be construed to create a cause of action.

Section 18. *Protection of Information.*—Nothing in these procedures shall affect the ability of any agency to protect classified or proprietary information pursuant to applicable law.

Section 19. *Pending Actions.*—a. These procedures do not apply to any Executive branch judgment or export financing for which the application was filed prior to the effective date of these procedures. Nevertheless, to the extent feasible and where this can be accomplished without undue delay, any applications for export licenses pending in the Executive branch shall be reviewed in a manner which accomplishes the objectives of these procedures.

b. Clearances obtained or matters resolved prior to the effective date of these procedures need not be reconsidered for the purpose of complying with these procedures.

c. Executive branch judgments pending in the Nuclear Regulatory Commission on the effective date of these procedures shall be processed in accordance with applicable law and regulations and shall not be returned to

the Executive branch because of the entry into force of these procedures.

Section 20. *Consistency with Other Law.*—The provisions of sections 5 and 16 do not apply to actions described in section 3(b) unless permitted by law.

Section 21. *Effective Date.*—These procedures take effect on November 13, 1979.

Section 22. *Amendment.*—These procedures may be amended at any time subject to agreement and consultation of agencies as specified in section 1(c).

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