

## ENVIRONMENTAL EFFECTS ABROAD OF MAJOR FEDERAL ACTIONS

**Number:** DAO 216-12

**Effective Date:** 1983-03-10

### SECTION 1. PURPOSE.

.01 This Order prescribes policy, procedures, and responsibilities for implementing Executive Order 12114, date January 4, 1979 (the Executive Order), Appendix A, which sets forth requirements for the preparation of environmental documents for use by Federal agencies in reaching decisions on major Federal actions having significant effects on the environment abroad.

.02 This revision is a general update of the Order, including the following major changes: (1) redesignation of Departmental units and officials responsible for executing this Order to reflect that the Administrator, NOAA, has primary implementing responsibility, supported by the NOAA Ecology and Conservation Division, and (2) the updating of functional responsibilities for the overall execution of this Order.

### SECTION 2. SCOPE.

.01 This Order applies to major Federal actions, as defined in paragraph 3.03 of this Order, having significant effects on the environment, as defined in paragraph 3.01 of this Order, outside the geographic borders of the United States, its territories and possessions.

.02 This Order does not apply to major Federal actions subject to the provisions of the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 et seq.) and the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act (40 CFR Parts 1500-1508), except to the extent indicated in paragraph 6.01 of this Order and section 3-5 of the Executive Order with respect to multiple impacts.

### SECTION 3. DEFINITIONS.

.01 Environment. For the purpose of this order, the terms "environment" and "environmental" refer to the natural and physical environment and exclude social, economic, and other environments.

.02 Significantly affects. For the purpose of this Order, the term "significantly affects" and similar expressions, when used in connection with a proposed major Federal action to which this Order applies, means an action which would significantly harm the environment even though on balance a Departmental unit believes the action to be beneficial to the environment.

.03 Major action. For the purpose of this Order, the term "major action" means those actions identified in section 2-3 of the Executive Order and not exempted pursuant to section 7. of this Order pertaining to categorical exclusions. "Major action" includes a proposed significant change to a major Federal action, which has commenced but has not been completed, where such change is not exempted in accordance with the Executive

Order of this Order.

.04 Organization Unit Head. For the purpose of this Order, the head of an organization unit means the head of an operating unit means the head of an operating unit, head of a Departmental Office, or a Secretarial Office, as appropriate.

#### **SECTION 4. POLICY.**

Departmental officials having ultimate responsibility for authorizing and approving actions encompassed by the Executive order and this Order shall, in making decisions concerning such actions, consider and take into account, along with other pertinent considerations of national policy, the information contained in documents prepared pursuant to the Executive Order and this Order addressing environmental impacts of such actions. Heads of organization units may provide, in procedures for implementing the Executive Order and this Order, measures in addition to those called for by the Executive order and this Order.

#### **SECTION 5. RESPONSIBILITIES.**

.01 The Administrator, National Oceanic and Atmospheric Administration, through the Chief, Ecology and Conservation Division ("Chief, ECD") shall:

- a. Determine whether a proposed major Federal action by the Department of Commerce is subject to the Executive Order and this Order and whether preparation of an environmental document is indicated, and, if so, specify the appropriate type of document;
- b. Provide guidance for the preparation of the environmental document specified pursuant to subparagraph .01a. and circulate the environmental document in draft form for review within the Department of commerce;
- c. Upon receipt of a letter and environmental document from an organization unit pursuant to subparagraph 5.02e., circulate the environmental document to other Federal agencies with relevant environmental jurisdiction and expertise;
- d. After consultation with the head of the organization unit which prepared the environmental document, determine when an affected nation shall be informed, through the Department of State, of the availability of an environmental document;
- e. Determine the necessity to modify an environmental document, as provided in Executive Order section 2-5(b) and paragraph 6.06 of this Order, and, after consulting with the head of the organization unit preparing the environmental document, specify the modification in content, timing, or availability of the document;
- f. Coordinate Department activities in collaborating with the Department of State and the Council on Environmental Quality in the exchange of environmental information, pursuant to section 2-2 of the Executive Order;
- g. Consult with the Department of State and the Council on Environmental Quality when a categorical exclusion is utilized pursuant to section 7. of this Order.
- h. Coordinate Departmental review of environmental documents prepared pursuant to the

Executive Order by other Federal agencies and referred to the Department of Commerce by the preparing agency, and, after necessary consultation with interested Department organization units, exercise primary responsibility for preparation and submission of comments to the preparing agency; and

i. In instances where an organization unit voluntarily reviews and prepares proposed comments on an environmental document prepared by another agency pursuant to the Executive Order, but not formally submitted by the preparing comments for conformity with Departmental policy, and, after consultation with interested organization units, exercise primary responsibility for submission of comments to the agency which prepared the environmental document.

.02 Heads of Organization Units shall:

a. Notify the Chief, ECD, when a categorical exclusion is proposed to be used pursuant to section 7. of this Order;

b. Identify for the Chief, ECD, potential major actions which may be subject to the provisions of the Executive Order and this Order;

c. Determine whether a draft environmental document, specified pursuant to subparagraph .01a. above, will be prepared, and, if so, submit the document to the Chief, ECD, for circulation within the Department;

d. Consider the comments generated by the process of intra-departmental review of a draft environmental document in preparing any revised environmental document;

e. Prepare a letter to be signed by the Chief, ECD, for transmitting for review an environmental document to Federal agencies with relevant environmental jurisdiction and expertise and submit the letter and environmental document to the Chief, ECD;

f. Consider comments timely received from other Federal agencies on an environmental document in taking any action addressed by the environmental document;

g. Ensure that applicable environmental documents are available for use by appropriate agency decisionmakers;

h. At the request of the chief, ECD, review an environmental document prepared pursuant to the Executive Order by another Federal agency and referred to the Department, and submit comments on the environmental document to the Chief, ECD, for consideration in preparing Departmental comments on the environmental document; and

i. In instances where an environmental document prepared pursuant to the Executive Order by another Federal agency is not formally submitted by the preparing agency for Departmental review, but the organization unit voluntarily reviews such documents, submit any proposed comments on the document to the Chief, ECD, for disposition in accordance with subparagraph .01i. above. This provision shall not preclude an organization unit field office from providing a preliminary response to an environmental document received locally, if it is made clear that the official Department position will be provided at a later date by the Chief, ECD.

## **SECTION 6. ENVIRONMENTAL DOCUMENTS.**

.01 Multiple impact. If a major Federal action having effects on the environment of the United States or the global commons results in preparation of an environmental impact statement, and if the action also has effects on the environment of a foreign nation, an environmental impact statement need not be prepared with respect to the effects on the environment of the foreign nation.

.02 Existing document. If an environmental document, as described in paragraphs .03 through .05 below, exists and adequately addresses the significant environmental effects of a proposed major Federal action to which the Executive Order and this Order apply, an additional document need not be prepared.

.03 Environmental Impact Statement. A detailed Environmental Impact Statement (EIS) (a) shall be prepared for actions described in section 2-3(a) of the Executive Order ("global commons") and (b) may be prepared for actions described in section 2-3(d) of the Executive Order ("Presidential designation" or "binding treaty"), if determined to be appropriate pursuant to subparagraph 5.01a. of this Order. An EIS should be comprehensive in its treatment of anticipated significant environmental effects, based on information that is reasonably available, and taking into account time constraints for agency action.

.04 Environmental Study. The responsible head of an organization unit may take the measures available to have prepared the document described in section 2-4(a)(ii) of the Executive Order for actions described in Executive order sections 2-3(b) ("third party"), 2-3(c) ("recipient"), or 2-3(d) ("Presidential designation" or "binding treaty"), if such document is determined to be appropriate pursuant to subparagraph 5.01a. of this Order. An Environmental Study should address anticipated significant environmental effects and provide quantified information, to the extent available, on the most significant aspects of the proposed actions, examine reasonable alternatives to the proposal, and identify feasible mitigation measures that can be used to minimize environmental harm. In determining the type of environmental document to be prepared, pursuant to subparagraph 5.01a. of this Order, the Chief, ECD, shall be cognizant of practical impediments to the preparation of an adequate and timely Environmental Study in which a participant, or the study would be prepared by an international body or organization and the United States would have little or no influence or control in the preparation of the study.

.05 Environmental Review, Assessment or Analysis. As indicated by the Chief, ECD, pursuant to subparagraph 5.01a. of this Order, an Environmental Review, Assessment, or Analysis may be prepared for actions describe in Executive Order sections 2-3(b) ("third party"), 2-3(c) ("recipient") or 2-3(d) ("Presidential designation" or "binding treaty"). An Environmental Review, Assessment, or Analysis should address significant environmental affects in a careful manner; present quantified information on the most significant aspects of the proposed action, to the extent such information is not reasonably available, describe environmental impacts as precisely as practicable. Further, such a document should examine reasonable alternatives to the proposal and identify feasible mitigation measures that can be used to minimize environmental harm.

.06 Modified Document. In accordance with Executive Order section 2-5(b) and subparagraph 5.01e., of this Order, an environmental document may be modified.

## **SECTION 7. CATEGORICAL EXCLUSION.**

In accordance with section 2-5(c) of the Executive Order, the issuance of export licenses or permits or export approvals are exempted from application of the Executive Order and this Order.

## **SECTION 8. ADVICE OF THE GENERAL COUNSEL.**

Responsible officials, in consultation with the Chief, ECD, will seek advice of the General counsel on legal questions arising in connection with this Order.

## **SECTION 9. EFFECT ON OTHER ORDERS.**

.01 This Order supersedes Department Administrative order 216-12 dated August 18, 1980.

.02 This order is to be applied independently of DAO 216-6, Implementing the National Environmental Policy Act, which supplements the Council on Environmental Quality regulations to implement the National Environmental Policy Act (40 CFR Parts 1500-1508).

(Signed) Secretary of Commerce

Office of Primary Interest:

Ecology and Conservation Division

National Oceanic and Atmospheric Administration