

Chapter 5.

Frequently Asked Questions about Environmental Compliance

The following are questions most frequently posed by users of the *Environmental Documentation Manual for USAID Title II Cooperating Sponsors*, the antecedant document to this EPTM. These questions arose repeatedly when PVOs and other food aid professionals began the process of understanding and responding to USAID's Environmental Procedures. To assist in cross-referencing, the questions are organized thematically. The questions themselves, paraphrased and combined, are in bold face type.

5.1. Understanding the rationale for compliance

5.1.1 Why is compliance with USAID environmental regulations required?

The requirements are Congressional in origin, but the rationale for their existence is a practical one — taking environmental factors into account makes good development sense. Activities, projects and programs have their sustainability enhanced through environmental review and assessment at the design stage—and that is what the regulation is all about.

5.1.2 What is Regulation 216

Regulation 216 is the commonly used shorthand term for the Agency's Environmental Procedures, which are codified in the Code of Federal Regulations (CFR) as 22 CFR Part 216 (also referred to informally as Reg. 216 or Reg. 16).

5.1.3 What happens if an activity is undertaken without adequate environmental analysis

USAID and those involved in the certification process are open to potential lawsuits, and the good name of all those involved is jeopardized. Most important, without environmental review and underlying environmentally sound design, an activity may not yield the results sought and may not be sustainable. Furthermore, USAID funds cannot be obligated unless activities receive prior Reg. 216 concurrence from the appropriate BEO.

5.2. Responsibilities and timelines

5.2.1 What is the timeline for Environmental Compliance?

- Environmental documentation should begin as soon as possible, and be completed expeditiously.
- All Program or Project Proposals or Proposal Amendment submissions should include an IEE or Categorical request cleared by the Mission Director or his/her designee (typically an MEO), unless an IEE or Categorical Exclusion for the respective project has already been approved by USAID.
- All BDCHA annual program or project reviews should be accompanied by an Environmental Status Report as outlined in Section 3.2 of the EPTM.
- USAID will continue to offer training in environmental analysis for USAID partners and their contractors and collaborators.

5.2.2 Who does what?

Partners: USAID Partners will prepare an environmental analysis of their activities, which will form the basis of the appropriate USAID environmental documentation. In addition to the EPTM, Partner staff can draw on outside expertise (MEO, REO, local and U.S. consultants as needed). The environmental documentation is incorporated by the Partner in the design process.

Partners should seek Mission review and clearance on their environmental documentation prior to official submission of proposals to Washington. The same is true for Environmental Status Reports and IEE/Categorical Exclusion Amendments. Environmental documentation, marked draft, may be submitted informally through the Mission to the Bureau Environmental Officer. If environmental documentation is submitted with a proposal without having been cleared by the Mission, the Partner should insure that it is clearly labeled as **“DRAFT—Not Yet Cleared by Mission”** and **dated** (be sure your computerized date mode is not set on automatic update, so that you are able to track possible future revisions). All draft Reg.216 documentation must be returned to the Mission for required clearance and the Mission may request revisions to ensure that Mission objectives, consideration of local conditions and consistency with environmental documentation of other Partners in the same country is achieved. Partners first submit environmental documentation to the USAID Mission Environmental Officer. The MEO obtains Mission clearance, and submits to the REO, if one exists and to the BEO.

USAID Missions: The MEO assesses information, recommends how an activity is to be classified, and works with the Partner to finalize documentation. Thus, it's important for the Partner to discuss preparation with the Mission before assembling the documentation. It is common practice for the MEO to clear on the documentation and for the Mission Director to approve it. The Mission Director or his/her designee must clear the IEE or Categorical Exclusion request prior to final environmental documentation approval by the BEO at USAID/Washington. In the case of

Title II Environmental Documentation, the USAID Mission Food for Peace Officer should also clear and the documentation forwarded to the BDCHA BEO for approval.

In a Mission's comments and/or approval cable on a proposed program, project or amendment, the Mission should state whether it concurs with the environmental documentation.

USAID/Washington: The IEE must receive BEO concurrence as the last step in the approval process from the USAID BEO. USAID Partners are free to send the Environmental Officer informational copies of environmental documentation, and to seek the guidance and expertise of the BEO during the IEE preparation and project design process. However, since the **IEE/Categorical Exclusion or IEE Amendment must first be cleared by the Mission Director or his/her designee prior to final approval by USAID/Washington**, all drafts circulated for comment and/or information to the BEO or the REO should be clearly marked as such.

Following review of the IEE by the Mission and USAID/W, the USAID Partner may be asked to modify current activity designs or budgets. An EA (a more comprehensive analysis than an IEE) may be required if the IEE recommends a Positive Determination, i.e., when significant (adverse) environmental consequences have been identified in the IEE and the approval process. It is a good idea to give the BEO a "heads up," and to keep the BEO in the loop, to avoid surprises and help answer specific questions.

5.2.3 What if the IEE is written, but the activity is subsequently changed or eliminated from the proposal?

Sometimes IEEs may be written for sets of activities that are modified or even eliminated from a proposal (if major changes are being made) during formal project or program approval. What happens if the IEE were to be approved prior to approval of the final proposal, thereby making it inconsistent with the program or project that will actually be implemented?

The Partner must take responsibility for making the necessary environmental documentation revisions and seeking necessary approvals and concurrences. Review again Section 3.4 of the EPTM regarding roles and responsibilities.

If an IEE has been submitted and approved by the MEO and the BEO, but there are changes to the proposal, the Partner's point person for the proposal should inform the Partner's staff responsible for Reg. 216 documentation preparation in the field (and the BEO and MEO) that a revised IEE must be prepared to accord with the final proposal document. If the proposal gets revised in Washington, then the Partner must work out a mechanism whereby the BEO is informed and sends the IEE back to the Mission for reworking with the revisions of the proposal.

In any case, a note regarding the revisions needed and made should accompany any re-submission and the date and sequence of the submissions should be clearly noted for the MEO's and BEO's information.

5..2.4 Is proposal approval contingent on environmental approval?

Specific questions under this topic include: Is a proposal approved before the environmental documentation is approved, or only after the approval of environmental documentation (this would likely be an IEE or Categorical Exclusion)? Is obligation of funds dependent on approved environmental documentation? Could a proposal be approved, but funds not be obligated until after environmental documentation is approved?

In principle, fully approved environmental documentation is to be submitted with the proposal or Project or Program Amendment, because **future obligations cannot be made until the documentation is approved** and approval of the proposal or amendments will not be possible unless there is suitable environmental documentation.

5.2.5 Can EAs be funded from DAP monies?

Specific questions under this topic include: What if I do an IEE and submit it with my proposal, but the IEE recommends a positive determination indicating that I will need to do an EA? Can I use the monies that I might get via that proposal to expend on the EA process so that I would be in compliance?

Partners must defer activities affected by the EA, but would be able to implement other approved activities. Partners could request a Categorical Exclusion to conduct the study itself, per 22 CFR 216.2(c)(iii). If an EA is needed, partners should budget for it, by requesting 202(e) funds. It is recommended that provision for IEE-related environmental review be made as a line item in the monetization component's budget as submitted with the project or program proposal. In ex post facto cases, budgeting would require a budget amendment proposing a shift of funds from one or more line items to an IEE/EA line item. An explanation of how the shift was made, without compromising the schedule of activities the budget was originally designed to support, should accompany the amendment request (see also Section 5.6.1).

5.2.6 Must environmental documentation be redone each time a project or program amendment is submitted?

Although amendment submissions need not include the previously approved environmental documentation (e.g., an IEE), if the documentation has already been approved by USAID and these activities have not changed. However, annual Environmental Status Reports should be prepared on all programs and projects. In 2-10 pages, the Report discusses the status of the mitigation plans and environmental monitoring. The instructions for preparing the Environmental Status Report help you determine if the previously approved environmental documentation needs to be amended because of changes in the activities mitigation plans or monitoring. The format and instructions are found in Section 3.2.

Note: If a Partner's submission contains changes that require a Project or Program Amendment, it will also include amended Reg. 216 environmental documentation.

5.2.7 Why does environmental documentation require USAID/Washington concurrence and clearances?

USAID is trying to empower Partners and USAID/Missions to make decisions for themselves, and increase their responsibility for compliance with Reg. 216. However, by statute, USAID cannot fully delegate authority for environmental decision-making from the BEO to the field under the concurrence process mandated by Reg. 216. The regulations cannot be changed internally by USAID, since they are established Federal Regulations that can only be changed by a process that involves formal notifications, public review, public comment and publication of new draft and final regulations in the Federal Register. Nevertheless, the approval and concurrence process should not cause delay in most cases. The BEOs typically have quick turn-around times for decisions.

The regulations stipulate that a threshold decision about the significance of environmental impacts and the appropriate level of documentation must have the concurrence of the BEO in USAID/Washington. The BEO will either concur or request reconsideration by the officer who made the threshold decision. Differences of opinion between these officers are submitted first to the Agency's Environmental Coordinator for resolution, or (in rare circumstances) are passed on to the Assistant Administrator (216.3[a][2]).

BEO concurrence provides a check against inadvertent error, as well the possibility that an implementing office might downplay environmental issues to expedite an activity. Furthermore, many Missions do not have staff fully conversant with the regulations and are not able to provide the level of knowledge required. It is the BEO's job to worry about the regulation and the environment.

5.3. Environmental compliance documentation

5.3.1 If a program or project contains several activities, do I submit separate environmental documentation for each activity?

Typically, no. You can cover several activities in one document. The EDG and additional guidance in this manual on compliance (see Sections 3 and 4) explains how to do this. If the proposal consists of a suite of different activities, such as agricultural credit, irrigation, and/or road building, it may make sense to organize Sections 1.0 through 4.0 of the IEE under the topical activity-cluster headings so that the sets of activities are analyzed separately by sector (thematic area). Thus, the sections would be repeated for each set of activities, and IEE Section 5.0 and the Facesheet summary would become the synopsis of all the parts. See also the response to Question 5.4.2.

5.3.2 What does the Partner do if the activities are not known in detail at the time the proposal is submitted?

Consider a deferral or preparing an "umbrella" IEE. Annex F provides information about preparing environmental documentation that can be submitted with the proposal when activities have not yet been designed in full. Annex F also provides guidance on how to do subsequent screening and environmental reviews of these activities as they are designed, without requiring that each submission receive USAID/Washington approval.

5.3.3 If deferrals are not encouraged, why are they provided as an option?

Deferrals merely postpone the inevitable, but they do buy time and they do allow you to separate out those activities that can proceed from those that cannot. Deferrals may be unavoidable in certain situations where some proposal elements need further definition (e.g., specific location, nature, and time), before they can be reviewed environmentally. Decisions on implementing those elements are also deferred, and **no commitment of resources should be made**. Multiple-activity proposals typically have a combination of multiple determinations, of which the deferral needs to be an available option. **In situations where a deferral might be appropriate, a Negative Determination with Conditions involving screening and review processes is an alternate option** (again, see Annex F).

5.4. Environmental Analysis

5.4.1 Is there a recommended way to organize proposal activities for the purpose of environmental decision making

Drawing on the sets or suites of activities and interventions in the USAID Partner's proposals, and preferably parallel to the format of your performance-monitoring plan and strategic framework, you could identify the nature and scale of the activities, geographic distribution, and relative proportion of resources devoted to the activities. Environmental decisions are ultimately site-specific and activity-specific, so having a sense of locations and activity characteristics will allow the overall potential for environmental impacts to be evaluated as well as the document preparation effort.

You may organize this information in a table (see Table 2.1). Note that this preparatory exercise provides an overview, so only ballpark figures are needed to arrive at a reasonably accurate order of magnitude. With this information in hand, use the EPTM. The format presented is intended as a guide only, and not meant to be the only way to present this information. Modify yours if necessary as long as the essential headings and their intent are addressed. Subsequent steps in preparing the documentation may require other tables and report formats appropriate to the nature and location of the activities.

5.4.2 If a proposal consists of a large number of different activities, what is the best way to organize the IEE?

That is, is there a way to organize the IEE to minimize repetition and make it easier to both prepare and review?

For large multi-sectoral programs it might be easier to retain the Environmental Compliance Facesheet and Summary as is, but as a means of trying to simplify the documentation process, it is suggested that the Partner consider preparing a series of documents that follow the IEE format but with each sector standing alone, e.g., roads, agriculture, health, soil conservation, etc. It is therefore recommended that the writeup for the first sector contain relevant background to the sector and program (without describing the whole program). If there are portions of IEE Section 1 *Background and Activity Description* that are applicable to other sectors, they do not need to be repeated in the next sector's documentation, but can be cross-referenced. This also may be possible for IEE Section 2 *Country and Environmental Information* with similar cross-referencing. Go to EPTM Sections 4.2 and 4.3 for a more detailed discussion of this issue.

5.4.3 When is programmatic environmental documentation best (vs. documenting each individual activity)

Environmental analysis is needed prior to and as input to any IEE, EA, or PEA. The approach to the conduct of environmental analyses depends on whether the proposed activities are generic or site-specific. Highly site-specific activities, such as an irrigation intervention, require analysis specific to the site within a "classic" IEE or as part of a post-IEE environmental review conducted under an "umbrella" IEE (see Question 5.3.2). If the scale of the activity is "significant" (a positive determination), it normally requires an EA. A group of similar activities in a region can also be treated within the framework of a PEA. More generic activities, such as soil erosion and terracing in several locations within a particular area, may be analyzed as a group within a "classic" IEE or, if an umbrella IEE has been prepared, similarly grouped and analyzed as part of a post-IEE environmental review. As in the example of highly site-specific activity(ies), activities considered "significant" would normally require an EA or a PEA.

5.4.4 How do I determine whether the scale or magnitude of my activities may result in significant effects?

Reg. 216 is unclear as to what scale or magnitude of a proposed action or group of actions is considered significant and therefore would trigger an EA. For example, in interpreting Reg. 216 compliance requirements, certain essential specifications as to what constitutes a "large" vs. "micro" dam, "major" irrigation project, etc., are not given. Without this information, how can the preparers of environmental documentation make determinations on their activities? More detailed specifications seem to be needed.

The very purpose of an IEE is to provide initial recommendations regarding a threshold decision, based on environmental analysis. Also, remember that

coming to conclusions about what constitutes “significant” scale or magnitude for activities is often a matter of judgment among professionals. Scale and magnitude decisions often involve reasoned subjective decisions rather than objective science, depending on the environmental context, e.g., the same intervention near a protected area may be “significant” but “not significant” in another location. Therefore, it is often useful in making such decisions to form and involve a team with varied environmental expertise in these decisions.

In some cases, a USAID Mission may take responsibility for acquiring specifications and data already developed (for example, by the host government) and for identifying parameters needed to assist USAID Partners in making their determinations. Although these kinds of specifics may not currently be available, the Partners can still proceed with an environmental analysis, begin the documentation process, and identify mitigation and monitoring measures to be taken to ensure that the activity is optimally sustainable and will not cause unintended harm to the environment.

In addition, the environmental analysis serves as an informal process for identifying mitigation measures linked to activity implementation. This process will give you a sense of the scale and magnitude of potential impacts. Begin the environmental analysis by simply listing all activity categories, and focus the collection of information on those activities that you consider to be not categorically excludable. That information will be essential for the IEE. If you believe your activities will have no significant (adverse) effects, provide the rationale in your IEE.

Remember that the umbrella IEE process (which provides for a Negative Determination with conditions) may be used if you have a large set of multiple activities and most of your activities are small-scale and not yet defined in much detail. In the course of refining other environmental review tools for country-specific situations, including country-specific IEE and post-IEE Environmental Screening Forms under an “umbrella” IEE process, you should expect to develop additional specifications for what locally are considered to constitute “significant” scale and magnitude.