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# ADS Chapter 204

## Environmental Procedures

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 POC for ADS 204: James Hester, (202) 712-5176, [JHester@usaid.gov](mailto:JHester@usaid.gov)

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## ADS 204 – Environmental Procedures

### 204.1 OVERVIEW

Effective Date: 05/11/2006

This chapter provides policy directives and required procedures on how to apply Title 22 of the Code of Federal Regulations, Part 216 ([22 CFR 216](#)) to the USAID assistance process. This is to ensure that assessment of the environmental consequences of all programs, activities, and substantive amendments are in full compliance with the requirements of this Federal Regulation implementing the underlying legislation and out of court settlement (See [ADS 201](#) and [ADS 204.4.1, External Mandatory References](#), at the back of this chapter.)

Environmental sustainability is integral to USAID's overall goal, and therefore must be mainstreamed into all activities to achieve optimal results, to avoid inadvertent harm to the people we are trying to help, and to prevent wasting taxpayer dollars. To meet this goal, USAID incorporates environmental considerations into results-based planning, achieving, and assessing and learning. This Chapter defines what USAID and its operating units must do to integrate environmental issues into its programs, both to meet U.S. Government (USG) legal environmental obligations and to optimize economic and social development results.

### 204.2 PRIMARY RESPONSIBILITIES

Effective Date: 08/17/2012

- a. **Operational Bureaus** are responsible for providing strategic direction to their operating units and approving and overseeing their Operating Units' strategic planning and implementation to ensure that environmental reviews in accordance with [22 CFR 216](#) are fully integrated into programs and activities. This oversight must include holding Operating Units accountable for achieving results required under approved 22 CFR 216 determinations. Allocating adequate staffing and financial resources to comply with 22 CFR 216 is the responsibility of the operational bureau.
- b. **Operating Units** are responsible for providing the staff and financial resources to their management units to implement the approved strategies consistent with the Agency's environmental procedures. Operating Units also hold their AO Teams accountable for meeting these requirements and continuously monitor their results.
- c. **Assistance Objective Teams (Teams), Activity Managers and Contract Officer's Representatives (CORs)/Agreement Officer's Representatives (AORs)** are responsible for ensuring full compliance with [22 CFR 216](#), the Agency's environmental procedures, in implementing their operating unit's strategy. The COR/AOR authority and responsibilities are delegated by the Contracting Officer. The responsibilities of COR/AORs, AO Teams and Activity Managers include designing, monitoring, and modifying programs, projects, activities and amendments, and Activity Approval Documents in order to:

*Text highlighted in yellow indicates that the adjacent material is new or substantively revised.*

- 1) Ensure that the environmental consequences of actions taken by USAID are considered and that appropriate environmental safeguards are adopted, as required by 22 CFR 216; and
- 2) To assist developing countries to appreciate and effectively evaluate potential environmental impacts of proposed activities, with due respect for the sovereignty of host or partner country governments.

Each Activity Manager or COR/AOR must keep his/her Team leader and relevant Bureau Environmental Officer (BEO) informed of upcoming [22 CFR 216](#) actions, both through informal contacts and through required 22 CFR 216 reporting in the Annual Report; and for ensuring that their 22 CFR 216 environmental reviews are accomplished in a timely fashion so as not to unnecessarily delay implementation of any activities. The Activity Manager or COR/AOR must also allocate adequate resources from his/her activity's budget for effective monitoring and mitigation to ensure compliance with 22 CFR 216 throughout the life of an activity.

**d. Mission Environmental Officers (MEOs) and Regional Environmental Advisors (REAs)** are responsible for advising Teams, Activity Managers and COR/AORs, and Operating Unit heads on how best to comply with [22 CFR 216](#) requirements; how Teams, Activity Managers and COR/AORs can effectively monitor implementation of approved mitigative measures; and how Teams, Activity Managers and COR/AORs can obtain additional environmental expertise to assist in their 22 CFR 216-compliance responsibilities. MEOs and REAs also liaise with their relevant Bureau Environmental Officer on 22 CFR 216 issues affecting Teams, Activity Managers and COR/AORs in their Operating Units. For a fuller account of MEO responsibilities, see [Recommended Mission Environmental Officer Appointment Memorandum](#).

**e. Bureau Environmental Officers (BEOs)** are responsible for overseeing the effective implementation of [22 CFR 216](#) throughout all Operating Units in their Bureau through timely decision making and adherence to consistent and strong environmental principles that lead to environmentally sound development and wise use of taxpayer money and that protect their Operating Units and the Agency from legal challenge. Specific duties of the BEOs include, inter alia, the review, concurrence, and approval functions of the various classes of 22 CFR 216 analyses and official agency decision-making documents described throughout 22 CFR 216 as well as those outlined in the [Recommended Bureau Environmental Officer \(BEO\) Appointment Memorandum](#) and those outlined elsewhere in this Chapter including **204.3.6**.

The purpose of the BEO's review, concurrence, and approval of environmental analyses and decision-making documents is to facilitate informed overall decision making by Bureaus and Operating Units regarding proposed Agency activities. To this end, BEOs (together with Regional Environmental Advisors and Mission Environmental Officers) provide expert advice to decision makers regarding the potential environmental impacts of Agency activities, measures available to minimize or mitigate those impacts, and/or alternative actions with less adverse environmental impact.

f. The **Agency Environmental Coordinator (AEC)** is responsible for coordinating the effective implementation of [22 CFR 216](#) throughout the Agency. This includes monitoring its implementation, advising Assistant Administrators as set out in ADS 204.3.11, setting Agency standards for compliance, consulting with the Office of General Counsel on its interpretation of 22 CFR 216 when questions or new situations arise, advising Assistant Administrators in selecting qualified BEOs, collaborating with the Office of the General Counsel on addressing legal challenges arising from environmental compliance matters, and communicating with the President's Council on Environmental Quality (CEQ) and the public.

g. The **Office of the General Counsel** is responsible for providing advice on legal matters arising in the operation and administration of all USAID programs, as described in [ADS 101.3.1.10](#). The Office of General Counsel interprets 22 CFR 216 when questions or new situations arise and coordinates with the AEC regarding its interpretations of [22 CFR 216](#) to ensure the regulation achieves its intended results.

### **204.3 POLICY DIRECTIVES AND REQUIRED PROCEDURES**

#### **204.3.1 Mandatory Compliance with 22 CFR 216**

Effective Date: 08/17/2012

USAID's environmental procedures are established in Federal Regulation ([22 CFR 216](#)), as authorized by the [Foreign Assistance Act, Section 117](#). By following the terms of 22 CFR 216 and the policies in this ADS Chapter, USAID further complies with relevant mandates established in: Civil Action 75-0500 in the District Court of the District of Columbia; Foreign Assistance Act Sections [118\(c\)](#) and [119\(g\)](#); Section [517\(d\) of the FY06 Foreign Operations Appropriations Act \(and predecessor provisions\)](#), the National Environmental Policy Act ([NEPA - 42 USC 4371 et seq](#)); [40 CFR 1500](#); and [Presidential Executive Order 12114](#) (see 204.4.1).

USAID must fully comply with [22 CFR 216](#), except to the extent that certain 22 CFR 216 terms may not be used in the current operations assistance processes. In such cases, as is also contemplated for certain special procedures in 22 CFR 216.3(a)(10), the terms used in this chapter of the ADS (which are intended to be as parallel as possible to the original terms) are used instead. However, 22 CFR 216 is controlling in the event of a legal conflict between this chapter and 22 CFR 216. If there are questions, consult your BEO, the AEC, or General Counsel.

#### **204.3.2 Operational Bureaus**

Effective Date: 08/17/2012

Bureaus must allocate to each Mission or other Operating Unit within it the resources necessary to complete all 22 CFR 216 environmental reviews and to manage for their day to day compliance for all of their programs, projects, activities, and amendments.

Incorporated into its normal Operational Planning (OP) process, each operational Bureau must review and approve, with the guidance of their Bureau Environmental Officer, the OP environmental section for each of its missions or Washington equivalent offices described in **204.3.3**.

### **204.3.3 Operating Unit**

Effective Date: 08/17/2012

Each USAID Operating Unit (a mission or Washington equivalent) must prepare and submit an Environmental Compliance Report (ECR) as an integral part of its Operational Plan (OP) that is submitted to its Washington headquarters. The relevant Bureau Environmental Officer reviews this section for adequacy prior to Bureau approval of the overall OP. It consists of two parts:

- a. The first part must include a discussion of implementation of mitigation measures, monitoring provisions, or other implementation requirements agreed to under [22 CFR 216](#) during activity design. It must also identify any cases of noncompliance, and for such noncompliance situations, identify corrective steps that will be taken. This part is incorporated into the text of the main body of the OP.
- b. The second part will be an Annex to the OP in the format laid out in the annual OP guidance that will consist of a brief summary of each activity's environmental compliance status.

Operating Unit heads must ensure that effective [22 CFR 216](#) environmental reviews are included in the design and implementation of their programs and activities that are authorized by their bureaus, and that sufficient resources are provided for this purpose as outlined in [ADS 201](#).

Operating Unit heads must also take necessary steps to ensure that resources are not committed to programs or activities before a [22 CFR 216](#) environmental review is completed, the 22 CFR 216 document is fully approved, the findings are considered by the Activity Manager or COR/AOR, and appropriate mitigative measures are incorporated into the design and budget for the program or activity and into the relevant acquisition and assistance documents.

Operating Units must also undertake the required environmental planning analyses for its strategic and operational planning as outlined in [ADS 201](#).

### **204.3.4 Assistance Objective Teams (Teams), Activity Managers and Contract/Agreement Officer's Representatives (COR/AORs)**

Effective Date: 08/17/2012

Each Team and Activity Manager or COR/AOR must plan how they will comply with [22 CFR 216](#) requirements for each non-exempt activity undertaken. They must actively monitor ongoing activities for compliance with approved Initial Environmental

Examination (IEE), Categorical Exclusion (CE), Environmental Assessment (EA), Programmatic Environmental Assessment (PEA), or Environmental Impact Statement (EIS) recommendations, conditionalities or mitigative measures. They also must modify or end activities that are not in compliance with provisions and conditions of approved environmental documents. An Operating Unit and each AO Team must ensure that its Activity Managers or COR/AORs have adequate time, staff, authority, and money to implement these responsibilities. (See activity planning in [ADS 201](#).)

Each Operating Unit and AO Team must develop effective essential environmental review procedures consistent with its strategic and operational plans to:

**a.** Ensure that Activity Managers have the resources to complete all environmental work required under [22 CFR 216](#) before funds are obligated. This environmental work may include preparation of one or more of the following:

- Initial Environmental Examinations (IEEs),
- Determinations of Categorical Exclusion (CEs),
- Determinations of Exemption (under 22 CFR 216.2(b)(I)(ii) or (iii) and 216.2(b)(2)) from further environmental reviews,
- Deferrals under [22 CFR 216.3\(a\)\(1\)\(iii\) and 22 CFR 216.3\(a\)\(7\)](#) Scoping Statements and subsequent Environmental Assessments (EAs),
- Programmatic Environmental Assessments (PEAs),
- Environmental Impact Statement (EISs) undertaken under the National Environmental Policy Act (NEPA) U.S. domestic procedures including **40 CFR 1500**.

More specifically, these environmental reviews must include:

(1) Completing an IEE, or a proposed determination with justification for a Categorical Exclusion (under **22 CFR 216.2(c)**), or Exemption (under **22 CFR 216.2(b) (2)**), for each program or activity at the earliest point in the planning and design process when sufficient information is known about the program or activity to permit a meaningful environmental threshold determination. It is essential that this review be done as early as possible in the design process in order to allow adequate time for more detailed subsequent environmental review and concurrence, as well as integrating environmental mitigations into the design process, should this be required; environmental review when undertaken in this way rarely delays the process of designing and approving activities and programs while it typically adds greatly to the development results achieved;

(2) Completing Scoping Statements and their EAs, PEAs or EISs (if required) at the earliest point in the design process when sufficient information is known or being developed to undertake these analyses;

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(3) Forwarding, pursuant to **22 CFR 216**, each environmental document to the BEO, for review and either written concurrence for CEs and IEEs, or written approval for Scoping Statements, EAs, or PEAs, through the Mission Director or USAID Representative, if the activity is field-based, or the senior manager equivalent who authorizes the funding, if the activity is Washington-based. Allow a reasonable amount of time for the BEO's review and concurrence or approval;

(4) Providing reasonable notification to the affected public and, as feasible, encouraging civil society public participation, review, and comment on Scoping Statements and their related EAs or EISs. The public is defined for EAs to include directly affected people in the host country and host country governments. It is USAID's policy that relevant U.S. parties must also be included when they request or when the Activity Manager or COR/AOR, Team or BEO believes there would be a value to inviting their participation. For EISs, including the U.S. public is a legal requirement and GC, the BEO, and the AEC should be consulted as to the correct procedures. Final IEEs, Scoping Statements, Determinations, and Declarations are available to the public under the Freedom of Information Act consistent with 22 CFR 216.10, and also will be posted on the internet when required by Agency procedures.

(5) Considering the content and findings of environmental documents in the design and approval of each program and activity before the Operating Unit, Team, Activity Manager or COR/AOR makes an irreversible commitment of resources for the program or activity;

(6) Incorporating environmental factors and mitigative measures identified in IEEs, EAs, and EISs, as appropriate, in the design and the implementation instruments for programs, projects, activities or amendments.

**b.** Once funds are obligated, ensure that Activity Managers or COR/AORs have the resources to adaptively manage environmental compliance during implementation including:

(1) Conducting ongoing monitoring and evaluation of whether the environmental components designed for the activity resulting from the **22 CFR 216** process are being implemented effectively. This includes identifying and addressing new or unforeseen environmental consequences arising during implementation that were not identified and reviewed in accordance with 22 CFR 216 and how such review will be undertaken to correct these newly identified issues in a timely way.

(2) Modifying mitigative activities or programs, or, if deemed necessary, ending activities or programs based on the aforementioned review. Modifications are documented through formal amendments to the original **22 CFR 216** documents and concurred in writing (for IEEs and CEs) or approved in writing

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(for Scoping Statements, EAs, or EISs) by the Bureau Environmental Officer.

(3) When an amendment or modification leads to a change in the activity and that change in turn affects an existing award (contract, grant, cooperative agreement, or interagency agreement), then the COR/AOR must request the Contracting Officer or Agreement Officer to take the appropriate action to modify or amend the award.

(4) Notifying the Team leader and Operating Unit head of any environmental noncompliance issues during implementation and scheduling corrective actions.

(5) Preparing documentation of this for inclusion in each Operational Plan's Environmental Compliance Report.

c. Ensure effective collaboration with the MEO during all Assistance Objective designs and approvals to create a system and adequate resources to ensure effective implementation of the requirements listed in **204.3.4.a**.

#### **204.3.5 Mission Environmental Officer (MEO) and Regional Environmental Advisor (REA)**

Effective Date: 05/11/2006

Each Mission Director is encouraged to appoint a Mission Environmental Officer (MEO) in writing (see recommended [MEO Appointment Memorandum](#)). When staffing patterns permit, the Mission Director also may appoint a Deputy Mission Environmental Officer to ensure timely operations in Missions when the MEO is absent, or when a Mission's portfolio is of such size that a Mission Director judges that one or more Deputy MEOs are needed to address their Mission's workload. These officers serve as a member of each Team in the Operating Unit in order to advise the Teams and their Activity Managers or COR/AORs on specific needs and approaches to meet [22 CFR 216](#) requirements. The MEOs assist and advise Activity Managers or COR/AORs and their implementing partners and contractors in preparing 22 CFR 216 documents on new activities and monitoring compliance on ongoing activities. While the MEO assists and advises, the responsibility and accountability for successfully meeting 22 CFR 216 requirements is shared by the Team leader and each Activity Manager or COR/AOR while the ultimate responsibility is with the Mission Director.

If the Mission Director does not appoint an MEO, the Mission Director assumes the responsibilities and duties which would have been delegated to the MEO.

Regional Environmental Advisors (REA), some with one or more Deputy Regional Environmental Advisors as appropriate, provide supplementary professional support, training, compliance auditing, compliance evaluations, and regional coordination on [22 CFR 216](#) matters to Mission Directors, Teams, Activity Managers or COR/AORs, and Mission Environmental Officers.

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**204.3.6 Bureau Environmental Officer (BEO)**

Effective Date: 08/17/2012

After consultation with the AEC, the Assistant Administrator (AA) for each operational Bureau or equivalent in Washington must appoint, in writing, a qualified BEO based in Washington. This includes all regional Bureaus (AFR, ASIA, E&E, ME, OAPA, and LAC), and Pillar Bureaus (E3, GH, BFS and DCHA – and when they have program funding other central Bureaus or Bureau equivalents such as PPL, M and similar units.). When staffing patterns permit, and after consultation with the AEC, each AA may also appoint one or more qualified Deputy Bureau Environmental Officer(s) to ensure timely decision-making when the BEO is absent. A BEO Appointment Memorandum for each BEO position must be prepared, approved by GC, and signed by the appropriate Assistant Administrator. (See recommended [BEO Appointment Memorandum](#))

## The BEO

- Oversees and monitors [22 CFR 216](#) compliance across all Operating Units in the Bureau;
- Reviews and, as specified in [22 CFR 216](#), concurs in or approves 22 CFR 216 documents;
- Ensures all staff in his/her Bureau are aware of and trained in 22 CFR 216 procedures and standards; and
- Performs the other specific functions described in 22 CFR 216.

**204.3.7 Agency Environmental Coordinator (AEC)**

Effective Date: 08/17/2012

The AEC coordinates Agency-wide implementation of [22 CFR 216](#) to ensure it achieves its intended results. The AEC advises the Administrator, Assistant Administrators (AAs), other senior Agency managers, and Bureau Environmental Officers on issues that arise relating to 22 CFR 216. The AEC coordinates with the Office of General Counsel regarding that office's interpretation of 22 CFR 216 when questions or new situations arise.

The President's Council on Environmental Quality (CEQ) in the White House oversees NEPA compliance across all Executive Branch agencies. The AEC is USAID's official liaison to CEQ on overall NEPA compliance matters as stated in 22 CFR 216.7. The AEC communicates with the public and makes postings on the Internet as directed by the Administrator or an Assistant Administrator and cleared by the Office of Legislative and Public Affairs and the Office of General Counsel, and as provided in **204.3.4(a)(4)**. Specific additional AEC responsibilities are described in 22 CFR 216.

### 204.3.8 Environmental Determination Procedures

Effective Date: 08/17/2012

When an activity is Mission-based, the Mission Director or USAID Representative submits [22 CFR 216](#) documents with their written determination for review and concurrence, or in the case of Scoping Statements, approval, to the appropriate Bureau Environmental Officer (BEO) in Washington. Determinations of Categorical Exclusion are different from and must be documented distinctly from IEEs under the procedures in 22 CFR 216.2(c)(3) and 22 CFR 216.2(e). Activities having components eligible for Categorical Exclusion or Negative Determination may be divided and considered separately for environmental determination in such a fashion as to permit those parts of the activity to proceed pending environmental analysis of the balance.

In such cases, obligation of funds can be made incrementally as the requirements of [22 CFR 216](#) are met with respect to discrete subprojects or aspects of projects, programs, or activities; or if necessary while planning continues, including environmental review, the agreement or other document obligating funds may contain appropriate covenants or conditions precedent to disbursement for unidentified subprojects, or aspects of projects, programs, or activities. When an activity is Washington-based, the senior manager who is a Mission Director equivalent and who authorizes the funding submits 22 CFR 216 documents with their written determination for review and concurrence, or in the case of Scoping Statements or Environmental Assessments, approval, by the appropriate BEO. Certain cases outlined in 22 CFR 216 (e.g., requests for Exemptions, Deferrals, and Environmental Impact Statements), will require additional reviews in Washington. After receiving their BEO's written concurrence, the Operating Unit, Team, Activity Manager or COR must consider the environmental findings and recommendations made in the approved CE, IEE, EA, or EIS when designing and approving funding for a program or activity. The Contracting Officer or Agreement Officer must incorporate these requirements into any contracts, grants, cooperative agreements, or other mechanisms used to implement the activity. Additional decision procedures are described in 22 CFR 216.

### 204.3.9 Applicability to Global Development Alliance (GDA) and Millennium Challenge Corporation (MCC)

Effective Date: 05/11/2006

#### a. Global Development Alliance (GDA)

[22 CFR 216](#) applies to all Global Development Alliance (GDA) programs. The source of the funds used (i.e. governmental or private sector) determines whether **22 CFR 216** is applied to the entire set of GDA activities or only to the USAID portion. In either case, USAID also must make a due diligence investigation of the environmental record and practices of each partner in an alliance, and for the alliance as a whole.

- **Pooled Resources:** Under this approach, USAID and alliance partners establish a formal alliance governance structure for the purpose of attracting

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resources and making joint program decisions. These alliances may involve fairly complex organizational structures and legal documentation. For this type of alliance, USAID support typically takes the form of a grant to a non-governmental organization (NGO) established by the alliance or to a public international organization (PIO) or other financial institution that serves as trustee for the alliance's resources. Where USAID resources are utilized under such structures, programs and activities are subject to environmental review under [22 CFR 216](#). The level of review depends on the proposed program or activity.

- **Parallel Financing:** Under this approach, USAID and alliance partners reach agreement on how to work together to address a development problem, with each partner establishing a separate mechanism (e.g., grant, contract) through which to provide resources to support the alliance's work (financial or in-kind). USAID-funded programs and activities under the alliance are subject to environmental review under [22 CFR 216](#). To the extent that an alliance involves programs and activities that are not funded by USAID, 22 CFR 216 would not apply to activities financed separately by alliance partners utilizing their own funding mechanisms.

**Due Diligence Investigation:** In all cases, as part of the due diligence investigation of a potential alliance partner, it is essential to investigate what is often called the “triple bottom line” — i.e., whether the prospective partner is socially responsible, environmentally accountable and financially sound. For purposes of this discussion, due diligence means that, while the [22 CFR 216](#) environmental review procedures may not be applicable to a non-USAID funded parallel program or activity implemented under an alliance, USAID is still concerned about a proposed alliance partner's past record of environmental accountability and how it might affect the partner's specific plans under the alliance. It is important that USAID align itself with private sector entities whose interests are compatible with USAID's and whose business practices do not pose risks to the alliance's or USAID's reputation. Look for 'signs' that the proposed partners' operational practices incorporate, for instance, commitment to human rights, decent work conditions, environmental protection, and community involvement. Examples might include:

- A written and publicly available:
  - environment policy
  - worker health and safety policy
  - disclosure practice for reporting non-compliance with environmental laws and regulations
  - indigenous people and human rights policy,
- A sustained record of compliance with their above policies in all countries in which they operate,
- A sustained record of compliance with environmental laws and regulations in all countries in which they operate, including no outstanding environmental regulatory actions or lawsuits,

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- A board member or other senior corporate manager charged and empowered with ensuring corporate environmental responsibility, and
- An internal environmental assurance or management system such as ISO 14000 or other widely used green certification standards.

More detailed guidance on environmental due diligence is available from the USAID internal website in the **GDA Tools for Alliance Builders, Appendix XI, Due Diligence Guide**.

More detailed guidance on how and when to apply [22 CFR 216](#) to GDA activities is available on USAID's internal website page in the **GDA Tools for Alliance Builders, Appendix XVIII, FAQs: Environmental Procedures**.

Additional guidance and help is available from your Bureau Environmental Officer or the Agency GDA staff.

#### **b. Millennium Challenge Corporation (MCC)**

The Millennium Challenge Corporation (MCC) is an independent federal agency that funds and manages its own programs. MCC maintains and applies its own [MCC environmental impact assessment procedures](#). USAID will typically have no role in designing or managing MCC activities. In such cases, MCC will use its own procedures and staff to undertake its own environmental impact assessments and manage their implementation. If requested by MCC and to the extent a USAID Operating Unit has resources available, USAID may provide advice to MCC on best practices on environmental impact assessment based on USAID's experience.

In cases where USAID undertakes or manages activities either with USAID resources or

MCC-provided resources to prepare a country to transition to MCC eligibility or to design and/or implement MCC activities, [22 CFR 216](#) shall apply and the procedures outlined in it and this ADS Chapter shall be followed. If MCC has already conducted environmental impact assessment under their own procedures for such an activity, to avoid duplication of effort the relevant USAID Bureau Environmental Officer (BEO) shall decide in writing whether it meets USAID [22 CFR 216](#) standards or whether it needs to be amended. When the BEO decides it meets 22 CFR 216 standards, the MCC environmental impact assessment document shall be processed as a USAID 22 CFR 216 document and the USAID Operating Unit and their COR/AOR or Activity Manager shall be responsible for implementing it in the same way as any other 22 CFR 216 decision.

Questions should be directed to your Bureau Environmental Officer.



**204.3.10 Environmental Review in International Disaster Scenarios**

Effective Date: 02/22/2013

22 C.F.R. § 216.2(b)(1) states that “[p]rojects, programs, or activities” involving “international disaster assistance” are exempt from the 22 C.F.R. § 216 environmental procedures (except for assistance for the procurement or use of pesticides, per 22 C.F.R. § 216.2(e)). This section sets forth the procedure and criteria for environmental review in international disaster scenarios and the invocation of this exemption from 22 C.F.R. § 216 environmental procedures for a particular activity.

**a. Principles of Environmental Review for International Disaster Scenarios**

The completion of environmental review for international disaster scenarios requires a balancing of two paramount Agency objectives. First, as stated in detail in 22 C.F.R. § 216.1, there are multiple significant policy reasons for why it is Agency policy to ensure that environmental factors and values are integrated into the programming decision-making process. At the same time, it is clear that there are some instances in which disaster circumstances may make it impossible to conduct environmental review prior to undertaking certain urgent activities. The exemption in 22 C.F.R. § 216.2(b)(1) is intended to cover these kinds of scenarios.

Because of the importance of environmental review, the Agency intends for the international disaster assistance exemption to be applied only:

- To activities funded out of the International Disaster Assistance (IDA) appropriation account or,
- For non-IDA funded activities,
  - On a temporary basis, and
  - In those very limited situations in which prior environmental review requirements would otherwise stand in the way of activities to save lives or otherwise avert imminent disaster-related threats.

The exemption should only be invoked for non-IDA-funded activities temporarily for short periods of time when absolutely necessary, with initial environmental examination (potentially leading to environmental assessment or rapid environmental assessment) for later anticipated longer term needs beginning within one to three months and concurrently with the disaster response. In addition, all Agency operating units are expected to work with their Bureau Environmental Officers to establish applicable advance environmental review mechanisms, such as programmatic initial environmental examinations, for anticipated disaster response activities, in order to minimize the need to invoke the exemption.

**b. Procedure for Invoking the Exemption**

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**ADS 201** sets forth the pre-obligation requirement for environmental impact assessment. In fulfillment of this requirement, a USAID Mission/Office may determine that the activity in question is exempt from environmental review under this exemption, if the activity is IDA funded or the criteria set forth in the next section (Exemption Criteria) are met.

Any USAID Mission/Office that invokes this exemption for a non-IDA funded activity must document the basis for its application prior to the obligation of funds for the exempt activity. Missions/Offices invoking the exemption must make documentation regarding the application of this exemption available upon request for periodic review by the Bureau Environmental Officer, who oversees and monitors compliance with 22 C.F.R. § 216.

### **c. Exemption Criteria**

The international disaster assistance exemption applies only to IDA-funded activities or non-IDA-funded activities that meet ALL of the following criteria. Bureau Environmental Officers are available to advise USAID Mission/Offices on the application of the criteria:

- (1) The activity is being implemented in response to a disaster (including but not limited to political-, economic-, or conflict-related disasters as well as natural disasters) that is the subject of (a) an official U.S. disaster declaration cable or equivalent communication, (b) an equivalent emergency declaration by a recipient country or the Secretary General of the United Nations, or (c) an emergency appeal from a country, United Nations Agency, the International Committee of the Red Cross or the International Federation of Red Cross and Red Crescent Societies, a relevant regional or international intergovernmental agency, or non-governmental humanitarian organization of recognized standing traditionally working in conjunction with the former bodies.
- (2) The activity must begin urgently in order to avert an immediate threat to lives or public health and safety, or to avert imminent significant damage to property or livelihoods. This does not include situations in which the need for the activity was foreseeable and has become urgent merely as a result of the Agency's lack of advance planning. The activity cannot be an extension or continuation of a prior activity, unless the need for the extension or continuation resulted from significant changes in the disaster situation that arose within the last three months of the original activity.
- (3) The activity timeframe is either (a) no longer than 12 months, whether under one or more awards, or (b) up to 18 months due to an extension of a shorter activity, if the extension is approved by the Director of the Office of Foreign Disaster Assistance or Food For Peace (or duly delegated deputy or division director) under special circumstances deemed

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unavoidable to address urgent relief needs.

- (4) The activity does not involve “assistance for the procurement or use of pesticides,” unless otherwise authorized in accordance with applicable USAID procedures. (See ADS 312 and 22 C.F.R. 216.2(e)).

***In order for the activity to qualify for the international disaster assistance exemption to 22 C.F.R. § 216, it must meet all four of the above conditions. Otherwise, the activity does not qualify for the exemption, and you must proceed to complete the 22 C.F.R. § 216 environmental review procedures.***

The following are illustrative examples of types of activities that would normally qualify for exemption:

- Activities conducted by a Disaster Assistance Response Team or Response Management Team;
- Search and rescue equipment and activities;
- Transportation of relief commodities;
- Provision of relief commodities;
- Provision of access and the safe passage for relief commodities and humanitarian personnel;
- Provision of warning devices such as certain signs and announcements;
- Provision of security systems or personnel (e.g., guards) necessary to secure relief commodities or personnel;
- Small-scale infrastructure repairs (e.g., repairing roads, air strips, or existing water systems, etc.) to provide basic humanitarian needs or for the purpose of stabilization and mitigating/preventing disaster-related conflict and violence;
- Town hall meetings, capacity-building workshops, community gatherings, transportation of government officials, community-focused sports events, and radio shows for the purpose of stabilizing a community and mitigating/preventing disaster-related conflict and violence; and
- Cash/food for work activities for the purpose of stabilizing a community and mitigating/preventing disaster-related conflict and violence.

The following are illustrative examples of activities that would not be expected to be exempt pursuant to the above criteria:

*Text highlighted in yellow indicates that the adjacent material is new or substantively revised.*

- Disaster risk reduction activities;
- Temporary resettlement housing developed more than six months after the onset of the disaster;
- Structural measures such as building levees, dikes, or reservoirs;
- Non-disaster-related health services, e.g., in areas with high incidence of disease;
- Non-disaster-related food production/security activities e.g., in areas of chronic food shortages; and
- Post-disaster recovery activities.

### **204.3.11 Resolution by the Assistant Administrator; Review by the AEC**

Effective Date: 08/17/2012

Pursuant to 22 CFR 216.3(a)(6), if a BEO does not concur in or approve of a document or proposed action as required by this chapter or 22 CFR 216, the difference of opinion between the BEO and the Operating Unit may be submitted by either party for resolution to the Assistant Administrator concerned.

In conjunction with such a request for resolution, the Assistant Administrator (AA) concerned may make a written request to the AEC requesting the AEC's views on the dispute. In the request, the AA should specify a reasonable date by which the AEC's views are needed, taking into consideration the complexity of the issue and the demands of the program, project, or activity timeline. The purpose of the AEC's review is to facilitate informed decision making by the Assistant Administrator regarding the appropriate course of action in dispute. To this end, the AEC provides senior-level expert advice regarding the potential environmental impacts of agency activities, measures available to minimize or mitigate those impacts, and broader policy consequences of the AA's decision.

## **204.4 MANDATORY REFERENCES**

### **204.4.1 External Mandatory References**

Effective Date: 05/11/2006

- a. [22 CFR 216](#). Title 22 of the Code of Federal Regulations, Part 216 dated October 9, 1980, codifies USAID's environmental procedures (cited as 22 CFR 216). These are USAID's environmental procedures and are sometimes referred to colloquially as Regulation 16 or Regulation 216).
- b. [40 CFR 1500](#), the Federal Regulation governing implementation of NEPA

*Text highlighted in yellow indicates that the adjacent material is new or substantively revised.*

- c. [42 USC 4371](#), et seq., the National Environmental Policy Act (NEPA).
- d. **Environmental Defense Fund, et al. v. U.S. Agency for International Development, et al. Civil Action 75-0500 Order filed December 5, 1975 by Judge John J. Sirica, U.S. District Court for the District of Columbia**, is the out-of-court settlement requiring, among other things, USAID to undertake environmental impact assessment of all of its activities.
- e. [Executive Order 12114](#) dated January 4, 1979, sets forth environmental impact review requirements of Federal agency actions outside the United States.
- f. [Section 117 of the Foreign Assistance Act \(FAA\) of 1961, as amended](#), requires USAID to have appropriate environmental impact assessment procedures. 22 CFR 216 has been determined by Congress to meet the requirements set forth in FAA, Section 117.
- g. [Section 118\(c\) of the Foreign Assistance Act \(FAA\) of 1961, as amended](#) concerning the application of USAID's environmental procedures to activities involving tropical forests and meeting requirements for waiving prohibitions on certain types of activities.
- h. [Section 119\(g\) of the Foreign Assistance Act \(FAA\) of 1961, as amended](#) concerning ensuring USAID's environmental procedures appropriately take into account endangered species
- i. [Section 517\(d\) of the FY06 Foreign Operations Appropriations Act \(and predecessor provisions\)](#), concerning the requirement to apply the Agency's environmental procedures to activities undertaken in the Independent States of the former Soviet Union.

#### 204.4.2 Internal Mandatory References

Effective Date: 05/11/2006

- a. [ADS 201, Program Cycle Operational Policy](#)

#### 204.5 ADDITIONAL HELP

Effective Date: 05/10/2008

- a. [ADS 204saa, Recommended Bureau Environmental Officer \(BEO\) Appointment Memorandum](#)
- b. [ADS 204sab, Recommended Mission Environmental Officer \(MEO\) Appointment Memorandum](#)

*Text highlighted in yellow indicates that the adjacent material is new or substantively revised.*

- c. [ADS 204sac, Environmental Compliance: Language for Use in Solicitations and Awards](#)
- d. Additional help and operational guidance is provided on the external USAID environmental compliance Web site at:  
[http://transition.usaid.gov/our\\_work/environment/compliance/index.html](http://transition.usaid.gov/our_work/environment/compliance/index.html)

#### **204.5.1 Optional Language for Use in Solicitations and Awards**

- a. Additional help and best practices on how to incorporate environmental conditions and mitigating measures required by 22 CFR 216 determinations into solicitations and awards is available at [Language for Use in Solicitations and Awards](#). This optional help document provides recommended best practice boilerplate language for various types of procurement actions. The provided language should be seen as a starting point that may be expanded to meet the specific requirements, purpose, and intent of the 22 CFR 216 determination of a particular activity.

#### **204.6 DEFINITIONS**

Effective Date: 05/11/2006

The terms and definitions listed below have been incorporated into the ADS Glossary. See the [ADS Glossary](#) for all ADS terms and definitions.

##### **CEQ regulations**

Regulations promulgated by the President's Council on Environmental Quality (CEQ) (Federal Register, Volume 43, Number 230, November 29, 1978) under the authority of NEPA and Executive Order 11514, entitled Protection and Enhancement of Environmental Quality (March 5, 1970) as amended by Executive Order 11991 (May 24, 1977). (22 CFR 216.1(c)(1)). (Chapter 204)

##### **environment**

The term environment, as used in these procedures with respect to effects occurring outside the United States, means the natural and physical environment. With respect to effects occurring within the United States, see 22 CFR 216.7(b). (22 CFR 216.1(c)(10)). (Chapter 204)

##### **environmental assessment**

A detailed study of the reasonably foreseeable significant effects, both beneficial and adverse, of a proposed action on the environment of a foreign country or countries. (22 CFR 216.1(c)(4)). (Chapter 204)

##### **environmental impact statement**

A detailed study of the reasonably foreseeable positive and negative environmental impacts of a proposed USAID action and its reasonable alternatives on the United States, the global environment, or areas outside the jurisdiction of any nation. (See 22 CFR 216.1(c)(5) for further definition). (Chapter 204)

**initial environmental examination**

The preliminary review of the reasonably foreseeable effects of a proposed action on the environment. Its function is to provide a brief statement of the factual basis for a Threshold Decision as to whether an Environmental Assessment or an Environmental Impact Statement will be required. (22 CFR 216.1(c)(2)). (Chapter 204)

**minor donor**

USAID is a minor donor to a multi-donor project when USAID does not control the planning or design of the multi-donor project and either: (i) USAID's total contribution to the project is both less than \$1,000,000 and less than 25 percent of the estimated project cost, or (ii) USAID's total contribution is more than \$1,000,000 but less than 25 percent of the estimated project cost and the environmental procedures of the donor in control of the planning of design of the project are followed, but only if the USAID Environmental Coordinator determines that such procedures are adequate. (22 CFR 216.1(c)(12)). (Chapter 204)

**significant effect**

With respect to effects on the environment outside the United States, a proposed action has a significant effect on the environment if it does significant harm to the environment. (22 CFR 216.1(c)(11)). (Chapter 204)

**threshold decision**

A formal Agency decision which determines, based on an Initial Environmental Examination, whether a proposed Agency action is a major action significantly affecting the environment. (22 CFR 216.1(c)(3)). (Chapter 204)

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