

Session 5.

Environmental Impact Assessment and USAID Environmental Procedures: Reg. 216 and the Pre-implementation Review

Technical presentation and dialogue

Important note:

Note that in this workshop, the term “USAID Environmental Procedures” does not refer only to 22CFR 216 (Reg. 216), but collectively to Reg. 216, relevant FAA requirements, and to the mandatory procedures and directives contained in the USAID-internal ADS.

Summary

The preceding workshop sessions have:

- Described ESDM as a key objective for the ethical and effective practice of development
- Explained the EIA process and the fundamental skills of baseline characterization, impact identification, and mitigation design
- Highlighted EIA as the framework for achieving ESDM in project-based development activities, and as the basis for USAID Environmental Procedures
- Provided an opportunity to test and apply fundamental EIA skills in a virtual field exercise

USAID is *required by both court settlement and US law* to utilize an EIA-based process to “fully take into account” environmental sustainability in the design and implementation of its development programs. USAID Environmental Procedures represent the Agency’s unique implementation of the EIA process, and seek to assure that USAID-funded projects effectively identify and mitigate potential adverse environmental impacts. USAID Environmental Procedures also lay out an environmental compliance regime in which the Agency and Implementing Partners fulfill various environment-related requirements over the life of project.

Specifically, USAID Environmental Procedures dictate a process that must be applied to all activities **before** implementation. The output of this EIA process, defined by 22CFR216 (“Reg. 216”), is USAID-approved Reg. 216 environmental compliance documentation. This documentation includes:

- Requests for Categorical Exclusion (RCE)
- Initial Environmental Examinations (IEEs)—the USAID version of a preliminary assessment
- Environmental Assessments (EAs) and Programmatic Environmental Assessments (PEAs)

Most IEEs and all EAs/PEAs specify environmental management conditions, which are essentially mitigation measures. These measures—“IEE/EA conditions”—must be implemented and monitored over the life of the activity (or life of project, LOP). While implementation is the responsibility of the IP, USAID C/AORs are required to actively manage and monitor compliance with IEE/EA conditions. This process is the cornerstone of project environmental compliance. This session will introduce—*but not go into detail regarding*—the steps comprising this process and who is responsible for them: MEOs, CORs/AORs, Activity Managers, IPs, etc.

Although the pre-implementation, or “upstream compliance” aspect of USAID Environmental Procedures is well articulated via Reg. 216, specific requirements for the implementation of IEE/EA conditions and associated reporting—“downstream compliance”—are based primarily on Agency best practice, and vary somewhat by region. To strengthen downstream environmental compliance in MENA, IEEs and award documents are increasingly requiring IPs to develop, submit and implement environmental mitigation and monitoring plans (EMMPs) for their projects. The EMMP is a systematic vehicle to implement IEE and EA conditions.

More about Reg. 216 (22 CFR 216)

Reg. 216 is a US federal regulation that sets out USAID’s mandatory pre-obligation/ pre-implementation EIA process. The Regulation applies to all USAID programs or activities, including non-project assistance *and* substantive amendments or extensions to ongoing activities. No “irreversible commitment of resources” can occur to implement an activity unless the activity is covered by appropriate, approved Reg. 216 documentation.

When IEEs are approved with mitigation and monitoring conditions attached to one or more activities, those conditions become a required part of project design/implementation. (EAs always have such conditions.)

Across USAID programs, **Reg. 216 documentation is developed both by Mission staff and Partners**, depending on the situation. Title II Cooperating Sponsors, for example, are required to develop IEEs as part of their MYAPs, and other partners are often asked to develop Reg. 216 documentation for new project components. Reg. 216 documentation covering multiple projects at the sector program level is developed by Mission staff or 3rd-party contractors.

Reg. 216 is the best-known portion of USAID Environmental Procedures. However, Reg. 216 simply defines the pre-implementation EIA process. Unless the IEE and EA conditions that result from this process are actually implemented, (1) the activity is out of compliance; (2) the Reg. 216 process is largely meaningless; and (3) the objective of the environmental procedures (ESDM) is not achieved.

For this reason, the ADS requires C/AORs to REMEDY or HALT activities where IEE/EA conditions are not being implemented, or which are otherwise out of compliance.

Objectives

- Understand the legal mandate of USAID Environmental Procedures, including 22CFR216 (“Reg. 216”).
- Link application of the EIA-based Environmental Procedures to the goals of ESDM and broader USAID development efforts.
- Gain familiarity with the environmental compliance requirements established by USAID Environmental Procedures, including IEEs and related documentation.
- Illustrate how the USAID IEE and related environmental compliance documents determine project environmental management requirements.

Key resource

- The *Environmental Procedures Briefing for Mission Staff* is a succinct summary of LOP environmental compliance. This training draws heavily from the *Briefing*. It is included in this Sourcebook and available at <http://www.usaidgems.org/rolesRespons.htm>.