USAID
FROM THE AMERICAN PEOPLE

ENVIRONMENTAL COMPLIANCE PROCEDURES

TITLE 22, CODE OF FEDERAL REGULATIONS, PART 216

Cover Photo: Ruel Pine (ruel.pine@gmail.com), WWF/Philippines

Photo Caption: The Children of Donsol in the Philippines Celebrate Earth Day 2007

On April 21, 2007, school children of Donsol participated in the annual celebration of the Butanding (whale shark) Festival. The jubilant children, clad in festive costumes mimicking the checkerboard skin pattern of the world's largest fish, demonstrate their strong affirmation of support to community-wide efforts to conserve the whale sharks that congregate in Donsol from January to June of each year.

Over the past several years, remote Donsol in the Philippines' southern Luzon has become an important ecotourism destination for its whale sharks, offering a sustainable and equitable practice of resource use.

Visitors coming to "swim with the sharks" averaged around 1,000 per year over the period 1998 - 2002, and that since that time, arrivals have increased exponentially, reaching nearly 11,000 in 2006! The fledgling industry has created many jobs and provided a steady source of income and revenue for Donsol. But perhaps more importantly, the whale shark provides a visible and lucrative flagship species to draw attention to sustainable management of this fishing town's marine resources.

USAID/Philippines supports the coastal resource management and ecotourism activities in Donsol through a Private Voluntary Cooperation Matching Grant to World Wildlife Fund. Through the grant USAID and WWF are helping the community of Donsol to strengthen coastal law enforcement; implement best fisheries management practices such as habitat/coastal zoning; managed coastal tourism; legal framework and institutional development; waste management; environmental education; ecotourism and other sustainable livelihood opportunities.

Foreword

This brochure provides a handy copy of the environmental impact assessment procedures used by the U.S. Agency for International Development (USAID). They have been promulgated as Title 22 of the Code of Federal Regulations, Part 216 (22 CFR 216).

The procedures are used on every program, project, activity and amendment USAID funds to ensure the wise use of American taxpayer money through thoughtful, environmentally sound economic development. In the thirty years in which USAID has been applying these procedures and their predecessors, we have learned that they are most successful when everyone involved in a USAID-funded effort accepts responsibility for understanding and implementing them. Through this process, together we:

- **Create modern, state-of-the-art development**
- **Achieve optimal economic results with every dollar invested**
- **Avoid harming people in both our partner countries and the U.S.**
- **Avert unintended negative economic growth**
- **Reinforce practical civil society and democracy through transparency and public participation**
- **Reduce diplomatic incidents**
- **Engender public trust and confidence in USAID**
- **Comply with the law**

Additional guidance on applying 22 CFR 216 is found in USAID's Automated Directives System, Chapter 204. This is available on the internet at: http://www.usaid.gov/policy/ads/200/204.pdf

An electronic copy of 22 CFR 216, along with many helpful guidelines, training books, sample documents and contacts of USAID professionals who can assist can be found on the internet at: http://www.usaid.gov/our_work/environment/compliance/index.html

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United States Agency for International Development
Title 22, Code of Federal Regulation, Part 216
Agency Environmental Procedures

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Preface

These procedures have been revised based on experience with previous ones agreed to in settlement of a lawsuit brought against the Agency in 1975. The Procedures are Federal Regulations and therefore, it is imperative that they be followed in the development of Agency programs.

In preparing these Regulations, some interpretations and definitions have been drawn from Executive Order No. 12114 of January 1979, on the application of the National Environmental Policy Act (NEPA) to extraterritorial situations. Some elements of the revised regulations on NEPA issued by the President's Council on Environmental Quality have also been adopted. Examples are: The definition of significant impact, the concept of scoping of issues to be examined in a formal analysis, and the elimination of certain A.I.D. activities from the requirement for environmental review.

In addition, these procedures: 1) provide advance notice that certain types of projects will automatically require detailed environmental analysis thus eliminating one step in the former process and permitting early planning for this activity; 2) permit the use of specially prepared project design considerations or guidance to be substituted for environmental analysis in selected situations; 3) advocate the use of indigenous specialists to examine pre-defined issues during the project design stage; 4) clarify the role of the Bureau's Environmental Officer in the review and approval process, and 5) permit in certain circumstances, projects to go forward prior to completion of environmental analysis.

Note that only minimal clarification changes have been made in those sections dealing with the evaluation and selection of pesticides to be supported by A.I.D. in projects or of a non-project.

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

U.S. Agency for International Development

22 CFR PART 216

ENVIRONMENTAL PROCEDURES

Authority: 42 U.S.C. 4332; 22 U.S.C. 2381.

Source: 41 FR 26913, June 30, 1976.

§216.1 Introduction.

(a) Purpose. In accordance with sections 118(b) [now section 117(c)] and 621 of the Foreign Assistance Act of 1961, as amended, (the FAA) the following general procedures shall be used by A.I.D. to ensure that environmental factors and values are integrated into the A.I.D. decision-making process. These procedures also assign responsibility within the Agency for assessing the environmental effects of A.I.D.'s actions. These procedures are consistent with Executive Order 12114, issued January 4, 1979, entitled Environmental Effects Abroad of Major Federal Actions, and the purposes of the National Environmental Policy Act of 1970, as amended (42 U.S.C. 4371 **et seq.**)(NEPA). They are intended to implement the requirements of NEPA as they affect the A.I.D. program.

(b) Environmental Policy. In the conduct of its mandate to help upgrade the quality of life of the poor in developing countries, A.I.D. conducts a broad range of activities. These activities address such basic problems as hunger, malnutrition, overpopulation, disease, disaster, deterioration of the environment and the natural resource base, illiteracy as well as the lack of adequate housing and transportation. Pursuant to the FAA, A.I.D. provides development assistance in the form of technical advisory services, research, training, construction and commodity support. In addition, A.I.D. conducts programs under the Agricultural Trade Development and Assistance Act of 1954 (Pub. L. 480) that are designed to combat hunger, malnutrition and to facilitate economic development. Assistance programs are carried out under the foreign policy guidance of the Secretary of State and in cooperation with the governments of sovereign states. Within this framework, it is A.I.D. policy to:

(1) Ensure that the environmental consequences of A.I.D.-financed activities are identified and considered by A.I.D. and the host country prior to a final decision to proceed and that appropriate environmental safeguards are adopted;

(2) Assist developing countries to strengthen their capabilities to appreciate and effectively evaluate the potential environmental effects of proposed development strategies and projects, and to select, implement and manage effective environmental programs;

(3) Identify impacts resulting from A.I.D.'s actions upon the environment, including those aspects of the biosphere which are the common and cultural heritage of all mankind; and

(4) Define environmental limiting factors that constrain development and identify and carry out activities that assist in restoring the renewable resource base on which sustained development depends.

(c) Definitions.

(1) 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).

(2) Initial Environmental Examination. An Initial Environmental Examination is the first 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.

(3) 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.

(4) 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.

(5) Environmental Impact Statement. A detailed study of the reasonably foreseeable environmental impacts, both positive and negative, of a proposed A.I.D. action and its reasonable alternatives on the United States, the global environment or areas outside the jurisdiction of any nation as described in §216.7 of these procedures. It is a specific document having a definite format and content, as provided in NEPA and the CEQ Regulations. The required form and content of an Environmental Impact Statement is further described in §216.7 infra.

(6) Project Identification Document (PID). An internal A.I.D. document which initially identifies and describes a proposed project.

(7) Program Assistance Initial Proposal (PAIP). An internal A.I.D. document used to initiate and identify proposed nonproject assistance, including commodity import programs. It is analogous to the PID.

(8) Project Paper (PP). An internal A.I.D. document which provides a definitive description and appraisal of the project and particularly the plan or implementation.

(9) Program Assistance Approval Document (PAAD). An internal A.I.D. document approving nonproject assistance. It is analogous to the PP.

(10) 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 §216.7(b).

(11) 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.

(12) Minor Donor. For purposes of these procedures, A.I.D. is a minor donor to a multidonor project when A.I.D. does not control the planning or design of the multidonor project and either:

(i) A.I.D.'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) A.I.D.'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 A.I.D. Environmental Coordinator determines that such procedures are adequate.

§216.2 Applicability of procedures.

(a) Scope. Except as provided in §216.2(b), these procedures apply to all new projects, programs or activities authorized or approved by A.I.D. and to substantive amendments or extensions of ongoing projects, programs, or activities.

(b) Exemptions.

(1) Projects, programs or activities involving the following are exempt from these procedures:

(i) International disaster assistance;

(ii) Other emergency circumstances; and

(iii) Circumstances involving exceptional foreign policy sensitivities.

(2) A formal written determination, including a statement of the justification therefore, is required for each project, program or activity for which an exemption is made under paragraphs (b)(l) (ii) and (iii) of this section, but is not required for projects, programs or activities under paragraph (b)(l)(i) of this section. The determination shall be made either by the Assistant Administrator having responsibility for the program, project or activity, or by the Administrator,

where authority to approve financing has been reserved by the Administrator. The determination shall be made after consultation with CEQ regarding the environmental consequences of the proposed program, project or activity.

(c) Categorical Exclusions.

(1) The following criteria have been applied in determining the classes of actions included in §216.2(c)(2) for which and Initial Environmental Examination, Environmental Assessment and Environmental Impact Statement generally are not required:

(i) The action does not have an effect on the natural or physical environment;

(ii) A.I.D. does not have knowledge of or control over, and the objective of A.I.D. in furnishing assistance does not require, either prior to approval of financing or prior to implementation of specific activities, knowledge of or control over, the details of the specific activities that have an effect on the physical and natural environment for which financing is provided by A.I.D.;

(iii) Research activities which may have an affect on the physical and natural environment but will not have a significant effect as a result of limited scope, carefully controlled nature and effective monitoring.

(2) The following classes of actions are not subject to the procedures set forth in §216.3, except to the extent provided herein;

(i) Education, technical assistance, or training programs except to the extent such programs include activities directly affecting the environment (such as construction of facilities, etc.);

(ii) Controlled experimentation exclusively for the purpose of research and field evaluation which are confined to small areas and carefully monitored;

(iii) Analyses, studies, academic or research workshops and meetings;

(iv) Projects in which A.I.D. is a minor donor to a multidonor project and there is no potential significant effects upon the environment of the United States, areas outside any nation's jurisdiction or endangered or threatened species or their critical habitat;

(v) Document and information transfers;

(vi) Contributions to international, regional or national organizations by the United States which are not for the purpose of carrying out a specifically identifiable project or projects;

(vii) Institution building grants to research and educational institutions in the United States such as those provided for under section 122(d) and Title XII of Chapter 2 of Part I of the FAA (22 USCA §§2151 p. (b) 2220a. (1979));

(viii) Programs involving nutrition, health care or population and family planning services except to the extent designed to include activities directly affecting the environment (such as construction of facilities, water supply systems, waste water treatment, etc.)

(ix) Assistance provided under a Commodity Import Program when, prior to approval, A.I.D. does not have knowledge of the specific commodities to be financed and when the objective in furnishing such assistance requires neither knowledge, at the time the assistance is authorized, nor control, during implementation, of the commodities or their use in the host country.

(x) Support for intermediate credit institutions when the objective is to assist in the capitalization of the institution or part thereof and when such support does not involve reservation of the right to review and approve individual loans made by the institution;

(xi) Programs of maternal or child feeding conducted under Title II of Pub. L. 480;

(xii) Food for development programs conducted by food recipient countries under Title III of Pub. L. 480, when achieving A.I.D.'s objectives in such programs does not require knowledge of or control over the details of the specific activities conducted by the foreign country under such program;

(xiii) Matching, general support and institutional support grants provided to private voluntary organizations (PVOs) to assist in financing programs where A.I.D.'s objective in providing such financing does not require knowledge of or control over the details of the specific activities conducted by the PVO;

(xiv) Studies, projects or programs intended to develop the capability of recipient countries to engage in development planning, except to the extent designed to result in activities directly affecting the environment (such as construction of facilities, etc.); and

(xv) Activities which involve the application of design criteria or standards developed and approved by A.I.D.

(3) The originator of a project, program or activity shall determine the extent to which it is within the classes of actions described in paragraph (c)(2) of this section. This determination shall be made in writing and be submitted with the PID, PAIP or comparable document. This determination, which must include a brief statement supporting application of the exclusion shall be reviewed by the Bureau Environmental Officer in the same manner as a Threshold Decision under §216.3(a)(2) of these procedures. Notwithstanding paragraph (c)(2) of this section, the procedures set forth in §216.3 shall apply to any project, program or activity included in the classes of actions listed in paragraph (c)(2) of this section, or any aspect or component thereof, if at any time in the design, review or approval of the activity it is determined that the project, program or activity, or

aspect or component thereof, is subject to the control of A.I.D. and may have a significant effect on the environment.

(d) Classes of Actions Normally Having a Significant Effect on the Environment.

(1) The following classes of actions have been determined generally to have a significant effect on the environment and an Environmental Assessment or Environmental Impact Statement, as appropriate, will be required:

(i) Programs of river basin development;

(ii) Irrigation or water management projects, including dams and impoundments;

(iii) Agricultural land leveling;

(iv) Drainage projects;

(v) Large scale agricultural mechanization;

(vi) New lands development;

(vii) Resettlement projects;

(viii) Penetration road building or road improvement projects;

(ix) Powerplants;

(x) Industrial plants;

(xi) Potable water and sewerage projects other than those that are smallscale.

(2) An Initial Environmental Examination normally will not be necessary for activities within the classes described in §216.2(d), except when the originator of the project believes that the project will not have a significant effect on the environment. In such cases, the activity may be subjected to the procedures set forth in §216.3.

(e) Pesticides. The exemptions of §216.2(b)(l) and the categorical exclusions of §216.2(c)(2) are not applicable to assistance for the procurement or use of pesticides.

§216.3 Procedures.

(a) General Procedures.

(1) Preparation of the Initial Environmental Examination. Except as otherwise provided, an Initial Environmental Examination is not required for activities identified in §216.2(b)(1), (c)(2), and (d). For all other A.I.D. activities described in §216.2(a) an Initial Environmental Examination will be prepared by

the originator of an action. Except as indicated in this section, it should be prepared with the PID or PAIP. For projects including the procurement or use of pesticides, the procedures set forth in §216.3(b) will be followed, in addition to the procedures in this paragraph. Activities which cannot be identified in sufficient detail to permit the completion of an Initial Environmental Examination with the PID or PAIP, shall be described by including with the PID or PAIP:

(i) An explanation indicating why the Initial Environmental Examination cannot be completed;

(ii) an estimate of the amount of time required to complete the Initial Environmental Examination; and

(iii) a recommendation that a Threshold Decision be deferred until the Initial Environmental Examination is completed. The responsible Assistant Administrator will act on the request for deferral concurrently with action on the PID or PAIP and will designate a time for completion of the Initial Environmental Examination. In all instances, except as provided in §216.3(a)(7), this completion date will be in sufficient time to allow for the completion of an Environmental Assessment or Environmental Impact Statement, if required, before a final decision is made to provide A.I.D. funding for the action.

(2) Threshold Decision.

(i) The Initial Environmental Examination will include a Threshold Decision made by the officer in the originating office who signs the PID or PAIP. If the Initial Environmental Examination is completed prior to or at the same time as the PID or PAIP, the Threshold Decision will be reviewed by the Bureau Environmental Officer concurrently with approval of the PID or PAIP. The Bureau Environmental Officer will either concur in the Threshold Decision or request reconsideration by the officer who made the Threshold Decision, stating the reasons for the request. Differences of opinion between these officers shall be submitted for resolution to the Assistant Administrator at the same time that the PID is submitted for approval.

(ii) An Initial Environmental Examination, completed subsequent to approval of the PID or PAIP, will be forwarded immediately together with the Threshold Determination to the Bureau Environmental Officer for action as described in this section.

(iii) A Positive Threshold Decision shall result from a finding that the proposed action will have a significant effect on the environment. An Environmental Impact Statement shall be prepared if required pursuant to §216.7. If an impact statement is not required, an Environmental Assessment will be prepared in accordance with §216.6. The cognizant Bureau or Office will record a Negative Determination if the proposed action will not have a significant effect on the environment.

(3) Negative Declaration. The Assistant Administrator, or the Administrator in actions for which the approval of the Administrator is required for the authorization of financing, may make a Negative Declaration, in writing, that the Agency will not develop an Environmental Assessment or an Environmental Impact Statement regarding an action found to have a significant effect on the environment when:

(i) a substantial number of Environmental Assessments or Environmental Impact Statements relating to similar activities have been prepared in the past, if relevant to the proposed action,

(ii) the Agency has previously prepared a programmatic Statement or Assessment covering the activity in question which has been considered in the development of such activity, or

(iii) the Agency has developed design criteria for such an action which, if applied in the design of the action, will avoid a significant effect on the environment.

(4) Scope of Environmental Assessment or Impact Statement.

(i) Procedure and Content. After a Positive Threshold Decision has been made, or a determination is made under the pesticide procedures set forth in §216.3(b) that an Environmental Assessment or Environmental Impact Statement is required, the originator of the action shall commence the process of identifying the significant issues relating to the proposed action and of determining the scope of the issues to be addressed in the Environmental Assessment or Environmental Impact Statement. The originator of an action within the classes of actions described in §216.2(d) shall commence this scoping process as soon as practicable. Persons having expertise relevant to the environmental aspects of the proposed action shall also participate in this scoping process. (Participants may include but are not limited to representatives of host governments, public and private institutions, the A.I.D. Mission staff and contractors.) This process shall result in a written statement which shall include the following matters:

(a) A determination of the scope and significance of issues to be analyzed in the Environmental Assessment or Impact Statement, including direct and indirect effects of the project on the environment.

(b) Identification and elimination from detailed study of the issues that are not significant or have been covered by earlier environmental review, or approved design considerations, narrowing the discussion of these issues to a brief presentation of why they will not have a significant effect on the environment.

(c) A description of:

(1) the timing of the preparation of environmental analyses, including phasing if appropriate,

(2) variations required in the format of the Environmental Assessment, and

(3) the tentative planning and decision-making schedule; and

(d) A description of how the analysis will be conducted and the disciplines that will participate in the analysis.

(ii) These written statements shall be reviewed and approved by the Bureau Environmental Officer.

(iii) Circulation of Scoping Statement. To assist in the preparation of an Environmental Assessment, the Bureau Environmental Officer may circulate copies of the written statement, together with a request for written comments, within thirty days, to selected federal agencies if that Officer believes comments by such federal agencies will be useful in the preparation of an Environmental Assessment. Comments received from reviewing federal agencies will be considered in the preparation of the Environmental Assessment and in the formulation of the design and implementation of the project, and will, together with the scoping statement, be included in the project file.

(iv) Change in Threshold Decision. If it becomes evident that the action will not have a significant effect on the environment (i.e., will not cause significant harm to the environment), the Positive Threshold Decision may be withdrawn with the concurrence of the Bureau Environmental Officer. In the case of an action included in §216.2(d)(2), the request for withdrawal shall be made to the Bureau Environmental Officer.

(5) Preparation of Environmental Assessments and Environmental Impact Statement. If the PID or PAIP is approved, and the Threshold Decision is positive, or the action is included in §216.2(d), the originator of the action will be responsible for the preparation of an Environmental Assessment or Environmental Impact Statement as required. Draft Environmental Impact Statements will be circulated for review and comment as part of the review of Project Papers and as outlined further in §216.7 of those procedures. Except as provided in §216.3(a)(7), final approval of the PP or PAAD and the method of implementation will include consideration of the Environmental Assessment or final Environmental Impact Statement.

(6) Processing and Review Within A.I.D.

(i) Initial Environmental Examinations, Environmental Assessments, and final Environmental Impact Statements will be processed pursuant to standard A.I.D. procedures for project approval documents. Except as provided in §216.3(a)(7), Environmental Assessments and final Environmental Impact Statements will be reviewed as an integral part of the Project Paper or equivalent document. In addition to these procedures, Environmental Assessments will be reviewed and cleared by the Bureau Environmental Officer. They may also be reviewed by the

Agency's Environmental Coordinator who will monitor the Environmental Assessment process.

(ii) When project approval authority is delegated to field posts, Environmental Assessments shall be reviewed and cleared by the Bureau Environmental Officer prior to the approval of such actions.

(iii) Draft and final Environmental Impact Statements will be reviewed and cleared by the Environmental Coordinator and the Office of the General Counsel.

(7) Environmental Review After Authorization of Financing.

(i) Environmental review may be performed after authorization of a project, program or activity only with respect to subprojects or significant aspects of the project, program or activity that are unidentified at the time of authorization. Environmental review shall be completed prior to authorization for all subprojects and aspects of a project, program or activity that are identified.

(ii) Environmental review should occur at the earliest time in design or implementation at which a meaningful review can be undertaken, but in no event later than when previously unidentified subprojects or aspects of projects, programs or activities are identified and planned. To the extent possible, adequate information to undertake deferred environmental review should be obtained before funds are obligated for unidentified subprojects or aspects of projects, programs or activities. (Funds may be obligated for the other aspects for which environmental review has been completed.) To avoid an irreversible commitment of resources prior to the conclusion of environmental review, the obligation of funds can be made incrementally as subprojects or aspects of projects, programs or activities are identified; 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.

(iii) When environmental review must be deferred beyond the time some of the funds are to be disbursed (e.g., long lead times for the delivery of goods or services), the project agreement or other document obligating funds shall contain a covenant or covenants requiring environmental review, including an Environmental Assessment or Environmental Impact Statement, when appropriate, to be completed and taken into account prior to implementation of those subprojects or aspects of the project, program or activity for which environmental review is deferred. Such covenants shall ensure that implementation plans will be modified in accordance with environmental review if the parties decide that modifications are necessary.

(iv) When environmental review will not be completed for an entire project, program or activity prior to authorization, the Initial Environmental Examination and

Threshold Decision required under §216.3(a)(l) and (2) shall identify those aspects of the project, program or activity for which environmental review will be completed prior to the time financing is authorized. It shall also include those subprojects or aspects for which environmental review will be deferred, stating the reasons for deferral and the time when environmental review will be completed. Further, it shall state how an irreversible commitment of funds will be avoided until environmental review is completed. The A.I.D. officer responsible for making environmental decisions for such projects, programs or activities shall also be identified (the same officer who has decision-making authority for the other aspects of implementation). This deferral shall be reviewed and approved by the officer making the Threshold Decision and the officer who authorizes the project, program or activity. Such approval may be made only after consultation with the Office of General Counsel for the purpose of establishing the manner in which conditions precedent to disbursement or covenants in project and other agreements will avoid an irreversible commitment of resources before environmental review is completed.

(8) Monitoring. To the extent feasible and relevant, projects and programs for which Environmental Impact Statements or Environmental Assessments have been prepared should be designed to include measurement of any changes in environmental quality, positive or negative, during their implementation. This will require recording of baseline data at the start. To the extent that available data permit, originating offices of A.I.D. will formulate systems in collaboration with recipient nations, to monitor such impacts during the life of A.I.D.'s involvement. Monitoring implementation of projects, programs and activities shall take into account environmental impacts to the same extent as other aspects of such projects, programs and activities. If during implementation of any project, program or activity, whether or not an Environmental Assessment or Environmental Impact Statement was originally required, it appears to the Mission Director, or officer responsible for the project, program or activity, that it is having or will have a significant effect on the environment that was not previously studied in an Environmental Assessment or Environmental Impact Statement, the procedures contained in this part shall be followed including, as appropriate, a Threshold Decision, Scoping and an Environmental Assessment or Environmental Impact Statement.

(9) Revisions. If, after a Threshold Decision is made resulting in a Negative Determination, a project is revised or new information becomes available which indicates that a proposed action might be "major" and its effects "significant," the Negative Determination will be reviewed and revised by the cognizant Bureau and an Environmental Assessment or Environmental Impact Statement will be prepared, if appropriate. Environmental Assessments and Environmental Impact Statements will be amended and processed appropriately if there are major changes in the project or program, or if significant new information becomes available which relates to the impact of the project, program or activity on the

environment that was not considered at the time the Environmental Assessment or Environmental Impact Statement was approved. When ongoing programs are revised to incorporate a change in scope or nature, a determination will be made as to whether such change may have an environmental impact not previously assessed. If so, the procedures outlined in this part will be followed.

(10) Other Approval Documents. These procedures refer to certain A.I.D. documents such as PIDs, PAIPs, PPs and PAADs as the A.I.D. internal instruments for approval of projects, programs or activities. From time to time, certain special procedures, such as those in §216.4, may not require the use of the aforementioned documents. In these situations, these environmental procedures shall apply to those special approval procedures, unless otherwise exempt, at approval times and levels comparable to projects, programs and activities in which the aforementioned documents are used.

(b) Pesticide Procedures.

(1) Project Assistance. Except as provided in §216.3 (b)(2), all proposed projects involving assistance for the procurement or use, or both, of pesticides shall be subject to the procedures prescribed in §216.3(b)(1)(i) through (v). These procedures shall also apply, to the extent permitted by agreements entered into by A.I.D. before the effective date of these pesticide procedures, to such projects that have been authorized but for which pesticides have not been procured as of the effective date of these pesticide procedures.

(i) When a project includes assistance for procurement or use, or both, of pesticides registered for the same or similar uses by USEPA without restriction, the Initial Environmental Examination for the project shall include a separate section evaluating the economic, social and environmental risks and benefits of the planned pesticide use to determine whether the use may result in significant environmental impact. Factors to be considered in such an evaluation shall include, but not be limited to the following:

(a) The USEPA registration status of the requested pesticide;

(b) The basis for selection of the requested pesticide;

(c) The extent to which the proposed pesticide use is part of an integrated pest management program;

(d) The proposed method or methods of application, including availability of appropriate application and safety equipment;

(e) Any acute and long-term toxicological hazards, either human or environmental, associated with the proposed use and measures available to minimize such hazards;

(f) The effectiveness of the requested pesticide for the proposed use;

(g) Compatibility of the proposed pesticide with target and nontarget ecosystems;

(h) The conditions under which the pesticide is to be used, including climate, flora, fauna, geography, hydrology, and soils;

(i) The availability and effectiveness of other pesticides or nonchemical control methods;

(j) The requesting country's ability to regulate or control the distribution, storage, use and disposal of the requested pesticide;

(k) The provisions made for training of users and applicators; and

(l) The provisions made for monitoring the use and effectiveness of the pesticide.

In those cases where the evaluation of the proposed pesticide use in the Initial Environmental Examination indicates that the use will significantly affect the human environment, the Threshold Decision will include a recommendation for the preparation of an Environmental Assessment or Environmental Impact Statement, as appropriate. In the event a decision is made to approve the planned pesticide use, the Project Paper shall include to the extent practicable, provisions designed to mitigate potential adverse effects of the pesticide. When the pesticide evaluation section of the Initial Environmental Examination does not indicate a potentially unreasonable risk arising from the pesticide use, an Environmental Assessment or Environmental Impact Statement shall nevertheless be prepared if the environmental effects of the project otherwise require further assessment.

(ii) When a project includes assistance for the procurement or use, or both, of any pesticide registered for the same or similar uses in the United States but the proposed use is restricted by the USEPA on the basis of user hazard, the procedures set forth in §216.3(b)(1)(i) above will be followed. In addition, the Initial Environmental Examination will include an evaluation of the user hazards associated with the proposed USEPA restricted uses to ensure that the implementation plan which is contained in the Project Paper incorporates provisions for making the recipient government aware of these risks and providing, if necessary, such technical assistance as may be required to mitigate these risks. If the proposed pesticide use is also restricted on a basis other than user hazard, the procedures in §216.3(b)(l)(iii) shall be followed in lieu of the procedures in this section.

(iii) If the project includes assistance for the procurement or use, or both of:

(a) Any pesticide other than one registered for the same or similar uses by USEPA without restriction or for restricted use on the basis of user hazard; or

(b) Any pesticide for which a notice of rebuttable presumption against re-registration, notice of intent to cancel, or notice of intent to suspend has been issued by USEPA,

The Threshold Decision will provide for the preparation of an Environmental Assessment or Environmental Impact Statement, as appropriate (§216.6(a)). The EA or EIS shall include, but not be limited to, an analysis of the factors identified in §216.3(b)(I)(i) above.

(iv) Notwithstanding the provisions of §216.3(b)(I)(i) through (iii) above, if the project includes assistance for the procurement or use, or both, of a pesticide against which USEPA has initiated a regulatory action for cause, or for which it has issued a notice of rebuttable presumption against re-registration, the nature of the action or notice, including the relevant technical and scientific factors will be discussed with the requesting government and considered in the IEE and, if prepared, in the EA or EIS. If USEPA initiates any of the regulatory actions above against a pesticide subsequent to its evaluation in an IEE, EA or EIS, the nature of the action will be discussed with the recipient government and considered in an amended IEE or amended EA or EIS, as appropriate.

(v) If the project includes assistance for the procurement or use, or both of pesticides but the specific pesticides to be procured or used cannot be identified at the time the IEE is prepared, the procedures outlined in §216.3(b)(i) through (iv) will be followed when the specific pesticides are identified and before procurement or use is authorized. Where identification of the pesticides to be procured or used does not occur until after Project Paper approval, neither the procurement nor the use of the pesticides shall be undertaken unless approved, in writing, by the Assistant Administrator (or in the case of projects authorized at the Mission level, the Mission Director) who approved the Project Paper.

(2) Exceptions to Pesticide Procedures. The procedures set forth in §216.3 (b)(I) shall not apply to the following projects including assistance for the procurement or use, or both, of pesticides.

(i) Projects under emergency conditions.

Emergency conditions shall be deemed to exist when it is determined by the Administrator, A.I.D., in writing that:

(a) A pest outbreak has occurred or is imminent; and

(b) Significant health problems (either human or animal) or significant economic problems will occur without the prompt use of the proposed pesticide; and

(c) Insufficient time is available before the pesticide must be used to evaluate the proposed use in accordance with the provisions of this regulation.

(ii) Projects where A.I.D. is a minor donor, as defined in §216.1(c)(12) above, to a multidonor project.

(iii) Projects including assistance for procurement or use, or both, of pesticides for research or limited field evaluation purposes by or under the supervision of project personnel. In such instances, however, A.I.D. will ensure that the manufacturers of the pesticides provide toxicological and environmental data necessary to safeguard the health of research personnel and the quality of the local environment in which the pesticides will be used. Furthermore, treated crops will not be used for human or animal consumption unless appropriate tolerances have been established by EPA or recommended by FAO/WHO, and the rates and frequency of application, together with the prescribed preharvest intervals, do not result in residues exceeding such tolerances. This prohibition does not apply to the feeding of such crops to animals for research purposes.

(3) Non-Project Assistance. In a very few limited number of circumstances A.I.D. may provide nonproject assistance for the procurement and use of pesticides. Assistance in such cases shall be provided if the A.I.D. Administrator determines in writing that;

(i) emergency conditions, as defined in §216.3(b)(2)(i) above exist; or

(ii) that compelling circumstances exist such that failure to provide the proposed assistance would seriously impede the attainment of U.S. foreign policy objectives or the objectives of the foreign assistance program. In the latter case, a decision to provide the assistance will be based to the maximum extent practicable, upon a consideration of the factors set forth in §216.3(b)(1)(i) and, to the extent available, the history of efficacy and safety covering the past use of the pesticide the in recipient country.

§216.4 Private applicants.

Programs, projects or activities for which financing from A.I.D. is sought by private applicants, such as PVOs and educational and research institutions, are subject to these procedures. Except as provided in §216.2(b), (c) or (d), preliminary proposals for financing submitted by private applicants shall be accompanied by an Initial Environmental Examination or adequate information to permit preparation of an Initial Environmental Examination. The Threshold Decision shall be made by the Mission Director for the country to which the proposal relates, if the preliminary proposal is submitted to the A.I.D. Mission, or shall be made by the officer in A.I.D. who approves the preliminary proposal. In either case, the concurrence of the Bureau Environmental Officer is required in the same manner as in §216.3(a)(2), except for PVO projects approved in A.I.D. Missions with total life of project costs less than $500,000. Thereafter, the same procedures set forth in §216.3 including as appropriate scoping and Environmental Assessments or Environmental Impact Statements, shall be applicable to programs, projects or

activities submitted by private applicants. The final proposal submitted for financing shall be treated, for purposes of these procedures, as a Project Paper. The Bureau Environmental Officer shall advise private applicants of studies or other information foreseeably required for action by A.I.D.

§216.5 Endangered species.

It is A.I.D. policy to conduct its assistance programs in a manner that is sensitive to the protection of endangered or threatened species and their critical habitats. The Initial Environmental Examination for each project, program or activity having an effect on the environment shall specifically determine whether the project, program or activity will have an effect on an endangered or threatened species, or critical habitat. If the proposed project, program or activity will have the effect of jeopardizing an endangered or threatened species or of adversely modifying its critical habitat, the Threshold Decision shall be a Positive Determination and an Environmental Assessment or Environmental Impact Statement completed as appropriate, which shall discuss alternatives or modifications to avoid or mitigate such impact on the species or its habitat.

§216.6 Environmental assessments.

(a) General Purpose. The purpose of the Environmental Assessment is to provide Agency and host country decision-makers with a full discussion of significant environmental effects of a proposed action. It includes alternatives which would avoid or minimize adverse effects or enhance the quality of the environment so that the expected benefits of development objectives can be weighed against any adverse impacts upon the human environment or any irreversible or irretrievable commitment of resources.

(b) Collaboration with Affected Nation on Preparation. Collaboration in obtaining data, conducting analyses and considering alternatives will help build an awareness of development associated environmental problems in less developed countries as well as assist in building an indigenous institutional capability to deal nationally with such problems. Missions, Bureaus and Offices will collaborate with affected countries to the maximum extent possible, in the development of any Environmental Assessments and consideration of environmental consequences as set forth therein.

(c) Content and Form. The Environmental Assessment shall be based upon the scoping statement and shall address the following elements, as appropriate:

(1) Summary. The summary shall stress the major conclusions, areas of controversy, if any, and the issues to be resolved.

(2) Purpose. The Environmental Assessment shall briefly specify the underlying purpose and need to which the Agency is responding in proposing the alternatives including the proposed action.

(3) Alternatives Including the Proposed Action. This section should present the environmental impacts of the proposal and its alternatives in comparative form, thereby sharpening the issues and providing a clear basis for choice among options by the decision-maker. This section should explore and evaluate reasonable alternatives and briefly discuss the reasons for eliminating those alternatives which were not included in the detailed study; devote substantial treatment to each alternative considered in detail including the proposed action so that reviewers may evaluate their comparative merits; include the alternative of no action; identify the Agency's preferred alternative or alternatives, if one or more exists; include appropriate mitigation measures not already included in the proposed action or alternatives.

(4) Affected Environment. The Environmental Assessment shall succinctly describe the environment of the area(s) to be affected or created by the alternatives under consideration. The descriptions shall be no longer than is necessary to understand the effects of the alternatives. Data and analyses in the Environmental Assessment shall be commensurate with the significance of the impact with less important material summarized, consolidated or simply referenced.

(5) Environmental Consequences. This section forms the analytic basis for the comparisons under paragraph (c)(3) of this section. It will include the environmental impacts of the alternatives including the proposed action; any adverse effects that cannot be avoided should the proposed action be implemented; the relationship between short-term uses of the environment and the maintenance and enhancement of long-term productivity; and any irreversible or irretrievable commitments of resources which would be involved in the proposal should it be implemented. It should not duplicate discussions in paragraph (c)(3) of this section. This section of the Environmental Assessment should include discussions of direct effects and their significance; indirect effects and their significance; possible conflicts between the proposed action and land use plans, policies and controls for the areas concerned; energy requirements and conservation potential of various alternatives and mitigation measures; natural or depletable resource requirements and conservation potential of various requirements and mitigation measures; urban quality; historic and cultural resources and the design of the built environment, including the reuse and conservation potential of various alternatives and mitigation measures; and means to mitigate adverse environmental impacts.

(6) List of Preparers. The Environmental Assessment shall list the names and qualifications (expertise, experience, professional discipline) of the persons prima-

rily responsible for preparing the Environmental Assessment or significant background papers.

(7) Appendix. An appendix may be prepared.

(d) Program Assessment. Program Assessments may be appropriate in order to assess the environmental effects of a number of individual actions and their cumulative environmental impact in a given country or geographic area, or the environmental impacts that are generic or common to a class of agency actions, or other activities which are not country-specific. In these cases, a single, programmatic assessment will be prepared in A.I.D./Washington and circulated to appropriate overseas Missions, host governments, and to interested parties within the United States. To the extent practicable, the form and content of the programmatic Environmental Assessment will be the same as for project Assessments. Subsequent Environmental Assessments on major individual actions will only be necessary where such follow-on or subsequent activities may have significant environmental impacts on specific countries where such impacts have not been adequately evaluated in the programmatic Environmental Assessment. Other programmatic evaluations of class of actions may be conducted in an effort to establish additional categorical exclusions or design standards or criteria for such classes that will eliminate or minimize adverse effects of such actions, enhance the environmental effect of such actions or reduce the amount of paperwork or time involved in these procedures. Programmatic evaluations conducted for the purpose of establishing additional categorical exclusions under §216.2(c) or design considerations that will eliminate significant effects for classes of actions shall be made available for public comment before the categorical exclusions or design standards or criteria are adopted by A.I.D. Notice of the availability of such documents shall be published in the Federal Register. Additional categorical exclusions shall be adopted by A.I.D. upon the approval of the Administrator, and design consideration in accordance with usual agency procedures.

(e) Consultation and Review.

(1) When Environmental Assessments are prepared on activities carried out within or focused on specific developing countries, consultation will be held between A.I.D. staff and the host government both in the early stages of preparation and on the results and significance of the completed Assessment before the project is authorized.

(2) Missions will encourage the host government to make the Environmental Assessment available to the general public of the recipient country. If Environmental Assessments are prepared on activities which are not country specific, the Assessment will be circulated by the Environmental Coordinator to A.I.D.'s Overseas Missions and interested governments for information, guidance and comment and will be made available in the U.S. to interested parties.

(f) Effect in Other Countries. In a situation where an analysis indicates that potential effects may extend beyond the national boundaries of a recipient country and adjacent foreign nations may be affected, A.I.D. will urge the recipient country to consult with such countries in advance of project approval and to negotiate mutually acceptable accommodations.

(g) Classified Material. Environmental Assessments will not normally include classified or administratively controlled material. However, there may be situations where environmental aspects cannot be adequately discussed without the inclusion of such material. The handling and disclosure of classified or administratively controlled material shall be governed by 22 CFR Part 9. Those portions of an Environmental Assessment which are not classified or administratively controlled will be made available to persons outside the Agency as provided for in 22 CFR Part 212.

§216.7 Environmental impact statements.

(a) Applicability. An Environmental Impact Statement shall be prepared when agency actions significantly affect:

(1) The global environment or areas outside the jurisdiction of any nation (e.g., the oceans);

(2) The environment of the United States; or

(3) Other aspects of the environment at the discretion of the Administrator.

(b) Effects on the United States: Content and Form. An Environmental Impact Statement relating to paragraph (a)(2) of this section shall comply with the CEQ Regulations. With respect to effects on the United States, the terms environment and significant effect wherever used in these procedures have the same meaning as in the CEQ Regulations rather than as defined in §216.1(c)(12) and (13) of these procedures.

(c) Other Effects: Content and Form. An Environmental Impact Statement relating to paragraphs (a)(1) and (a)(3) of this section will generally follow the CEQ Regulations, but will take into account the special considerations and concerns of A.I.D. Circulation of such Environmental Impact Statements in draft form will precede approval of a Project Paper or equivalent and comments from such circulation will be considered before final project authorization as outlined in §216.3 of these procedures. The draft Environmental Impact Statement will also be circulated by the Missions to affected foreign governments for information and comment. Draft Environmental Impact Statements generally will be made available for comment to Federal agencies with jurisdiction by law or special expertise with respect to any environmental impact involved, and to public and private organizations and individuals for not less than forty-five (45) days. Notice of availability of the draft Environmental Impact Statements will be published in

the Federal Register. Cognizant Bureaus and Offices will submit these drafts for circulation through the Environmental Coordinator who will have the responsibility for coordinating all such communications with persons outside A.I.D. Any comments received by the Environmental Coordinator will be forwarded to the originating Bureau or Office for consideration in final policy decisions and the preparation of a final Environmental Impact Statement. All such comments will be attached to the final Statement, and those relevant comments not adequately discussed in the draft Environmental Impact Statement will be appropriately dealt with in the final Environmental Impact Statement. Copies of the final Environmental Impact Statement, with comments attached, will be sent by the Environmental Coordinator to CEQ and to all other Federal, state, and local agencies and private organizations that made substantive comments on the draft, including affected foreign governments. Where emergency circumstances or considerations of foreign policy make it necessary to take an action without observing the provisions of §1506.10 of the CEQ Regulations, or when there are overriding considerations of expense to the United States or foreign governments, the originating Office will advise the Environmental Coordinator who will consult with Department of State and CEQ concerning appropriate modification of review procedures.

§216.8 Public hearings.

(a) In most instances A.I.D. will be able to gain the benefit of public participation in the impact statement process through circulation of draft statements and notice of public availability in CEQ publications. However, in some cases the Administrator may wish to hold public hearings on draft Environmental Impact Statements. In deciding whether or not a public hearing is appropriate, Bureaus in conjunction with the Environmental Coordinator should consider:

(1) The magnitude of the proposal in terms of economic costs, the geographic area involved, and the uniqueness or size of commitment of the resources involved;

(2) The degree of interest in the proposal as evidenced by requests from the public and from Federal, state and local authorities, and private organizations and individuals, that a hearing be held;

(3) The complexity of the issue and likelihood that information will be presented at the hearing which will be of assistance to the Agency; and

(4) The extent to which public involvement already has been achieved through other means, such as earlier public hearings, meetings with citizen representatives, and/or written comments on the proposed action.

(b) If public hearings are held, draft Environmental Impact Statements to be discussed should be made available to the public at least fifteen (15) days prior to

the time of the public hearings, and a notice will be placed in the Federal Register giving the subject, time and place of the proposed hearings.

§216.9 Bilateral and multilateral studies and concise reviews of environmental issues.

Notwithstanding anything to the contrary in these procedures, the Administrator may approve the use of either of the following documents as a substitute for an Environmental Assessment (but not a substitute for an Environmental Impact Statement) required under these procedures:

(a) Bilateral or multilateral environmental studies, relevant or related to the proposed action, prepared by the United States and one or more foreign countries or by an international body or organization in which the United States is a member or participant; or

(b) Concise reviews of the environmental issues involved including summary environmental analyses or other appropriate documents.

§216.10 Records and reports.

Each Agency Bureau will maintain a current list of activities for which Environmental Assessments and Environmental Impact Statements are being prepared and for which Negative Determinations and Declarations have been made. Copies of final Initial Environmental Examinations, scoping statements, Assessments and Impact Statements will be available to interested Federal agencies upon request. The cognizant Bureau will maintain a permanent file (which may be part of its normal project files) of Environmental Impact Statements, Environmental Assessments, final Initial Environmental Examinations, scoping statements, Determinations and Declarations, which will be available to the public under the Freedom of Information Act. Interested persons can obtain information or status reports regarding Environmental Assessments and Environmental Impact Statements through the A.I.D. Environmental Coordinator.

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Dated October 9, 1980

Joseph C. Wheeler

Acting Administrator

Spelling errors corrected

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