USAID ENVIRONMENTAL REGULATIONS

AND

FOREIGN ASSISTANCE ACT ENVIRONMENTAL REQUIREMENTS

A Practical Guide and Strategy Tips for AID Project, Program And Technical Personnel

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1.0 INTRODUCTION

USAID's environmental regulations evolved out of litigation between the Agency and U.S. environmental groups during the mid 1970's. Embodied as 22 CFR 216 (USAID Handbook 3, Appendix 2D), the stated purpose of these federal, court-ordered regulations is: 1) to ensure that environmental factors and values are integrated into the AID decision-making process; 2) to assign responsibility within the Agency for assessing the environmental effects of AID's actions; and 3) to implement the requirements of the National Environmental Policy Act (NEPA) as they affect AID programs. The regulations are consistent with the purpose of NEPA and Executive Order (EO) 12114 on "Environmental Effects Abroad of Major Federal Actions," but they are considerably less stringent in most respects than NEPA-related environmental legislation applicable to U.S. domestic projects. (22 CFR 216.1(a)).

The purpose of this guide to the regulations is: 1) to simplify and explain the regulations; 2) to help AID officers more easily understand how federal environmental law affects the project development and implementation processes; and 3) to assist AID officers in obtaining environmental clearances with the minimum cost and time expenditure practicable consistent with the intent of the regulations.

In addition to treating the regulations in 22 CFR 216, this guide also addresses environmental legislation on tropical forests and biological diversity which has recently been incorporated into the U.S. Foreign Assistance Act (FAA) in sections 118 and 119, respectively, and which are important to mission program and project personnel.

2.0 AID ENVIRONMENTAL POLICY

AID's environmental policy as stipulated in the regulations is: 1) to ensure that the environmental consequences of AID-financed activities are identified and considered by both AID and the host country (HC) prior to final decision to proceed, and that appropriate environmental safeguard are adopted; 2) to assist developing countries in their ability to evaluate the environmental effects of development strategies and projects, and to select, implement and manage effective environmental programs; 3) to identify environmental impacts of AID actions; and 4) to define environmental limiting factors that constrain development, and identify and carry out activities that "assist in restoring the renewable resources base on which sustained development depends." (22 CFR 216.1(b)).

3.0 GENERAL APPLICABILITY OF THE REGULATIONS

The various procedures outlined in AID's enviromental regulations apply to all new projects or activities authorized or approved by AID, and to "substantive amendments or extensions to ongoing activities." In practice, "substantive amendments or extensions to ongoing activities" are assessed for environmental impact only when 1) they include new project components (e.g., addition of funds to construct a road not envisioned in the original project paper); 2) they represent a significant expansion of scope over and above the original project (e.g., an expansion of barrage construction into new geographical areas not envisioned in the original project paper); or 3) the original project or project components were not subjected to environmental review under the regulations (e.g., the original project was authorized prior to the existence of the regulations, or the commodities to be imported under a

project amendment are in addition to those reviewed during the original environmental review process).

4.0 SOME DEFINITIONS

As with any regulations, certain definitions are critical. With respect to the AID environmental regulations, the most important are the following:

Environment: "Environment" is defined as the "natural and physical environment." Note that this does not encompass the social environment. The social impacts of a project are addressed not in project environmental review documents and corresponding PID sections, but rather in separate social analysis sections of the PID or similar AID project document.

Significant Effect: "A proposed action has a significant effect on the environment if it does significant harm to the environment." This definition applies only to AID projects which will not affect the U.S. environment. In contrast to domestic projects (e.g., by the U.S. Army Corps of Engineers), if an AID project has a significant beneficial impact then it is not considered to have a significant effect. The distinction between beneficial and adverse impacts within the AID regulatory context is important since under AID regulations only the negative or adverse foreign impacts of a project on the environment need to be evaluated. Projects which are expected to have significant beneficial impacts on the environment do not, by virtue of that impact, have to undergo the detailed, costly and time-consuming environmental review required of projects having significant adverse impacts unless those positive impacts will occur in the U.S. What actually constitutes "significant impact" is discussed in Section 5.3.3 of this guide.

Initial Environmental Examination (IEE): "The first review of the reasonably forseeable effects of a proposed action on the environment." IEE's consist of two documents, normally appended to the PID or similar document describing projects for which an IEE is required: The IEE text and the IEE facesheet. An example of the IEE/Categorical Exclusion (IEE/CE) facesheet is

attached to this guide as Annex 1, and IEE's are discussed at length in Section 5.3.

Threshold Decision: "A formal Agency decision which determines, based on an IEE, whether a proposed Agency action is a major action significantly affecting the environment." In addition to being found in Section 3.0 of the IEE, the Recommended Threshold Decision is stated in abbreviated form on the IEE/CE facesheet, as well as being included in it's entirety in the body of the PID (usually in Section H, "Environmental Considerations"). Threshold Decisions are discussed in greater detail in Section 5.3.3 of this guide.

Environmental Assessment (EA): "A detailed study of the reasonably forseeable significant effects, both beneficial and adverse, of a proposed action on the environment of a foreign country or countries." The level of environmental analytical detail, cost, host country coordination and time investment inherent in preparation of an EA is a quantum leap above that required for preparation of an IEE. EA's are only required, however, when it is determined that a project will have a significant adverse environmental impact. EA's are discussed in detail in Section 5.4 of this guide.

Environmental Impact Statement (EIS): "A detailed study of the reasonably forseeable environmental impacts, both positive and negative, of a proposed AID action and its reasonable alternatives on the United States, the global environment or areas outside the jurisdiction of any action. It is a specific document having a definite format and content, as provided in NEPA and the CEQ Regulations." The level of environmental analytical detail, cost, host country and U.S. coordination, and time investment involved in preparation of an EIS is in turn a quantum leap above that required for preparation of an EA. Apparently, only one EIS has ever been prepared by the Agency; that document, on AID's pesticide program, was part of the court settlement between AID and litigant environmental groups in the 1970's which gave rise to the current environmental regulations. EIS's are discussed further in Section 5.5 of this guide.

Minor Donor: AID is a minor donor to a multidonor project when AID does not control the planning or design of the multidonor project, and either 1) AID's total contribution to the project is both less than U.S.$ 1,000,000 and less that 25% of the estimated project cost, or 2) AID's total

contribution is more that U.S.$ 1,000,000 but less than 25% of the estimated cost of the project and the environmental procedures of the donor in control of the planning and design of the project are followed. Catch 1: In the latter instance, AID's Environmental Coordinator must determine that such procedures are adequate.

Bureau Environmental Officer (BEO): Each AID geographical region has a BEO who is responsible for, among other items, reviewing IIE's, concurring in Threshold Decisions and reviewing EA's and EIS's. The BEO ia one of the key players in the environmental review process, since without concurrence of the BEO in your environmental review and Threshold Decision your project cannot authorize or disburse funds.

Regional Environmental Officer (REO): There is normaly a REO in each major field division of AID's geographical regions (e.g., Central and West Africa, East and Southern Africa, the Caribbean). The REO is responsible for assisting missions to the extent practicable with preparation of environmental review documents. Under certain circumstances, the REO may also be delegated authority to review and approve the environmental review document with the clearance of the Regional Legal Advisor (RLA).

Mission Environmental Officer (MEO): Most AID missions have a designated MEO who is, in principal, responsible for the preparation of environmental review documents for mission projects. In practice, however, the MEO may not have training or experience in sifting, focusing and evaluating the environmental impacts that will result from a project "with reasonable forseeability".

Negative Declaration: A written declaration by the Administrator or Assistant Administrator "that the Agency will not develop an EA or an EIS regarding an action found to have a significant effect on the environment." Negative Declarations can only be made when 1) a substantial number of EA's or EIS's relating to similar activities have been made in the past; 2) previously prepared Agency programatic statements or assessments covering the activity have been prepared and considered in developing the activity; or 3) 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.

Scoping Process: The formal Agency process undertaken prior to preparation of EA's and EIS's, whereby the significant environmental issues relating to the action are identified and the scope of issues to be addressed in the EA or EIS are determined.

Pesticides: Chemical compounds intented to kill plant or animal pests, and broadly defined to include fungicides, insecticides, herbicides, rodenticides, molluscicides and similar types of compounds.

5.0 SPECIFIC REGULATORY PROCEDURES

AID projects, project components and activities can generally be broken down into six categories according to the procedures they have to follow under the AID environmental regulations. Projects, components or activities normally either: 1) will be eligible for exemption; 2) will be eligible for categorical exclusion; 3) will be neither eligible for exemption nor for categorical exclusion, but at the same time will not have a significant adverse impact and will therefore require an IEE; 4) will have a significant adverse environmental impact but will not have such an impact on the global or U.S. environment and will therefore require an EA; 5) will have a significant effect on the global or U.S. environment and will therefore require an EIS; or 6) will involve the acquisition and/or use of pesticides, and therefore may be either "exceptable", require an IEE, require an EA or require an EIS. Each of these categories has different procedures to follow under the regulations, and, with the exception of pesticide activities, those procedures are generally of increasing complexity, cost and time investment. Each of these categories is individually described in this guide for AID foreign service officers, along with information on project eligibility, procedural requirements and strategy tips for satisfying the requirements and intent of the regulations.

5.1 EXEMPTIONS

5.1.1 Applicability

AID projects or activities eligible for exemption

under the regulations include 1) international disaster assistance; 2) other emergency circumstances; and 3) circumstances involving exceptional foreign policy sensitivities (22 CFR 216.2(b)(1). Catch 2: These exemptions are not applicable to assistance for the procurement or use of pesticides. (22 CFR 216.2(e)).

5.1.2 How to Proceed

A formal written determination, including a statement of the justification for it, is required for activities involving "other emergency circumstances" or "circumstances involving exceptional foreign policy sensitivities," but not for international disaster assistance. The determination is made by the Assistant Administrator with responsibility for the activity, or by the Administrator if authority to approve financing has been reserved by the Administrator. The determination is made only after consultation with the Council on Environmental Quality (CEQ) about the environmental consequences of the proposed activity. (22 CFR 216.2(b)(2)).

5.1.3 Strategy Tips

Because of the requirements for consultation with CEQ, the high level at which issuance is required for such determinations and for other reasons, this is sometimes not a preferred option for clearance of AID activities under the regulations even if the activity clearly warrants it. In some instances, for example, it may be easier to prepare a categorical exclusion or IEE for the activity (if appropriate) rather than expend the time and effort required to get an AA determination after consultation with CEQ. Also, while international disaster assistance is exemptable under the regulations and does not require such a determination, in practice such a determination may be required if ancillary funds are obtained from non-disaster accounts. In practice, therefore, while an activity may be clearly eligible for exemption under the regulations, it is wise to pragmatically assess whether an alternative clearance route might be faster, easier and cheaper. This is especially the case where time is of the essence, management burden is high, and cost considerations are significant.

5.2 CATEGORICAL EXCLUSIONS

5.2.1 Applicability

Certain types projects are eligible for categorical exclusion (CE) under the regulations based on the following specific criteria: 1) They are actions not having an effect on the natural or physical environment; 2) they are actions where AID doesn't have knowledge of or control over, and the objective in providing assistance doesn't require knowledge of or control over, the details of specific activities financed which may affect the environment; and/or 3) they are research activities which may affect the environment but are of limited scope, are carefully controlled and are effectively monitored. (22 CFR 216.2(c)(1)). The specific types of projects eligible for CE are as follows (22 CFR 216.2(c)(2)):

1) Education, technical assistance (TA) or training programs, unless they directly affect the environment (e.g., support construction activities);

2) Controlled experimentation exclusively for research and field evaluation purposes which are limited to small areas and are carefully monitored;

3) Analyses, studies, academic or research workshops and meetings;

4) Projects where AID is a minor donor to a multidonor project and no potentially significant effects will occur to the U.S. environment, areas outside any nation's jurisdiction (e.g., the oceans), or endangered or threatened species or their critical habitats;

5) Document and information transfers;

6) Contributions to international, regional or national organizations not for the purpose of carrying out specifically identifiable projects (e.g., general support grants to FAO, regional research institutions or national universities);

7) Institution building grants to U.S. research and educational institutions;

8) Nutrition, health care, population and family planning activities unless the activity directly affects the environment (through, e.g., housing or wastewater treatment plant construction);

9) Commodity Import Program (CIP) activities when AID doesn't know the specific commodities to be financed prior to approval and the objective in financing the CIP requires neither knowledge of nor control over the commodities or how they will be used;

10) Support for intermediate credit institutions when AID's objective is to assist in capitalization of the institution and AID doesn't reserve the right to review and approve individual loans;

11) Maternal or child feeding programs under Title II of PL 480;

12) Food for development programs under Title III of PL 480 when AID's objective doesn't require knowledge of or control over the details of the activities to be conducted by the HC under the program;

13) Matching, general support and institutional support grants to PVO's where AID's objective doesn't require knowledge of or control over the details of the specific PVO's activities;

14) Studies, projects or programs intended to develop the capability of the HC to engage in development planning, unless they involve activities directly affecting the environment (e.g., construction of facilities); and

15) Activities involving the application of design criteria or standards developed and approved by AID (Catch 3: AID has developed design standards for a number of types of projects, but none have been officially approved; therefore, this section cannot be used).

Catch 4: Categorical exclusions are not applicable to assistance for the procurement or use of pesticides. (22 CFR 216.2(e)).

5.2.2 How to Proceed

For those projects, components or activities listed above, an IEE, EA or EIS is "generally" not required. A written determination of the eligibility of the project or project's components for categorical exclusion is required, however, along with a brief statement supporting this application. These are normally submitted to AID/W with the PID, PAIP or comparable document. The BEO reviews the determination, concurs (or doesn't concur) with it, and forwards it to GC for clearance (or non-clearance).

5.2.3 Strategy Tips

While the regulations do not specifically require preparation of an IEE or other separate document for categorically excludable actions, in practice CE's are applied for by using the IEE/CE facesheet and including a statement for CE application in the body of the PID (usually in Section H, "Environmental Considerations"). As an example of CE application for a family planning project, the following statement might be included on the IEE/CE facesheet: "This project is categorically excludable pursuant to the provisions of 22 CFR 216.2(c)(2)(viii), since the project is involved solely in the provision of population and family planning services and no construction or other activities affecting the environment will be undertaken." (Be sure and cite chapter and verse.) In the body of the PID, this same sentence should appear along with a statement noting that an IEE/CE facesheet is attached to the PID as Annex X.

In cases where some project components can be categorically excluded from environmental review and others cannot, it is best to split those different project components out into subsets according to the level of review required. For example, a family planning project that will also include construction of office facilities can be split into two subsets: Those categorically excludable (all activities except construction) and those

requiring preparation of an IEE (construction activities). Assuming that the construction component is minor and will not significantly affect the environment, both subsets can be addressed on the same IEE/CE facesheet. One could state, for example, that: "All project activities except for construction activities are eligible and recommended for categorical exclusion pursuant to the provisions of 22 CFR 216.2(c)(2)(viii). Construction activities, described in the attached IEE, are of a minor nature, will occur only on previously disturbed lands, and are recommended for negative determination." In such case, Section 1.0 of the IEE document attached ("Project Description") would briefly describe all project activities, and Section 2.0 of the IEE ("Issues and Impacts") would address only issues and impacts related to construction activities. (See Section 5.3 of this guide).

It occasionally comes to pass that a project or activity does not fall within one of the 15 specific classes above, but that it does meet one of the three "criteria which have been applied in determining the classes of actions...for which an IEE, EA or EIS are generally not required." If your project does not fall within one of the 15 classes of action cited (e.g., the project will pay someone to whistle Stars And Stripes Forever for five years), but you can make a solid case that it meets one or more of the three criteria cited (e.g., the whistling will not affect the environment), then you can apply for a categorial exclusion for your project in the same way as you would normally apply.

Catch 5: If at any time during the "design, review or approval" of projects eligible for categorical exclusion it is determined that the activity or component thereof "is subject to the control of AID and may have a significant effect on the environment," then you will have to write an IEE, EA or EIS as appropriate. (22 CFR 216.2(c)(3)). This means, for example, that if your controlled experimentation and research project shifts into an extension mode, then you have to put it under environmental review.

5.3 NO SIGNIFICANT IMPACT: THE INITIAL ENVIRONMENTAL EXAMINATION

5.3.1 Applicability

IEE's have to be prepared for all projects, project

components or activities which 1) are not exemptable; 2) are not categorically excludable; but 3) will have no significant adverse environmental impact. They must also be prepare for activities involving the procurement or use of pesticides, even if an EA or EIS is required.

5.3.2 How to Proceed

The IEE is normally prepared during the PID stage of project development, and submitted to AID/W along with the PID for BEO concurrence/non-concurrence and GC clearance/non-clearance. The PID should have attached to it both the IEE text and IEE/CE facesheet, and the PID should include in the main text (usually in Section H, "Environmental Considerations") a brief resume of the IEE and the Recommended Threshold Decision. According to the regulations, activities which cannot be identified in sufficient detail to permit the completion of an IEE with the PID or PAIP shall be described by including with the PID or PAIP: 1) an explanation of why the IEE cannot be completed; 2) an estimate of the amount of time required to complete the IEE; and 3) a recommendation that a Threshold Decision be deferred until the IEE is completed. The Assistant Administrator has the responsibility to act on the request for deferral and will designate a time for IEE completion; this IEE completion date is required to provide sufficient time for completion of an EA or EIS, if required, prior to a final decision by AID to provide funding for the action. Deferrals are described in greater detail in Section 5.4.2 of this guide. (22 CFR 216.3(a)(1)).

5.3.3 Strategy Tips

How IEE's are Constructed. An IEE consists of two parts, an IEE text and an IEE/CE facesheet. The text of the IEE consists of three sections. The "Project Description" section is a brief description of the project's components and how they will work. Briefly describe all project components. Start by breaking your project down into components which correspond with the level and complexity of environmental review which they will required. Split out, for example, those project components eligible for exemption, those eligible for categorical exclusion, those eligible for neither but not having a significant impact, those involving pesticides, etc., and address them separately in the IEE. This both simplifies and organizes

the process, and at the same time focuses environmental review on the important issues. The second IEE section, "Issues and Impacts," should address only the true environmental issues germane to those project activities which are not exemptable and are not categorically excludable. The third IEE section, "Recommended Environmental Action," is your recommendation to the BEO and GC as to how you believe the project should be legally handled under the AID environmental regulation. The third section summarizes the findings and conclusions of the IEE and states the recommended Threshold Decision. The second part of the IEE is the facesheet, an example of which is appended as Annex 1 to this guide. Fill it out after completion of the IEE text, and if the IEE will be submitted with the PID then write the "Environmental Considerations" section of the PID after completion of the IEE/CE facesheet. The IEE/CE facesheet is a standard form which includes space to address project components eligible for categorical exclusion as well as space for the concurrence/non-concurrence of the BEO and the clearance/non-clearance of GC.

How the IEE and Threshold Decision Relate. The IEE is the written technical rationale in support of your recommended Threshold Decision. If preparation of the IEE leads you to believe that the project will have no reasonably forseeable significant adverse environmental impacts then the Threshold Decision that you recommend will be a "negative determination" (no significant impact). If preparation of the IEE leads you to believe that the project will have a reasonably forseeable significant adverse environmental impact, then the Threshold Decision that you recommend will be a "positive determination" (significant impact) and preparation of an EA or EIS will be required. The Threshold Decision you recommend is stated 1) in the last section of the IEE, 2) on the IEE facesheet, and 3) in the body of the PID or similar project document. It is the recommended Threshold Decision (not the IEE itself) that the BEO either concurs or doesn't concur with, and GC either clears or doesn't clear. The IEE is the rationale for making that recommendation.

In practice, most project development officers seek a negative determination because it means that the IEE, if approved by the BEO and concurred in by GC, is the end of the environmental review process for the project. With a negative determination, the time, cost and management burden inherent in project environmental review is minimized because a much more detailed EA or EIS is not required. This does not mean, however, that conditions or requirements in the IEE upon which a negative determinstion is based can be ignored; in fact, negative determinations are often recommended contingent upon monitoring or mitigation measures described in the IEE which require

implementation and may require inclusion of covenents or conditions precedent to disbursement in the project or grant agreement.

IEE/CE Facesheet Signatures. Note that the standard IEE/CE facesheet has space for the signature and concurrence/non-concurrence of the BEO, and for the signature and clearance/non-clearance of GC, but does not always necessarily include a section for the approval of the mission director. This absence presumably reflects a perception that the mission director, in signing the PID facesheet, has read and concurs with the findings, limitations and restrictions of the IEE. In practice, however, this is sometimes not the case. In any instance where there are environmental issues of contention, therefore, or where monitoring or mitigation measures are recommended or required, or where convenants or conditions precedent to disbursement are recommended as preconditions for recommending a negative determination, then it is always adviseable to include a section for the mission director's signature and approval. It is the mission which will implement the project, the mission which will assure that those provisions are adhered to, and the mission that will have to negotiate CP's and covenants with the HC government. It is therefore essential that the mission director be aware of the IEE findings, the rational for those conclusions, and what will be required in the project in terms of monitoring and mitigation. Make sure you go over it with the Mission Director, and make sure you sign or initial the facesheet.

When to Prepare the IEE. In principle, the IEE should be prepared at the earliest possible time when project components are identified. The idea is to come into the project design process early enough so that appropriate design modifications, monitoring activities and/or mitigation measures can be incorporated into the design if and as necessary. In practice, however, if the IEE is prepared too early then IEE amendments and modifications tend to ultimately be required; this can lead both to considerable confusion and considerable time delays. As a rule of thumb, it is better on projects involving few or no engineering or infrastructural activities to prepare the IEE towards the tail end of the PID process when the individual project components are truly nailed down. If substantial changes occur during the PP process, then an amendment may have to be filed in any case. In practice,

this is semi-common. Where there are considerable engineering activities in a project, e.g., a number of small to medium-sized barrages, considerable road construction or maintenance, or extensive transmission facility construction, then it is better to have someone take an early cut at reviewing what is tentatively planned. What often occurs in association with road projects, for example, is that individual segments of particular environmental importance can be identified and mitigation measures worked out before these segments are set in concrete with the HC government. If the IEE is prepared too late in the process, it may happen that an EA will be required because one or more segments of concern cannot be changed or deleted from the project.

Timing of IEE Submittal: The IEE should be submitted with the PID, PAIP or similar AID project document, but sometimes this isn't possible. The mission may not have drafted the IEE yet due, say, to the absence of the MEO; the mission may have drafted it but would prefer to wait until REO review before submitting it to AID/W; or it may be that some of the activities to be undertaken in the project cannot be defined in sufficient detail to permit IEE completion. In the latter case, the procedures outlined in Section 5.3.2 above have to be followed: the PID should state why it can't be completed, estimate how long it will take to complete and recommend a deferral of the Threshold Decision. In other cases, where a relatively short delay in IEE submittal is anticipated, the best approach is to cable AID/W that the IEE is forthcoming. PID's can be approved without the IEE, but PP approval and authorization of financing are contingent upon completion, concurrence and clearance of the IEE and the resolution of issues described in the IEE. In any cases where the IEE is completed after approval of the PID, the IEE is sent immediately with the recommended Threshold Decision to the BEO and GC for action. It is better to hold off sending an IEE where substantial issues exist, and waiting for professional review, than it is to submit an IEE of questionable technical solidity along with the PID. It is foolish to run the risk of doing an EA because you are in a hurry.

Impact Assessment Tips. The older checklists, flow sheets, complex diagrams and matrix sheets designed to "help" evaluate project impacts are still on file in many missions. Use them at your own risk, and in any case don't submit them with the IEE you send to AID/W with the PID. They are for guidance only, they are not required, they are often rejected, and they in

practice tend to substantially diffuse the issues at the same time that they send you off addressing an array of irrelevant, inapplicable and usually inappropriate non-issues. Use common sense in evaluating project impacts and address what is appropriate. Acid rain, aesthetics and air quality, for example, are almost never issues with AID projects. Concentrate on the issues.

You must assume during environmental review that your project will succeed at what it is setting out to do. Ask yourself: "What will be the real environmental impact if the project is totally successful?" It is always best in assessing what impact your project will have to take a "pre-impact/post-impact" or "no project/project" comparative approach, that is, compare existing, pre-project environmental conditions (the baseline) with those conditions that one can reasonably forsee as likely to ensue from project implementation. The difference between baseline conditions and post-project conditions are your impacts.

As a general rule, address only applicable impacts in the "Issues and Impacts" section of the IEE. If pre-project environmental conditions in the target area are such that soil fertility and deforestation are major problems, for example, and your project will not likely have a reasonably forseeable effect on either problem (e.g., it is family planning project with minor construction), then soil fertility and deforestation problems are not applicable and shouldn't be addressed at all in association with the project. More than one project has hung itself with it's own rope by going far past what is "reasonably forseeable" and discussing, for example, how family planning might decrease the labor force over "no project" conditions in the mid term, which could in turn inhibit family income in the mid term, thus reducing the family's ability to procure fertilizers, and therefore tending to exacerbate the process of declining soil fertility. This is far beyond what is "reasonably forseeable" and there are a myriad of other and far more important ambient factors at work affecting soil fertility. In addition, you run the risk of having to prepare an EA when the entire family planning component should have been categorically excluded in the first place.

While it is by no means required, it is sometimes and indeed often advisable in the IEE to point up the beneficial environmental impacts of the project to put project environmental effects into perspective. Nonetheless, Catch 6: General Counsel advises that you cannot "draw up the ledger sheet." In other

words, if your Perpetual Peace Project (999-1234) is going to bring peace, love, harmony and riches to all mankind, but at the same time it is going to have a significant adverse impact on, e.g., a population of the African Viviparous Toad (an endangered species), then that project will by regulatory definition have a significant adverse effect on the environment. In such a case, the toad-killing component will have to go through the EA process, although other components may be eligible for exemptions, categorical exclusions and/or negative determinations. IEE's may vary considerably in length, scope and level of detail depending upon the nature of the project. For example, a project involving small scale forestry, construction of a few housing units, or introduction of better and traditional coastal fishing techniques might require an IEE of only a few pages. Conversely, a major road construction project in tropical moist forests might require an IEE of much greater length because of the extent of issues related to secondary as well as primary environmental impact. In the latter case an IEE would normally only be prepared if an EA or EIS were not required, that is, if it were determined that the project would not result in significant adverse environmental impact.

If you are not sure what kinds of environmental impacts are "reasonably forseeable" and which are not for a certain project, there are a number of publications of varying quality listed in Annex 2 of this guide which you might want to refer to. Most are obtainable from AID/W or from your REO. Most mission personnel have neither the time nor the inclination, however, to review such documents. If you have a complicated or problematical project to review, therefore, it's better to call on the REO, BEO or other professional for assistance.

The Significance of "Significance". The term "significant" is a qualitative and ambiguous term that means different things to different people. It is of major importance, however, since if your project will have a "significant" adverse impact you will have to prepare an EA or EIS. While the regulations list "Classes of actions normally having a significant effect on the environment" (22 CFR 216.2(d), the section 2(d) category), such actions may not in fact result in significant adverse impact depending on the scope and nature of the individual project. Because the time and expense involved in preparing an EA for a "significant impact" project is considerably greater than that involved in preparing an IEE for a "no significant impact" project, and before getting into a discussion of EA's, it is important for the AID

project officer to understand just what kinds of projects can slip from one category to the next and how that determination is made.

Quite a few AID projects currently fall into the "significant/not significant gray area." That is, they are "Section 2(d) projects" that may or may not have a significant adverse environmental impact depending on how they are designed. Many AID projects which have gone through the EA process in the past could have reasonably and supportably avoided that process if sufficient monitoring and mitigation activities had been designed into the project to reduce reasonably forseeable project impacts down to acceptable levels. Before considering the significant/not significant gray area, let's look at two extreme examples of Section 2(d) category projects which fall outside of that gray area by virtue of the nature of the projects.

At one end of the spectrum, if your project will have a significant adverse impact and there is nothing you can do to mitigate that impact down to acceptable levels, then a positive Threshold Decision and preparation of an EA or EIS is required. This holds true even though a project's environmental benefits may strongly outweigh it's environmental costs. Again, you can't "draw up the ledger": If your Perpetual Peace Project is contingent on wiping out a population of African Viviparous Toads, and there is nothing you can do about it (because, e.g., the powers that be will only swap you peace for that population of toads), then you have to write an EA.

At the other end of the spectrum is a project which, although falling in the Section 2(d) category, will clearly not result in significant adverse impact. As an example, take a project that will fill in potholes on a stretch of Sahelian road. In this case (assuming your borrow pits won't cause major schistosomiasis or malaria increases), a negative determination based on a solid IEE is wholly appropriate and an EA would be wholly inappropriate. Note, however, that General Counsel strongly advises when recommending negative determinations for Section 2(d) projects that 1) you make sure you go on-site prior to preparing the IEE, and 2) that you make your IEE detailed, rational, fully defensible and without ambiguity as to how you arrived at your conclusion that the project will have no significant impact.

These two examples fall largely outside of the significant/not significant gray area, but what happens with projects that fall squarely in the middle of

it? Let's take the case of the small to medium scale irrigation project. Under the regulations, "irrigation or water management projects, including dams and impoundments" are in the Section 2(d) category, that is they "normally" have a significant adverse impact and therefore "normally" require preparation of an EA. Some major reasons why "irrigation" is in this category derive from international experience with large irrigation schemes resulting in major human health problems (e.g., malaria, schistosomiasis), soil problems (e.g., salinization, waterlogging), water quantity problems (e.g., significantly reduced low flow discharges), water quality problems (e.g., hypersalinity), etc. The extent to which significant problems arise from irrigation projects depends on a large number of factors. On the one hand, an irrigation project of 10,000 hectares in an arid or semi-arid zone, requiring long distance or groundwater pumping, and occuring in an area with high potential but little existing incidence of water-related diseases, would be a prime canditate for preparation of an EA. On the other hand, a small project of 100 ha perched on the bank of a river with good flow and low salt content, and occurring in an area where everyone already has schistosomiasis, yellow fever, filariases, dysentery and all other water-related diseases, would probably be a prime candidate for a negative determination.

Let's assume, however, that your project lies somewhere in between -- encompassing 250 ha with no potential water quantity problems, a slight potential salinization problem and a moderate potential for adverse human health impacts. If you design this project in such a way as to reduce the level of those potential impacts to acceptable levels through, e.g., monitoring, mitigation, resiting, redesigning and/or other measures, then a solid IEE can probably be prepared supporting a negative determination based on mission and grantee commitment to implement those monitoring and mitigation measures. In other words, if the project <u>as designed</u> is not expected to result in significant adverse environmental impact, then a negative determination is appropriate. In cases like this, it is wise to state explicitly in the IEE that: 1) all potentially significant adverse environmental impacts have been identified and are believed to be designed out of the project (then described how they have been designed out); 2) no significant impacts are therefore foreseen; and 3) in the event that it appears that impacts might occur to a degree greater than anticipated, then mitigative measures will be employed to reduce the level of impact down to acceptable levels. It is also wise (very wise) to: 1) include an appropriately scaled environmental monitoring provision to assure that

impacts, should they arise in spite of efforts to control them, can be identified, and 2) to detail what project (not central or outside) funds will be available to implement mitigation measures to reduce those impacts should this become necessary.

The same project scenario can be used to illustrate how some missions get into unnecessary environmental clearance problems. Let's say that the mission is in a hurry to design and authorize the same project and that you as the Project Development Officer simply design this project without addressing how the project will deal with the potential problems that are reasonably forseeable as likely to ensue. In this case, it is highly likely that your recommended negative determination will be overturned, that a positive determination will result, and that an EA will have to be prepared. Note that the net result of most EA's is typically to force the project to do the monitoring and/or mitigation that could/should have been designed into the project in the first place. In essence, therefore, you have gained nothing but the additional management burden of having to support an EA team, you have lost the cost involved in EA preparation, and you can probably count on a minimum delay of up to six months while the EA is produced. You're mad, the Mission Director is mad, the REO and BEO are mad because it was unnecessary, and the HC is mad because of the delay. The only happy people are the contract EA team. In short, you have won nothing and lost everything.

In principal, there are currently very few AID projects which should require EA preparation. In most cases, a good technical specialist can identify and evaluate the real issues and the project can incorporate monitoring and/or mitigation measures during the PID or PP stage such that impacts are reduced to acceptable levels. In practice, however, EA's are still produced unnecessarily because of lack of familiarity with the regulations, inexperience with project-related environmental issues, and the inability or unwillingness to incorporate appropriately scaled monitoring and mitigation measures in the project design. Remember: EA's are generally expensive, time consuming, a management burden, and seldom tell you much that you don't already know.

One further item is important here: If a project receives a negative determination and it later comes to pass that a significant adverse impact

results, then a revised Threshold Decision requiring an EA or EIS is mandatory. Conversely, if it becomes evident that a project will not have a significant adverse impact after a positive Threshold Decision has been issued, then that decision can be withdrawn with the concurrence of the BEO.

When the BEO Does Not Concur: It the BEO (or GC) does not concur with your recommended Threshold Decision, it is their responsibility to request that you reconsider and state the reasons for their request. If differences of opinion cannot be worked out between these officers, the differences are submitted for resolution to the Assistant Administrator. According to the regulations, this should occur at the time that the PID is submitted for approval, but in practice the IEE and PID are submitted at the same time so that differences have to be worked out after PID approval. In such circumstances, PID's are usually approved at the ECPR meeting in AID/W with the caveat that environmental review and resolution of environmental review issues will be required prior to authorization. (22 CFR 216.3(a)(2)).

Endangered Species. The regulations state that "the IEE 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." (22 CFR 216.5). Note that this statement says "effect" and not "significant effect." If your project will not affect the environment at all (much less significantly), for example projects involving only education, TA, training, analyses, studies, information transfers, nutrition, health care, population, family planning, maternal or child feeding, etc., then you do not need to address endangered species in the IEE for that project. In most cases, of course, projects which do not "affect" the environment are categorically excludable anyway and you do not have to prepare an IEE in the first place. If you have to prepare an IEE for your project, i.e., all or part of the project is not eligible for exemption or categorical exclusion, then you can assume that you have to address endangered species in the IEE.

Catch 7: What constitutes an "endangered or threatened species" under the regulations is not clear, although it is usually taken to include those species officially listed as endangered or threatened by the U.S. Department of Interior (USDOI) as being so. These are listed for the West and Central Africa region in Annex 3 to this guide (50 CFR 17.11 and 17.12, 20 July

1984). It is not clear whether species listed by the Convention on International Trade in Endangered Species of Wild Fauna and Flora (the CITES list published in the Federal Register on 4 September 1981) are included and/or whether species listed by individual nations are subject to the regulations.

Catch 8: The term "critical habitat" is a regulatory term with a precise definition. In the U.S., most endangered and threatened species have specific, geographically-defined critical habitats. Overseas, few if any species have established geographically defined critical habitats; indeed, for many species listed in Appendix 3 even basic information on their geographical range, distribution within that range and habitat is sketchy.

If you have a real potential issue with your project and endangered species, cable your REO or BEO. You may not care much about African Viviparous Toads, but it's gizzard may turn out to cure Hodgkin's Disease (a similar African species recently lead to a breakthrough in identifying new types of antibiotics); it may be the sole natural predator of the Transylvanian root-muncher that is wreaking havoc with your project crops; or your kid may grow up to be a herpetologist and disown you for what you did as a project officer. In any case, your project can get shot down in a hurry if you wipe them out without clearance (don't anticipate clearance) and you may be putting yourself in line for a long series of 25% posts.

5.4 SIGNIFICANT ADVERSE IMPACT: THE ENVIRONMENTAL ASSESSMENT

The purpose of the EA is "to provide Agency and HC decision makers with a full discussion of the significant environmental effects of a proposed action. It includes alternatives which would avoid and 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." (22 CFR 216.6(a)).

5.4.1 Applicability

The regulations list the following "classes of actions

normally having a significant effect on the environment," and for which an EA or EIS "as appropriate, will be required" (22 CFR 216.2(d)(1)), unless the originator of the project believes that the project will not have a significant effect (22 CFR 216.2(d)(2)):

1) Programs of river basin development;

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

3) Agricultural land levelling;

4) Drainage projects;

5) Large scale agricultural mechanization;

6) New lands development;

7) Resettlement projects;

8) Penetration road building or road improvement projects;

9) Power plants;

10) Industrial plants; and

11) Potable water and sewerage projects other than those that are small scale.

In addition, as noted earlier, if your activity will "jeopardize" an endangered species or "adversely modify" its critical habitat, then a Positive Determination must ensue and the EA or EIS "shall discuss alternatives or modifications to avoid or mitigate such impact on the species or its habitat." (22 CFR 216.5).

5.4.2 How to Proceed

Need for an IEE. The regulations state that an IEE is not normally necessary for activities within these classes of action, "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 (IEE) procedures..." (22 CFR 216.2(d)(2)). If you know in advance that your project will require an EA, you state in the body of the PID that the recommended Threshold Decision is positive, that an IEE has therefore not been prepared pursuant to 22 CFR 216.2(d)(2), and that endangered species issues will be addressed during the EA scoping process.

Scoping. After a Positive Threshold Decision has been made requiring preparation of an EA, the "scoping" process begins. The originator of the action identifies the significant environmental issues relating to the action and determines the scope of the issues to be addressed in the EA. "Persons having expertise relevant to the environmental aspects of the proposed action shall also participate in this scoping process," e.g., HC "government representatives, public and private institutions, the AID mission staff and contractors." This process results in a written statement which includes the following (22 CFR 216.3(a)(4)):

1) A determination of the scope and significance of issues to be analyzed, including direct and indirect effects of the project on the environment;

2) Identification and elimination from detailed study of 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; (Catch 9: No design considerations have been officially approved, therefore you cannot eliminate from detailed study issues of potential significance unless they have been covered by earlier environmental review.)

3) A description of the timing of the preparation of environmental analyses, including phasing if appropriate; variations required from the format of the EA; and the tentative planning and decision making schedule; and

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

Once this written scoping statement has been prepared, it is sent for the review and approval of the BEO. The BEO may circulate copies of the scoping statement along with a request for comments within 30 days to selected U.S. federal agencies if the BEO thinks comments by those agencies will be useful in preparing the EA. If this occurs, and federal agencies respond, their comments will be considered in preparation of the EA and in formulating the design and implementation of the project; they will also, along with the scoping statement, be included in the project file.

EA Preparation: After completing the scoping process, preparation of the EA begins. Missions, bureaus and offices within AID "will collaborate with affected countries to the maximum extent possible, in the development of any EA and consideration of the environmental consequences as set forth therein." (22 CFR 216.6(b)).

The EA is a document of standard format based on the scoping statement and has six principal sections. The "Summary" section stresses major conclusions, areas of controversy (if any), and the issues to be resolved. The "Purpose" section briefly specifies the underlying purpose and need to which the Agency is responding in proposing the alternatives described in the EA, including the "proposed action" (i.e., the project)." The "Alternatives Including the Proposed Action" section compares the environmental impacts of the project with other alternatives. This is supposed to sharpen the issues and provide a clear basis for choice among options by decision makers. This section includes a discussion of the "no action" alternative (i.e., no project), identifies the Agency's preferred alternative or alternatives, and includes appropriate mitigation measures not already included in the proposed action or alternatives described. The "Affected Environment" section succinctly

describes the environment of the target area(s). "The descriptions shall be no longer than is necessary to understand the effects of the alternatives. Data and analyses in the EA shall be commensurate with the significance of the impact with less important material summarized, consolidated or simply referenced." The "Environmental Consequences" section is the analytical basis for comparison of alternatives. It includes environmental discussions of 1) impacts of alternatives; 2) adverse effects that cannot be avoided; 3) the "relationship between short term uses of the environment and the maintenance and enhancement of long term productivity"; and 4) any irreversible or irretrievable commitments of resources which would be involved in the proposed action should it be implemented. It should also includes discussions of 5) direct and indirect effects and their consequences; 6) "possible conflicts between the proposed action and land use plans, policies and controls for the areas concerned;" 7) "energy requirements and conservation potential of various alternatives and mitigation measures;" 8) "natural or depletable resources requirements and conservation potential of various requirements and mitigation measures;" 9) "urban quality;" 10) "historic and cultural resources and the design of the built environment, including the reuse and conservation potenial of various alternatives and mitigation measures;" and 11) means to mitigate adverse environmental impacts. The "List of Preparers" section lists the names and qualifications for the persons primarily responsible for EA preparation or significant background papers. (22 CFR 216.6(c)).

Consultations: Consultations must be held between AID staff and the HC government both in the early stages of preparation and on the results and significances of the completed EA before the project is authorized. HC governments are to be encouraged to make the EA available to the general public of the HC. (22 CFR 216.6(e)). In situations where an EA indicates that potential effects may extend beyond the national boundaries of the HC and that adjacent foreign nations may be affected, AID will urge the HC to consult with such countries in advance of project approval and to negotiate mutually acceptable accommodations. (22 CFR 216.6(f)).

Processing: After completion of the EA, it "will be processed pursuant to standard AID procedures for project approval documents... (EA's) will be reviewed as an integral part of the Project Paper or equivalent document. In addition to these procedures, EA's will be reviewed and cleared by the BEO.

They may also be reviewed by the Agency's Environmental Coordinator who will monitor the EA process." (22 CFR 216.3(a)(6)(i)). When project approval suthority is delegated to fields posts, EA's "shall be reviewed and cleared by the BEO prior to the approval of such actions." (22 CFR 216.3(a)(6)(ii)).

Deferrals. It sometimes comes to pass that environmental review for certain projects or portions of projects must occur after authorization of financing. This is only permitted "with respect to subprojects or significant aspects of the project, program or activity that are unidentified at the time of authorization." Review must be completed for all activities that are identified before authorization can occur. Review must also occur "in no event later than when previously unidentified subprojects or aspects of projects, programs or activities are identified and planned." When part of a project is recommended for deferral, funds can still be obligated for subprojects or subactivities which have undergone review. This can also occur while planning and environmental review continues if the obligating document contains appropriate covenants or CP's to disbursement for unidentified activities. When environmental review has to be deferred beyond the time some funds are to be disbursed (e.g., long lead times for delivery of goods or services), the Proag or similar obligating document "shall contain a covenant or covenants" requiring environmental review prior to implementation of those activities which are in deferral status. Note again, however, that funds can be obligated for those project components which have undergone environmental review, but not for those project components which remain outstanding from the environmental review perspective until such review is completed.

When environmental review will be deferred for an entire project, several items have to be accomplished: 1) the IEE must identify those aspects of the project for which review will be completed prior to authorization of financing; 2) it must identify the deferred components and state why they are to be deferred and the time by when review will be completed; 3) it must state how an irreversible commitment of funds will be avoided until environmental review is completed; 4) the AID office with authority for project implementation must be identified; and 5) the deferral must be reviewed and approved by the AID officer making the Threshold Decision (i.e., the IEE preparer) and the officer who authorizes the project (e.g., the Mission Director). This "approval may only be made after consultation with the Office

of General Counsel for the purpose of establishing the manner in which CP's to disbursement or covenants in project and other agreements will avoid an irreversible commitment of resources before environmental review is completed." (22 CFR 216.3(a)(7)). Remember, however, that the IEE containing this deferral request must be approved by the BEO and GC prior to authorization.

Monitoring. "To the extent feasible and relevant, projects and programs for which (EA's) have been prepared should be designed to include measurements 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 AID will formulate systems in collaboration with recipient nations, to monitor such impacts during the life of AID's involvement. Monitoring implementation of projects, programs or activities shall take into account environmental impacts to the same extent as other aspects of such projects, programs or activities." (22 CFR 216.3(a)(8)).

Revisions. If, during implementation of any project, whether or not an EA was required, it appears that the project is having or will have a significant adverse impact not previously studied, then a new Threshold Decision, scoping process and EA preparation will be required. (22 CFR 216.3(a)(8)). Also, if a negative determination 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 Bureau and an EA or EIS will be prepared, as appropriate. EA's must also 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" that was not considered at the time of EA preparation. Moreover, "when on-going 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, "an EA or EIS must be prepared," as appropriate. (22 CFR 216.3(a)(9)).

Program Assessments. Program Assessments (PA's) may also be prepared to assess the effects of a number of individual actions and their cumulative impact in a country or geographical area, or the impacts generic or common to a class of actions or other activities which are not country-specific. A PA is currently (8/87) scheduled for assessment of the efficacy and residual

toxicity of a range of pesticides, for example, in association with locust/grasshopper outbreak response efforts in the arid and semi-arid regions of Africa. PA's are prepared in AID/W and circulated to appropriate overseas missions, HC governments and interested U.S. parties. Their form and content is, to the extent practicable, the same as for regular EA's. After completion of a PA, subsequent EA's on major individual actions are only necessary "where such follow-up or subsequent activities may have significant environmental impacts on specific countries where such impacts have not been adequately evaluated" in the PA. In other cases, PA's may be prepared to establish additional classes of action suitable for categorical exclusion, to approve design standards, etc. To date, however, no such PA's are known to have been developed. (22 CFR 216.6(d)).

EA Alternative 1: Negative Declarations. There is a clause in the regulations (22 CFR 216.3(a)(3)) that says that the Administrator or Assistant Administrator may make a Negative Declaration in writing "that the Agency will not develop an EA or an EIS regarding an action found to have a significant effect on the environment when 1) a substantial number of EA's or EIS's relating to similar activities have been prepared in the past, if relevant to the proposed action; 2) 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 3) 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."

In addition to the fact that there are no officially approved design criteria for any action, use of the Negative Declaration route for clearance of an environmentally significant project has apparently not ever occurred since promulgation of the regulations. It appears likely that programmatic assessments will lead to more clearances under this section in the future, however, especially for pesticide use, and missions should be aware that most actions for which EA's are normally required have had many EA's or EIS's written for those types of actions domestically. There is, in principal, no good technical reason why domestic EA's for similar projects in similar environments could not be used under this clause as a basis for requesting a negative declaration by the Administrator or AA so long as a solid and defensible case can be made that those domestic evaluations are "relevant to the proposed action."

EA Alternative 2: Studies and Concise Reviews. There is also a clause in the regulations (22 CFR 216.9) that states: "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 EA (but not for an EIS). Those two "documents" (actually classes of documents) include: 1) bilateral or multilateral environmental studies, relevant or related to the proposed action, prepared by the U.S. and one or more foreign countries or by an international body or organization in which the U.S. is a member or participant, or 2) concise reviews of the environmental issues involved including summary environmental analyses or other appropriate documents. In principle, this clause and this approach should be used far more extensively, especially where vast amounts of baseline data have been accumulated and alternative development scenarios have already been evaluated. In practice, it appears that the clause is seldom if ever used because it is little known, and because of reluctance to request this type of "waiver" for the project from the Administrator.

5.4.3. Strategy Tips

General Observations. It is often said that it is not the environmental assessment itself, but rather the process of assessment, that is important. This may or may not be true (it sometimes is and sometimes isn't), but EA's in practice have a very strong tendency to be expensive, time consuming and a significant management burden. At the same time, they often prove largely ineffective in predicting the true nature of environmental impacts and tend to be simplistic and narrow in their evaluation of tradeoffs between alternative development scenarios. (Some people argue that EA's are supposed to be narrow: "They are, after all, environmental and not economic assessments." This is a very difficult point of view to reconcile, however, with "real world" decision making processes given what is usually at stake. Most domestic EA's, in any case, take into serious account the economic as well as environmental costs and benefits of alternatives.) When judiciously applied, carefully scoped and professionally prepared, however, the EA is sometimes an appropriate and useful analytical exercise which can be of significant benefit.

EA's typically prove to be of the greatest value when prepared during the earliest development planning stages of very large, complex projects like river basin development which involve major engineering works in a number of locations. Some good examples of good EA's include those prepared for the Mahaweli-Ganga Project in Sri Lanka and for the Senegal and Gambia river basin development activities in West Africa. In all three cases, multiple dams and associated infrastructure of considerable size and geographical scope were involved, and the EA's cost several million dollars to produce. However, the EA process in these three instances permitted analysis of tradeoffs between options which, in at least two cases, very significantly affected final development design. The identification and analysis of major alternatives therefore indeed appeared to help "sharpen the issues" among some (repeat, some) project-related personnel. However, in practice the EA process often does not "provide a clear basis for choice among options by decision makers," because in practice decisions are more often made on the basis of economic, political, strategic or other considerations rather than on the basis of "environmental" considerations. This is particularly true in the LDC's, and is probably as it should or should be expected to be.

Scoping. The most important part of the EA process to the mission whose PID has just received a Positive Threshold Decision is the scoping process. This is the opportunity to narrow the focus of the EA down to the true issues. Bring as many solid technical people and iconoclasts into the process as possible. Obtain as much existing technical material as is available on the prevailing issues to avoid reduplication of effort. List all issues as they arise, then work on culling the list down. Require that each issue, in order to remain in the final scope, be both answerable and have a solid objective reason for being addressed. You will often find that reasonably foreseeable impacts are impossible to quantify and extremely difficult to even qualitatively address. Fisheries impacts resulting from estuarine barrage construction, for example, are reasonably forseeable based on U.S. and other worldwide experience but data to estimate where, when and how much under different alternative scenarios are typically lacking and are for all practical purposes unobtainable. Anticipate having to respond to such issues using "best professional estimates."

You will also find that in many cases, what are perceived by mission or western personnel to be issues or non-issues may be perceived exactly the

opposite way by HC government representatives. (E.g., "We don't even eat fish here, why should we care about fisheries impacts?") Attempt to reconcile these differencies early, but be prepared to compromise. Remember that in many countries the U.S. perception of the importance of aesthetics, air quality, urban quality, historic and cultural resource, and the built environment, not to mention the EA concept in general, will be perceived largely as western curiosities of little or no relevance when compared to economic development. Resentment can often be expected because of the cost and the delay the EA process represents, and the possibility also exists that the process will be perceived as a "neo-colonialist" phenomenon designed to tell people in the HC what is best for them. Remember that in some cases, the EA is required by U.S., court-ordered, federal regulations. This is an explanatory backup you can always hang your hat on whether you think going through the process in your particular case is "rational" or not.

The EA Team. Get the best technical people possible to prepare the EA. "Best" is defined here not by highest degree, number of publications in respected journals, years in academia or the "general perception" of the academic field, but rather by the level of experience of the personnel in preparing EA's and EIS's. To the extent possible, get people who know your region or your country or who have overseas experience. Typically, however, it is better to get people with a lot of domestic EA experience and no overseas experience than it is to get people with lots of overseas experience but no EA experience. People with a lot of experience writing domestic EA's typically know how to separate the wheat from the chaff. Seriously consider obtaining personnel from other federal agencies (e.g., the Corps Engineers, Bureau of Land Management, Environmental Protection Agency, Fish and Wildlife Service, etc.) who have had considerable professional experience with the EA process in the U.S., can recognize the difference between real issues and non-issues, are familiar with alternatives analysis, and know how to cope with assessing alternatives given "less than optimum" baseline data. Also consider obtaining specialists from A&E or Engineering/Environmental consulting firms--they often have the most practical and applied experience in preparing focused EA's.

To the extent practicable, minimize the size of the team. In many cases, the issues can be narrowed sufficiently such that one, two or at most three people can prepare the EA. This not only saves on cost and management burden, but it also tends to result in a more cohesive and focused EA. Stay flexible enough

in preparing the scope of work such that when the EA team arrives, changes to the EA scoping document can be made if practicable, necessary or adviseable. Scope changes have to be cleared with the BEO but this can be done relatively rapidly by cable depending on the nature of the changes. It is better to rescope after the EA team arrives than it is to run off and try and answer either unanswerable questions or questions which turn out to be not really relevant. Be sure to advise the EA team to prepare to the maximum extent practicable prior to arriving in-country; if possible, pouch them available technical and project materials. Impress upon them the following statement from the regulation on preparation of the "Affected Environment" section: "The description shall be no longer than is necessary to understand the effects of the alternatives. Data and analyses in the EA shall be commensurate with the significance of the impact with less important material summarized, consolidated or simply referenced". Remember to scope your EA such that it will answer specific questions that will help you make important design and implementation decisions.

Review. Review the draft EA very carefully. If you don't understand something because of technical jargon, have the team change or define the terms. Be iconoclastic. Don't permit haphazard use of dogmatic or commonly misused phrases like "desertification," "natural resource base," "sustainable development," "rationale development," "ecology," etc., and don't accept platitudes, generalizations or dogma that sound good but which may or may not apply to your specific project. Remember, it is the mission that has to be satisfied that 1) the findings are technically supportable and 2) any decisions made based on those findings make "real world" project-related sense.

Alternatives Selection. As a final note, remember that just because an EA says that one alternative is better than another alternative does not mean that the mission and host country are bound to implement the alternative of choice of the EA team. The regulations state that policy is to "ensure that the environmental consequences of AID-financed activities are identified and considered by AID and the host country prior to a final decision to proceed and that appropriate environmental safeguards are adopted" (22 CFR 216.1(b)(1)); underlining added). What this means is that while you are not bound by the findings of the EA, those findings must be considered by AID and the HC; after consideration, you may choose the original or another course of action but you must also incorporate measures to "safeguard" the environment.

5.5. THE ENVIRONMENTAL IMPACT STATEMENT

5.5.1. Applicability

An EIS "shall be prepared when agency actions significantly affect (22 CFR 216.7(a)):

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."

5.5.2 How to Proceed

If the project will significantly affect the U.S., the EIS must comply with CEQ regulations. Those regulations are complex and detailed and should be obtained from AID/W. Also, the terms "environment" and "significant effect" wherever used in the AID regulations are to be taken aa having the same meaning as in the CEQ regulations rather than as described in the AID regulations. Again, CEQ definitions are considerably broader for these terms than are the AID definitions. However, CEQ definitions and regulations only apply if the effect will occur to the U.S. environment. (22 CFR 216.7(b)).

If the project will significantly affect either the global environment, areas outside the jurisdiction of any nation, or other aspects of the environment at the discretion of the Administrator, then an EIS will "generally follow the CEQ Regulations, but will take into account the special considerations and concerns of AID." Circulation of draft EIS's will precede approval of the PP and comments from such circulation will be considered before final project authorization. Draft EIS's will also be circulated by the mission to affected foreign governments for information and comment, and will generally be made available for comment to federal agencies with jurisdiction by law or special expertise with respect to impacts and to public and private organizations and

individuals for not less than 45 days. Notice of availability of the draft EIS will be published in the Federal Register, and drafts will be circulated through the USAID Environmental Coordinator who will have the responsibility for coordinating all such communications with persons outside AID. All comments received will be considered in final policy decisions and in the preparation of the final EIS. They will also be attached to the final EIS, and those relevant comments not adequately discussed in the draft will be "appropriately dealt with" in the final EIS. Copies of the final document will be sent to CEQ and to all other federal, state and local agencies and private organizations that made substantive comments on the draft, including foreign governments. (22 CFR 216.7(c)). Public hearings are normally held during the draft EIS phase. (22 CFR 216.8).

5.5.3 Strategy Tips

If your project requires preparation of an EIS, then you are best advised to either redesign your project down to an EA level or design a different project. Again, the only EIS ever apparently prepared by the Agency was a programmatic EIS for AID's pesticide activities resulting from litigation with U.S. environmental groups in the 1970's. If your Perpetual Peace Project will require EIS preparation, however, we can do it. Anticipate high costs, long delays and implementation of the EIS activity by either AID/W or an outside contract organization. AID/W can be expected to spearhead the operation because of the considerable domestic input required and because of the assignment of regulatory responsibility for coordination to the Agency Environmental Coordinator there.

5.6 PESTICIDE REGULATIONS

5.6.1 Applicability

AID's pesticide regulations are applicable to all "proposed projects involving assistance for the procurement or use, or both, of pesticides," with the exception of the following projects (22 CFR 216.3(b)(2)):

1) "Projects under emergency conditions." These are "deemed to exist when it is determined by the Administrator in writing that a pest outbreak has occurred or is imminent; significant health problems (either human or animal) or significant economic problems will occur without the prompt use of the proposed pesticide; and insufficient time is available before the pesticide must be used to evaluate the proposed use in accordance with the provisions of" the regulations;

2) "Projects where AID is a minor donor to a multi-donor project;" and

3) "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."

Catch 10: The term "use" is not defined in the regulations, has not been defined by General Counsel, and is not likely to be defined in the future. GC advises, however, that they "interpret it in very broad terms." More on this in the Strategy Tips section.

If your project will procure or use pesticides, and it is not "exceptable" under one of the three project categories above, then the pesticides it will use will fall into one of the three following categories (22 CFR 216.3(b)(1)). Either:

1) The pesticide is registered for the same or similar uses by EPA without restriction;

2) The pesticide is registered for the same or similar uses in the U.S. but the proposed use is restricted by EPA on the basis of user hazard; or

3) The pesticide does not fit into either of these two categories, or there has been a "rebuttable presumption against registration", a "notice of intent to cancel" or a "notice of intent to suspend" the compound by EPA.

Each of these four pesticide categories, 1) exceptable, 2) registered for the same or similar uses, 3) restricted based on user hazard, and 4) rebuttable presumption or notice to cancel/suspend, has different procedures under the regulations.

5.6.2 How to Proceed

If your activity is "exceptable" due to emergency conditions, all you need to do is obtain a written determination from the Administrator prior to proceeding. If your activity is exceptable due to AID being a minor donor to a multi-donor project, you need only explain and substantiate this in the IEE. If your project is exceptable under the research or limited field evaluation clause, you must prepare an IEE and ensure the following during implementation (22 CFR 216.3(b)(2)(iii)):

1) "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;" and

2) that "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. Catch 11: You can't eat what you grow unless those tolerances have been established.

If your project will use or procure pesticides registered for the same or similar uses by EPA, all you have to do is prepare an IEE. That IEE, however, must be considerably more detailed than a regular IEE and must 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." This is what is often referred to as

the "Risk-Benefit Analysis" but it is technically supposed to be found in the IEE. Factors to be considered in such an evaluation shall include, but not be limited to the following (22 CFR 216.3(b)(1)(i)):

1) "The EPA registration status of the requested pesticide;

2) The basis for selection of the requested pesticide;

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

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

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

6) The effectiveness of the requested pesticide for the proposed use;

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

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

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

10) The provisions made for training of users and applicators; and

11) The provisions made for monitoring the use and effectiveness of the pesticide."

If the IEE indicates that the pesticide use will significantly affect the environment, then the Threshold Decision will be positive and an EA will be prepared. (22 CFR 216.3(b)(1)(i)). If the IEE indicates that acquisition and use will not significantly affect the environment, then the IEE will recommend a negative determination and, if it is approved as is, the PP "shall include to the extent practicable, provisions designed to mitigate potential adverse effects of the pesticides." Catch 12: Even if the pesticide component of the project will not have significant adverse impact, an EA or EIS will still be required if the impact of the project "otherwise requires further assessment."

If your project will procure or use a compound whose proposed use is restricted by EPA on the basis of user hazard, you follow the same procedures as above for pesticides registered for the same or similar uses. In addition, however, the IEE "will include an evaluation of the user hazards associated with the proposed EPA restricted uses to ensure that the implementation plan which is contained in the PP 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." (22 CFR 216.3(b)(1)(ii)). If the proposed pesticide use is also restricted on a basis other than user hazard, however, you have to follow the procedure outlined below.

If your project will procure or use pesticides which are not registered for the same or similar uses, which are restricted on a basis other than user hazard, or for which a notice of rebuttable presumption, notice of intent to cancel, or notice of intent to suspend has been issued by EPA, then you have to come in with a Positive Threshold Decision and prepare an EA or EIS, as appropriate. The EA or EIS "shall include, but not be limited to, an analysis of" the eleven factors identified above. (22 CFR 216.3(b)(i)(iii)).

Notwithstanding any of the provisions outlined above for pesticides, except those relating to projects exceptable under the regulations, if your project will procure or use pesticides "against which EPA has initiated a regulatory action for cause, or for which it has issued a notice of rebuttable presumption against reregistration," then you are required to discuss with the HC government the nature of that EPA action or notice and consider it in the IEE. Catch 13: If EPA initiates a regulatory action against a pesticide which your project has already cleared, then you have to both discuss that

notice with the HC government and file an amended IEE, EA or EIS, as appropriate. (22 CFR 216.3(b)(1)(iv)).

If you don't know exactly what pesticide(s) your project will procure or use at the time the IEE is prepared, you must still follow the procedures outlined above when the specific compounds are identified and before procurement or use is authorized. This also applies to CIP activities. If identification of the compounds does not occur until after PP approval, no procurement or use of pesticidea can occur 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 PP. (22 CFR 216.3(b)(1)(v)).

Pesticides can also be procured for non-project assistance activities. Such cases, which are "few" and "limited," require that the AID Administrator determine in writing that 1) emergency conditions exist; or 2) 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 such assistance "will be based to the maximum extent practicable, upon a consideration of" the eleven factors identified above and "to the extent available, the history of efficacy and safety covering the past use of the pesticide in the recipient country." (22 CFR 216.3(b)(3)).

5.6.3. Strategy Tips

To most mission personnel, the pesticide regulations are perhaps the most frustrating aspect of the USAID environmental regulations. This is due to ambiguity over what constitutes "use;" difficulty in obtaining consistently reliable and current information of EPA registration statuses; changing EPA actions; difficulty in obtaining sufficient data to meet IEE requirements; the complexity of the regulations; and, most importantly, the feeling that the regulations do more harm than good. Let's take these items individually.

The Meaning of "Use". As noted earlier, the term "use" does not have a regulatory definition, is not likely to have a regulatory definition in the near future, but is "interpreted in very broad terms" by General Counsel. In

the absence of a definition, two recent examples suggest just how broadly the term "use" has recently been interpreted by GC.

In the first case, a project was to provide letters of credit to support key elements of cereals production in Country X. These elements, fertilizer supply, seed supply, cereals sector marketing and agricultural statistics, were to be addressed through provision of TA, lines of credit, participant training and acquisition of miscellaneous (non-pesticide) supplies. While the project would neither procure nor directly "use" pesticides of any kind, it was conceivable that some people using pesticides for, e.g., seed treatment, might be supplied lines of credit which might directly or indirectly support such activities. General Counsel interpretated this possibility as constituting "use," requiring a risk-benefit analysis, evaluation of user hazards and/or an EA or EIS prior to disbursement of project funds for lines of credit or other applicable project activities.

In the second case, the REO was advised that a component of a PVO umbrella project in Country Z would include "use" of pesticides if the PVO for that component, who was acting as an intermediate credit institution, were to loan funds which ultimately were employed intentionally or unintentionally for procurement or use of pesticides. It was ultimately decided that because of this, a covenant would be required in the grant agreement to the PVO stating that AID funds could not be used for the procurement or use of pesticides and requiring that the PVO have a specific clause in all individual loan agreements stating that the recipient of the loan agreed not to use those loan funds for the procurement or use of pesticides.

In essence, the rationale behind these interpretations of "use" is to ensure that any potential pesticide poisoning or adverse pesticide incident which might occur in a country has not been funded, directly or indirectly, by the Agency. Such an interpretation is indeed "very broad," and has recently come to affect more and more projects with the advent of increasing use of funds to support intermediate credit institutions. Where such an institution is making loans through individual loan agreements, then the problem has come to be regulatorily resolved by including a similar covenant in the obligating document requiring agreement on the part of the ultimate loan recipient not to acquire or use pesticides. (In fact, of course, there is no practicable way to monitor, regulate, control or enforce such a provision when loan recipients

may run into the thousands and when loan funds are typically commingled with personal funds in the same sock.)

"Real World" Impact of the Regulations. In practice, while such an interpretation makes good legal and regulatory sense given legislative provisions, it can sometimes make poor development sense. In spite of considerable recent work on integrated pest management, pesticide use among smallholder LDC farmers remains an increasingly important component of most agricultural production systems. Pesticides, if not always the funds to acquire them, are increasingly available locally and farmers are increasingly using them irregardless of U.S. or any other regulations. Moreover, the "real world" net effect of the regulations appears in many cases to be to reduce the protection from misuse of pesticides that the regulations are designed to provide. This is because in practice, AID often functionally removes itself from the process of pesticide acquisition and "use" because missions are unable or unwilling to go through what is widely perceived to be the extraordinarily complex regulatory process involved in obtaining clearances.

In one recent project design effort, for example, the precedents set in the case studies cited above dictated that AID funding of a government parastatal, serving as an intermediate credit institution and making "in kind" loans, should be contingent upon proscription of the acquisition or use of pesticides. In this case, even though there already existed a short list of about twenty target compounds in widespread use by the parastatal, AID's ability to influence the use of those pesticides was negated because of the functional impossibility of obtaining regulatory clearance given the extreme diversity in compound types, target crops, target pest species, biophysical environments, application rates, methods of application, hazards, effectiveness and compatibility, and the fact that loan recipient numbers potentially ran into the thousands. Proscription of acquisition and use was therefore virtually preordained, and AID's potential role in influencing pesticide selection and use by the parastatal was essentially nullified. The net result in this and other cases is expected to be a lessening of current control over pesticide acquisition and use, with more and more diverse compounds being acquired and disseminated by the parastatal or intermediate credit institution with the assistance of other donors.

There are many variations on this theme and in fact there are few missions who have gone through the exercise of pesticide clearance, even under emergency circumstances for a single target pest species, who are eager to go through it again. A common and prevailing perception among those who have faced the AID regulations is: "If you have a pest problem, let a different donor take care of it." In many cases this is perceived as the only "rational" decision for everyone concerned given prevailing circumstances, although it hardly meets the original intent or optimum goal of the pesticide regulations.

In the final analysis it would appear that the "real world" effect that USAID pesticide regulations have could be significantly improved upon by including, in the category of exemptions to the pesticides regulations, support to intermediate credit institutions where AID does not have knowledge of or control over the details of the specific activities supporting that institution that may have an effect on the environment. Under prevailing conditions, however, missions are best advised when pesticide clearances are required to contact S&T/AGR who will in turn either prepare the clearances, obtain the services of one of the excellent pest management specialists having familiarity with the regulations, or request that the REO prepare the clearance.

In practice, it is seldom that a project at either the PID or PP stage has sufficient information on the pesticides to be acquired and/or used under the project to permit completion of clearance at an early stage. In most cases, therefore, the IEE for the project in general should recommend a deferral under the regulations until those compounds are identified.

Toxicological and Environmental Data. Toxicological and environmental data required for almost all clearances under the regulations, including certain projects which are "exceptable," can usually be found in part on the labels accompanying the pesticide, in the Farm Chemicals Handbook, in other documents detailing compound toxicity such as the Herbicide Handbook of the Weed Science Society of America, through computer search, or, most conveniently, by cabling S&T/AGR to obtain the relevant information. Be advised, however, that some data of considerable practical importance (e.g., aquatic toxicity data) may not be available from any source because of the absence of appropriate studies. For those AID officers who wonder what the data mean once they have them in hand, some common terms used for pesticides and toxicological analyis of chemical compounds are found in Appendix 4 to this guide.

EPA Registration Actions and Status. The "hit list" of "forget it" compounds, "Suspended and Cancelled Pesticides," is included as Appendix 5 to this guide. For all other compounds not listed, it is always best because of the potential for a change in status at EPA to cable S&T/AGR for the most recent information on your target pesticides.

Basis for Selection of the Pesticide. Usually, your basis for selection of a pesticide from the field perspective is that it has been proven to be effective and it is locally available. This is the wrong approach to go into a clearance action with. The right approach, and what will be required in the IEE, is a description of it's effectiveness compared to other compounds, it's lack of (or minimal) user hazard, it's relatively low toxicity to non-target ecosystems, and it's relatively safe handling, storage and disposal properties.

HC Ability to Regulate and Control. Your average LDC does not have a tremendous capacity to regulate or control the distribution, storage, use and disposal of pesticides. If this is the case with your project, it will normally be necessary for clearance to provide sufficient TA, training, equipment and commodities to ensure that such regulation and control can be realized to the satisfaction of the BEO.

Monitoring. Forget about getting a clearance for pesticide acquisition or use unless you establish some kind of realistic monitoring program.

Conditions Under Which the Pesticide Will be Used. This section of the IEE needs to be sufficiently detailed to provide the reviewer with a solid feel for the physical and biological environment of the target region, but does not need to be detailed in the extreme. A few well worded pages will usually suffice. To the extent practicable, try and briefly described or characterize trophic levels in the target area. Be sure to point up whether it is an arid, semi-arid, savannah, woodland or forested region, and to describe precipitation, surface water and aquatic resources.

A Final Note. In spite of the fact that AID probably controls only a minuscule proportion of the total pesticide budget in the world's LDC's, and that AID pesticide regulations are therefore unlikely to make much of a difference in the face of international competition for sales, the regulations

are there for a good reason. While they could probably be improved upon, it is important to remember that the negative fallout from even a single major pesticide incident can do very substantial damage to U.S. foreign policy and foreign assistance objectives. It appears likely given prevailing phenomena that AID may in some cases be able to do more in the pest management field by providing technical assistance, training and equipment to develop HC capabilities in screening and evaluation of pesticides than it can by providing or "using" the compounds themselves. Agricultural production projects where pesticide use ia a major and significant component of increasing net annual yields might therefore consider weighing the relative advantages and disavantages of these two approaches, taking into account not only regulatory limitations, cost and management burden, but also the preexisting availability and use of pesticides in-country and the potential benefits to accrue from improving HC screening and application capabilities. Be advised, however, that certain forms of TA, training and equipment provision may also be open to interpretation by GC as constituing "use."

6.0 DELEGATIONS OF AUTHORITY

Delegation of Authority (DOA) 551 doea not redelegate responsibilities for approving environment clearances under AID's environmental regulations to the field (see 87 State 18297). In certain cases, however, for field posts in Schedule A, DOA is given on a case by case basis when requested in writing prior to project approval. In such cases, the approving responsibility of the BEO is usually delegated to the REO (or MEO), and clearance responsibility of the General Counsel in Washington is delegated to the RLA or Mission Legal Advisor in the field. Since IEE'a are usually cleared during the PID stage, but DOA for project authorization usually occurs after the PID stage, there are two approaches to seeking DOA for environmental clearances by Schedule A posts. The first approach, untested, is to simply submit the PID without an environmental review and request that authority for environmental approval be delegated along with authority for project authorization per 87 State 18297. The second approach is to prepare and submit the IEE along with the PID, and either include in the PID document or cable in to AID/W a request for delegation of authority to approve it in the field.

7.0 NEW FOREIGN ASSISTANCE ACT PROVISIONS

The Special Foreign Assistance Act (SFAA) of 1986, PL 99-529 (24 October 1986), contains substantial new provisions related to tropical forests and biological diversity of significant importance to mission programing and project development. The principal provisions of the 1986 SFAA related to these issues were incorporated into the FAA of 1961, as amended, into sections 118 ("Tropical Forests") and 119 ("Endangered Species"). A copy of these sections is attached to this document as Appendix 6.

7.1 TROPICAL FORESTS

The principal new provisions of Section 118 of the FAA on tropical forests as they relate to assistance to developing countries are as follows:

1) To place a high priority on conservation and sustainable management of tropical forests;

2) To engage in dialogue with recipient countries on forest conservation and sustainable management, losses associated with forest destruction, and policies contributing to deforestation;

3) To support projects offering employment and income alternatives to those who would otherwise cause deforestation, and to help countries identify and implement alternatives to colonization of forest areas;

4) To support training, education and institution building which help countries to formulate forest policies, engage in relevant land use planning, and improve forest management;

5) To "help end destructive slash-and-burn agriculture by supporting stable and productive farming practices" on cleared or degraded lands and lands which will "inevitably be settled;"

6) To help conserve forests which have not yet been degraded;

7) To support projects which conserve forested watersheds and rehabilitate deforested watersheds;

8) To support training, research and other activities which "lead to more environmentally sound practices for timber harvesting, removal, and processing" as well as reforestation, soil conservation and other activities to rehabilitate degraded forest lands;

9) To support research to expand knowledge of forests and identify alternatives for preventing forest destruction, loss or degradation;

10) To conserve biological diversity in forest areas by identifying, establishing and maintaining a representative worldwide network of protected forest ecosystems; making establishment of protected areas a condition of support for activities involving forest clearance or degradation; and helping nations to identify forest ecosystems and species in need of protection and to establish and maintain protected areas;

11) To engage in efforts to increase the awareness of the immediate and long-term value of tropical forests;

12) To use the resources and abilities of all relevant U.S. government agencies (in these endeavors);

13) To require that any project significantly affecting tropical forests, including projects involving planting of exotic species, be based on careful analysis of alternatives available to "achieve the best sustainable use of the land," and take full account of the environmental impacts of the project on biological diversity as provided in AID's environmental regulations;

14) To deny assistance for the procurement or use of logging equipment unless an EA indicates that all timber harvesting will be conducted in an environmentally sound manner minimizing forest destruction and it will produce positive economic benefits "and sustainable forest management systems;" and to deny assistance which would "significantly degrade national parks or similar protected areas" containing tropical forests, or for actions introducing exotic plants and animals into such places; and

15) To deny assistance, unless an EA indicates the activity will "contribute significantly and directly to improving the livelihood of the rural poor and will be conducted in an environmentally sound manner which supports sustainable development": 1) to activities resulting in conversion of forest lands to the rearing of livestock; 2) to construction, upgrading, or maintenance of roads (including temporary haul roads for logging or other extractive industries) which pass through relatively undegraded forest lands; 3) to the colonization of forest lands; and 4) to construction of dams or other water control structures which flood "relatively undegraded" forest lands.

Section 118 also requires that whenever feasible, the objectives of the section be accomplished through projects managed by PVO's or international, regional or national NGO's active in the region or country where the project is located. In addition, and of significance to mission program officers, are the "country analysis requirements" requiring that CDSS's "or other country plans prepared by" AID include an analysis of 1) the actions necessary in that country to achieve conservation and sustainable management of tropical forests; and 2) the extent to which the actions proposed for support by the Agency meet the needs thus identified.

The terms "forest" and "tropical forest" are not defined in these provisions of the FAA, and the FAA appears to use the two terms interchangeably. Professional ecologists generally define forests as tree-dominated, closed canopy vegetation types with an absence or near absence of grass in the understory. Such vegetation types correspond closely in the tropics with what

are sometimes referred to as "closed forests," "moist or closed moist forests," "rain forests," and/or "cloud forests," or, by the layman, "jungle." The technical disctinction separating true forests from woodlands, savannah and other vegetation types with trees on the basis of a grass stratum is not esoteric: it reflects the pervasive implications of the presence of a grass stratum to the structure and function of the ecosystem. This applies edaphically, vegetationally and zoologically, as well as to trophic structure, ecosystem disturbance response, fire susceptibility and system capacity to support different types of human land use. It currently appears likely, however, that the terms "forest" and "tropical forest" as employed in the FAA will be taken to be the equivalent of the definition of "tropical forest" in the document entitled "The World's Tropical Forests: A Policy, Strategy and Program for the United States," prepared by the U.S. Interagency Task Force on Tropical Forests. That definition, which includes "all forests and shrublands within the geographic tropics and in generally frost-free areas outside of the geographic tropics," would extend the applicability of these FAA provisions to virtually all of sub-Saharan Africa, regardless of vegetational structure, with the exception of some desert environments characterized by an absence of any woody vegetation.

Under a worst case scenario, therefore, these provisions could be taken to require preparation of formal EA's for all forestry projects involving exotic species; all livestock projects affecting lands not previously used for grazing unless those lands are in desert environments without trees or shrubs; all non-desert colonization projects; and all road and water control structure activities, regardless of scope or scale, affecting "relatively undegraded forest lands" (also undefined).

7.2 BIOLOGICAL DIVERSITY

The principal new provisions of Section 119 of the FAA on biological diversity related to assistance to developing countries are as follows:

1) To cooperate with appropriate international governmental and non-governmental organizations;

2) To look to the World Conservation Strategy as an overall guide for actions to conserve biological diversity;

3) To engage in dialogue with recipient countries on conserving biological diverity and identifying and focusing on policies contributing to the loss of biological diversity;

4) To support training and education to improve countries' abilities to prevent loss of biological diversity;

5) To, when possible, enter into agreements where the country protects ecosystems or wildlife habitats and the U.S. agrees to provide additional assistance necessary for establishing and maintaining such areas;

6) To support efforts to identify and survey ecosystems worthy of protection;

7) To cooperate with and support the efforts of other U.S. Government agencies;

8) To review AID environmental regulations and revise them as necessary to ensure that ongoing or proposed activities do not inadvertently endanger wildlife species or critical habitats, harm protected areas, or have other adverse impacts on biological diversity;

9) To ensure that environmental profiles sponsored by the Agency include information needed for conservation of biological diversity; and

10) To deny direct or indirect assistance to actions which significantly degrade national parks or similar protected areas or introduce exotic plants and animals into such areas.

Section 119 also requires that projects supported under the section include close consultation and involvement of local people at all stages of design and implementation, and that where feasible the objectives of the section be

accomplished through projects managed by PVO's or international, regional or national NGO's active in the region or country where the project is located. In addition, and of significance to mission program officers, are the "country analysis requirements" requiring that CDSS's or "other country plans prepared by" AID include an analysis of 1) the actions necessary in that country to conserve biological diversity, and 2) the extent to which the actions proposed for support by the Agency meet the needs thus specified.

The term "biological diversity" is not defined in these provisions of the FAA. Professional ecologists have developed a number of indices of diversity, but it currently appears likely that the term as employed here will be taken to mean "the number of species" rather than the evenness of distribution of species or other analytical definitions. In principal, these provisions of the FAA should not represent a significant constraint over existing conditions with respect to project environmental clearances unless project activities will occur in or near parks or protected areas.

7.3 MULTILATERAL DEVELOPMENT BANKS

Another recent addition to the FAA is found in Section 539 of Title V ("General Provisions"), and relates to a number of environmental provisions the most important of which from the mission perspective is a requirement that missions conduct environmental review of multilateral development bank (MDB) activities. Section 539(g)(1) specifically states in part that: "The Administrator of the Agency for International Development in conjunction with the Secretaries of Treasury and State shall -- (1) instruct overseas missions of the Agency for International Development and embassies of the United States to analyze the impacts of Multilateral Development Bank projects proposed to be undertaken in the host country well in advance of a project's approval by the relevant institution. Such reviews shall address the economic viability of the project; adverse impacts on the environment, natural resources, and indigenous peoples; and recommendations as to measures, including alternatives, that could eliminate or mitigate adverse impacts. If not classified under the national security system of classification, such information shall be made available to the public; (2) in preparation of reviews required by subsection (g)(1), compile a list of categories of projects likely to have adverse impacts on the environment, natural resources,

or indigenous peoples. The list shall be developed in consultation with interested members of the public...; (3) study the feasibility of creating a cooperative "early warning system" for projects of concern with other interested donors."

In practice, missions are notified and asked to review such projects by cable. Generally, the cable states that: "Monthly operations summary of IDA indicates that a proposed loan of X million dollars to country Y will to finance the Z project will soon be under appraisal. It is currently expected that Ministry R will be the executing agency. The project will finance A, B and C activities. The purpose of this cable is to ask if you anticipate major problems with this project on the basis of the information currently available to you. If you see problems please try to give some indication of their severity and their likely significance in order to guide AID/W on needed follow-up. In formulating your responses to this cable please consult with embassy economic staff. Please also advise whether you have had the opportunity to discuss these problems with Bank staff (if so, specify whether resident bank officers or travelling teams) and described nature and outcome of discussions. Was there a simple exchange of background information, a meeting of the minds, or were serious problems raised without satisfactory resolution? The following questions are intended as a guide to the kind of problems which most commonly arise and are of srious concern to AID and other Working Group on Multilateral Assistance (WGMA) agencies. They should be answered only repeat on if they are relevant to your concerns regarding a particular project." With respect to environmental considerations, the cable usually states: "Does the project raise any serious environmental issues? If so, to your knowledge have these been addressed adequately in the project design, or is further work likely to be required prior to executive boards consideration? Projects which are likely to have adverse environmental consequences include irrigation, lumber industry, roads, resettlement, agricultural development, and energy projects including hydroelectric and multipurpose dam projects. In particular, is the project likely to result in (1) the use of natural resources at an unsustainable level; (2) a threat to public health; (3) endangering species survival; (4) environmental degradation beyond recipient country boundaries; (5) the conversion or degradation of designated areas such as national parks, World Heritage sites or wildlife reserves; (6) the impairment of land and other resources needed by indigenous people; or 7) the use of pesticides without adequate controls?" The cable

goes on to give you one month to reply by AIDAC channel directly to SECSTATE for action and directly to Treasury for information, and advises you that if they haven't heard from you in six weeks they will send a follow-up.

To date, responses to such cables reviewed by the author have been by cable from the affected mission directly to AID/W. They tend to follow the format of questions sequentially, and to address them to the extent that information is available. The short turnaround time required to address these questions has to date precluded requests for REO assistance, although that option remains open if the MEO and/or other mission or embassy personnel consider it advisable. A copy of Section 539 is found in Appendix 6 of this guide.

APPENDICES

APPENDIX 1

Initial Environmental Examination/Categorical Exclusion Facesheet

APPENDIX 1:1

INITIAL ENVIRONMENTAL EXAMINATION

or

CATEGORICAL EXCLUSION

Project Country:

Project Title:

Funding: FY(s) _____ US$ _____

IEE Prepared By:

Environmental Action Recommended:

Positive Determination _____
Negative Determination _____
Categorical Exclusion _____
Deferral _____

Summary of Findings:

Clearance:

Mission Director: _____ Date: _____

Concurrence:

Bureau Environmental Officer: APPROVED: _____

DISAPPROVED: _____

DATE: _____

Clearance:

GC/Africa: _____ Date: _____

APPENDIX 2

Environmental Impact Reference Documents

APPENDIX 2:1

ENVIRONMENTAL IMPACT REFERENCE DOCUMENTS

Environmental Design Considerations for Rural Development Projects. 1980. Harza Engineering Company. Funded by USAID, with assistance from the American Public Health Association. (Roads, Electrification, Irrigation, Water Supply, Small Industry).

Environmental, Health and Human Ecological Considerations in Economic Development Projects. 1974. The World Bank, Washington, D.C.

Ecological Guidelines for Development Projects. 1979. Club du Sahel.

Environmental Assessment Guidelines Manual. 1974. U.S. Agency for International Development. Washington, D.C.

Resource Inventory and Baseline Study Methods for Developing Countries. 1983. American Association for the Advancement of Sciences. Funded by USAID. Washington, D.C.

Environmental Guidelines for Selected Infrastructure Projects. 1986. Asian Development Bank. (Draft: Includes airports, roads, ports and harbors, sewerage and excreta disposal, urban development and water supply).

Environmental Guidelines for Irrigation. 1981. R.E. Tillman. Funded by USAID, the U.S. Man and the Biosphere Program, and the New York Botanical Cary Arboretum. Millbrook, New York.

Economic and Environmental Guidelines for Water and Related Land Resources Implementation Studies. Undated. U.S. Water Resources Council.

Environmental Considerations in Aquaculture. 1981. R.P. Phelps. International Center for Aquaculture, Auburn University, Alabama.

Ecological Guidelines for Development in Tropical Rain Forests. 1976. D. Poore. International Union for the Conservation of Nature and Natural Resources. Morges, Switzerland.

Draft Operational Guidelines for Environmental Impact Studies for Watershed Management and Development in Mountain Areas. 1979. United Nations Environment Program. Paris, France.

Ecological Guidelines for Development in the Humid Tropics. 1985. Winrock International, Morrilton, Ark.

Environmental Methodologies for Small Hydropower Projects. 1982. National Rural Electric Cooperative Association. Funded by USAID. Washington, D.C.