Session 6:

22 CFR 216 (Reg. 216): USAID's Pre-implementation Environmental Impact Assessment Process

Session Objectives:

- Identify the pre-implementation environmental review process defined by 22 CFR 216;
- Identify this process as a specific implementation of the general Environmental Impact Assessment process;
- Practice deciding determinations for given USAID-funded activities.

What is 22 CFR 216 (Reg. 216)?

- **Sets out USAID's pre-implementation EIA process**
- **Applies to:**
  - ***All*** *USAID programs or activities, (including non-project assistance.)*
  - *New activities*
  - *Substantive amendments or extensions to ongoing activities*

!

Reg. 216 (22 CFR 216) is a US FEDERAL REGULATION. Compliance is mandatory.

Documentation & Approval

IMPORTANCE:
No activities may be implemented without APPROVED Reg. 216 environmental documentation in hand.

APPROVED =
Mission Director
(or Washington equivalent) &
Bureau Environmental Officer (BEO) signatures

BEO concurrence *not* automatic or guaranteed

Dialogue is sometimes required

Who signs?

Clearances:

- COR/AOR or Team leader
- Mission Environmental Officer (for Missions)
- Regional Environmental Advisor (depending on mission)
- Mission Director or Washington equivalent*

Concurrence

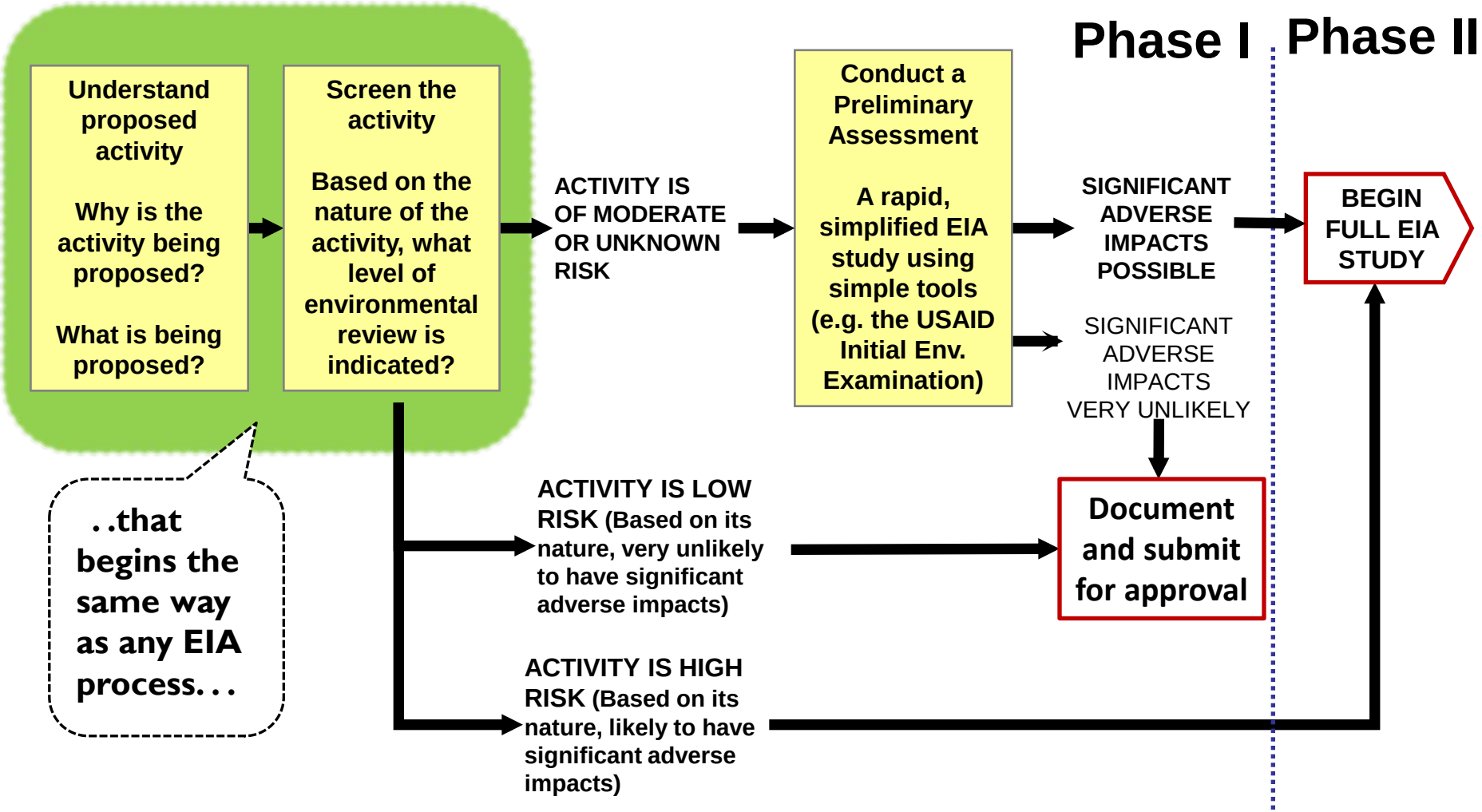
- Bureau Environmental Officer*

Approval

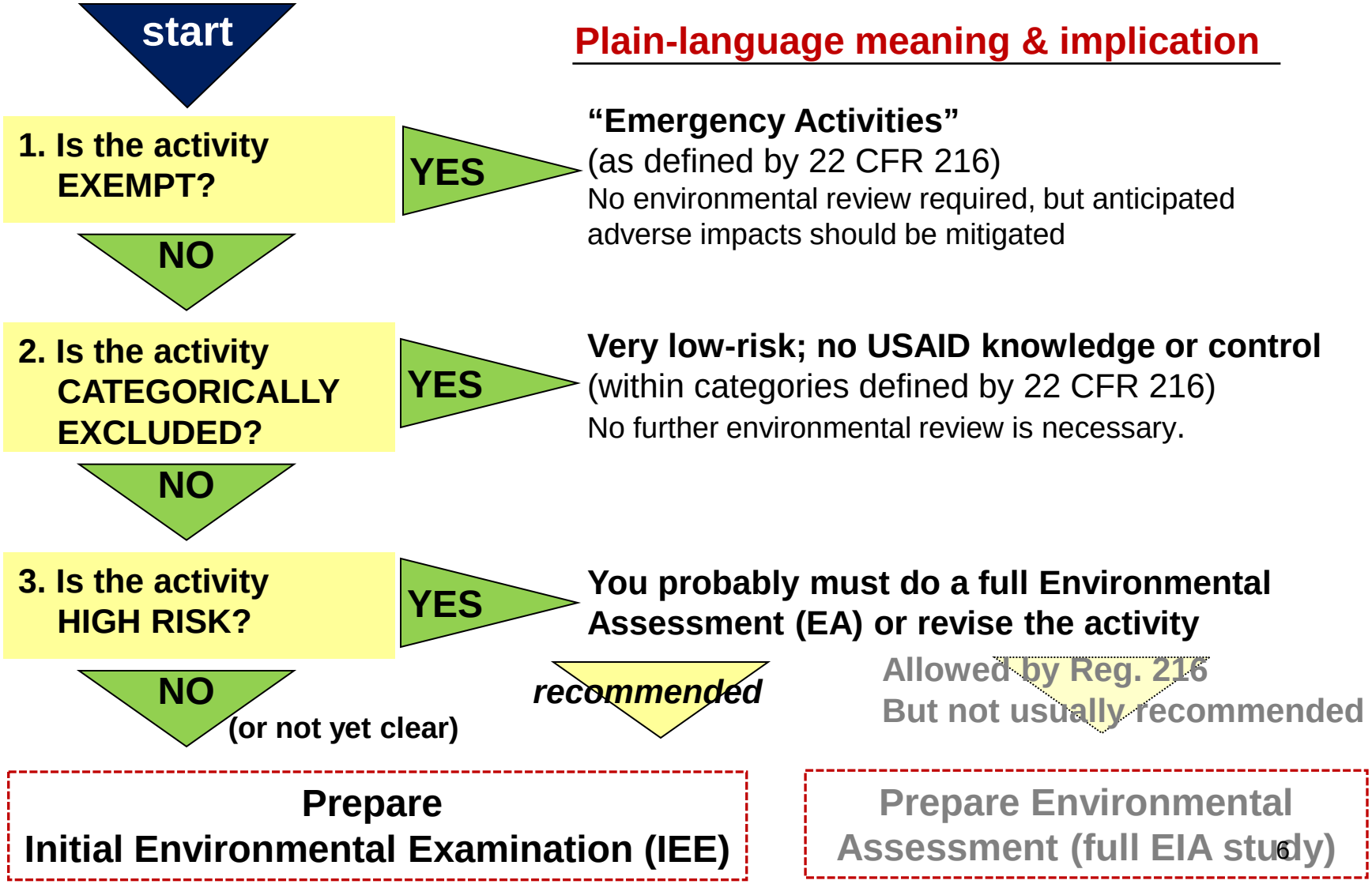
- General Counsel (rarely)

*required by Reg 216

Reg. 216: specific USAID implementation of general EIA process. . .



Screening under Reg. 216



Screening under 22 CFR 216:

Exemptions

! "Exempt" activities often have significant adverse impacts.

Mitigate these impacts where possible.

start

1. Is the activity EXEMPT?

YES

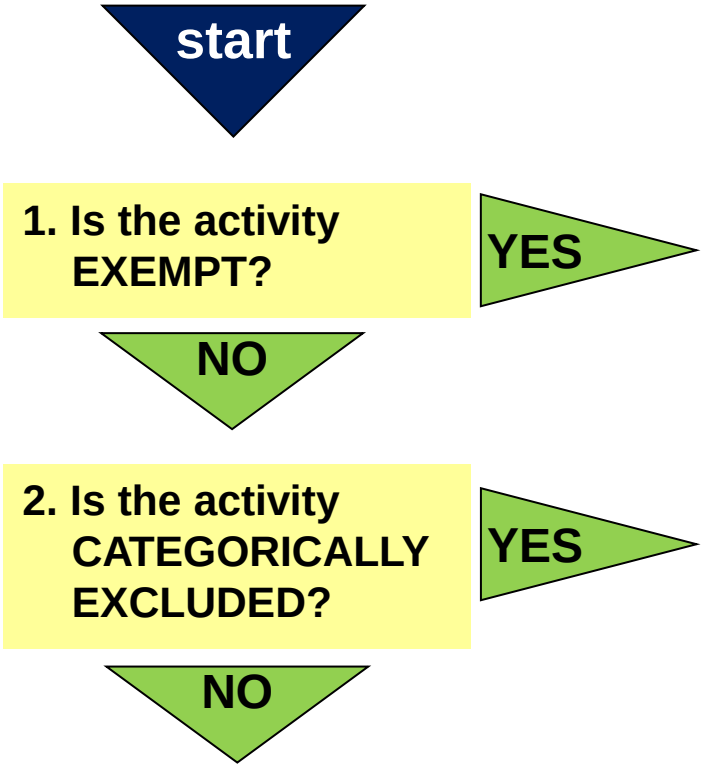
NO

Under Reg 216, EXEMPTIONS are ONLY. . .

1. **International disaster assistance**
2. **Other emergency situations**
   requires Administrator (A/AID) or Assistant Administrator (AA/AID) formal approval
3. **Circumstances with "exceptional foreign policy sensitivities"**
   requires A/AID or AA/AID formal approval

Screening under 22 CFR 216:

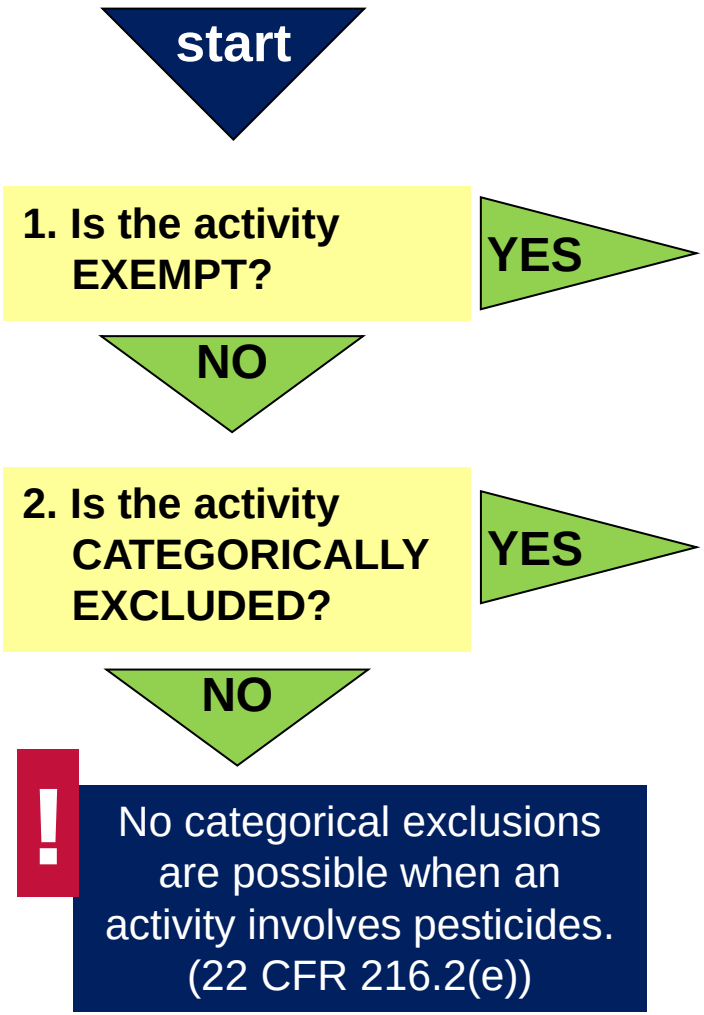
Categorical Exclusions



ONLY activities fitting in a set of 15 specific categories <u>MAY</u> qualify for categorical exclusions, including. . .

- Education, technical assistance, or training programs (as long as no activities directly affect the environment)
- Documents or information transfers
- Analyses, studies, academic or research workshops and meetings
- Nutrition, health, family planning activities ***<u>except where medical waste is generated</u>***

Categorical Exclusions: LIMITATIONS



An activity may "fit" into a categorically excluded class. . .

. . . but if adverse impacts are reasonably foreseeable, the activity will NOT receive a categorical exclusion.

Why would categorical exclusions NOT apply if USAID funds. . .

- A technical advisor to the ministry of environment & energy with co-signature authority over mining concession awards?
- Midwife training in management of 3rd-stage labor?
- Credit support to large-scale agro-processing?

Screening under 22CFR216

"High Risk" (EA Likely Required)

start

1. Is the activity EXEMPT? — **YES**

NO

2. Is the activity CATEGORICALLY EXCLUDED? — **YES**

NO

3. Is the activity HIGH RISK? — **YES**

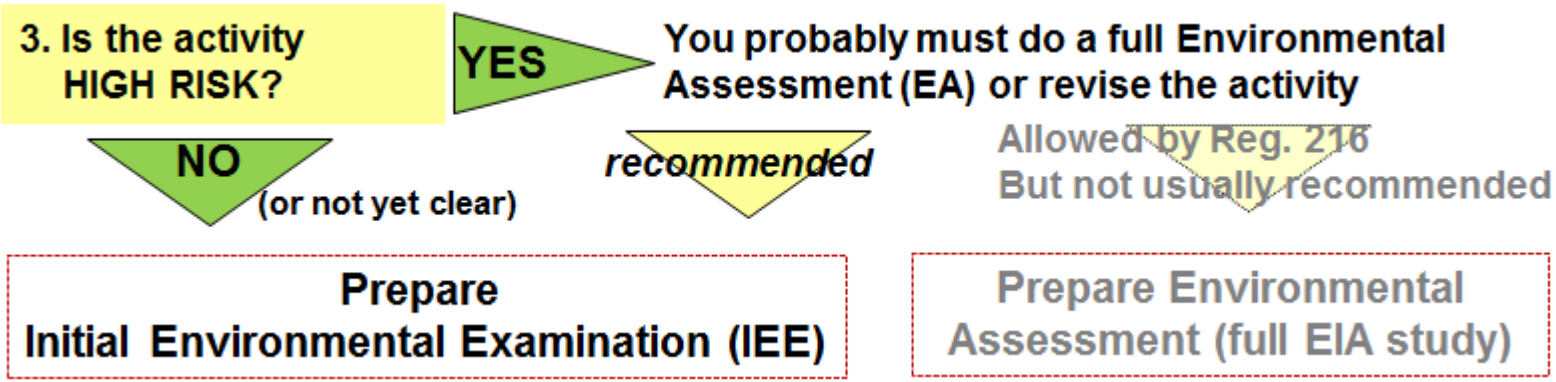
NO

"HIGH RISK" = activities "for which an EA is normally required" per 22 CFR 216

<u>OR</u> other activities which clearly present high environmental risks

- Penetration road building or improvement
- Irrigation, water management, or drainage projects
- Agricultural land leveling
- New land development; programs of river basin development
- Large scale agricultural mechanization
- Resettlement
- Powerplants & industrial plants
- Potable water & sewage, "except small-scale"

What if my activity is “high risk”?



Can proceed directly to an EA (USAID’s full EIA study)

But unless the activity is VERY clearly “high risk”, do an IEE (USAID’s preliminary assessment) instead

WHY a preliminary assessment?

An IEE will:

- Allow you to determine if impacts can be easily controlled below a significant level—if so, an EA is not necessary
- Gather information needed to jump-start the EA process

What is clearly “high risk”?

EA DEFINITELY REQUIRED	NOT CLEAR—proceed to IEE
New 500Ha irrigation scheme	Rehabilitation of 50Ha irrigation scheme
Major expansion of a 100MW thermal power plant & construction of new transmission lines	Mini-hydro installations of 500 kw total
Widening 30km of a 2-lane road to 6-lane tollway thru an urban area	Rehabilitation of multiple short segments of rural feeder road

Sections 118 & 119 of the Foreign Assistance Act REQUIRE an EA for. .
Activities involving procurement or use of logging equipment
Activities with the potential to significantly degrade national parks or similar protected areas or introduce exotic plants or animals into such areas

Once each activity has been screened…

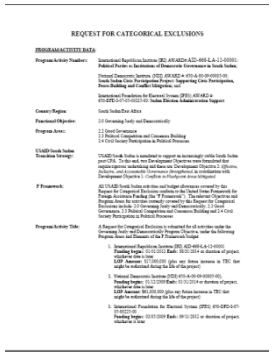
Activity*	Exempt	CatEx	IEE Req'd	EA Req'd
1. Small clinic rehabilitation			X	
2. Borehole Installations			X	
3. Training in patient record-keeping		X		
4. Construct provincial medical waste disposal facility				X

*Use a table like this. It helps.

Develop your 22 CFR 216 documentation. . .

. . .as determined by the outcome of your screening process

Overall screening results	22 CFR 216 documentation required
All activities are exempt	Statement of Justification
All activities categorically excluded	**Categorical Exclusion Request** + FACESHEET
All activities require an IEE	**IEE** covering all activities + FACESHEET
Some activities are categorically excluded, some require an IEE	An **IEE** that: ▪ Covers activities for which an IEE is required AND ▪ Justifies the categorical exclusions + FACESHEET
High-risk activities	▪ Initiate scoping and preparation of an EA



REQUEST FOR CATEGORICAL EXCLUSIONS

PROGRAM/ACTIVITY DATA

Program/Activity Number: International Republican Institute (IRI) AWARD# AID-486-A-12-00001; Political Parties as Institutions of Democratic Governance in South Sudan;

National Democratic Institute (NDI) AWARD# 470-A-00-09-00015-00; South Sudan Civic Participation Project: Supporting Civic Participation, Peace Building and Conflict Mitigation; and

International Foundation for Electoral Systems (IFES) AWARD# 470-IFES-A-7-10-00223-00: Sudan Election Administration Support

Country/Region: South Sudan/East Africa

Functional/Objective: 2.0 Governing Justly and Democratically

Program Areas: 2.1 Good Governance
2.2 Political Competition and Consensus Building
2.4 Civil Society Participation in Political Processes

USAID South Sudan Transition Strategy: USAID South Sudan is mandated to support an increasingly stable South Sudan post CPA. To this end, two Development Objectives were formulated that engage rigorous mainstreaming and data on: Development Objective 1: Efficient, Equitable and Transparent Governance and Development Objective 2: Conflict Development Objective 1: Conflict in Northern Areas Mitigated

F Framework: All USAID South Sudan activities and budget allocations covered by the Request for Categorical Exclusion conform to the United States Framework for Foreign Assistance Funding (the "F Framework"). The relevant Objectives and Program Areas covered by the Request for Categorical Exclusion are the: 2.0 Governing Justly and Democratically; 2.1 Good Governance; 2.2 Political Competition and Consensus Building and 2.4 Civil Society Participation in Political Processes

Program/Activity Title: A Request for Categorical Exclusion is submitted for all activities under the Governing Justly and Democratically Program Objective, under the following Program Areas and Elements of the F Framework/budget

1. International Republican Institute (IRI) AID-486-A-12-00001
   Funding begins: 01/01/2012 Ends: 03/31/2014 or duration of project, whichever is first
   LOP Amount: $17,500,000 (plus any future increase in TEC that might be authorized during the life of the project)
2. National Democratic Institute (NDI) 470-A-00-09-00015-00,
   Funding begins: 01/12/2009 Ends: 01/31/2014 or duration of project, whichever is first
   LOP Amount: $61,500,000 (plus any future increase in TEC that might be authorized during the life of the project)
3. International Foundation for Electoral Systems (IFES) 470-IFES-A-7-10-00223-00
   Funding begins: 03/01/2009 Ends: 09/31/2012 or duration of project, whichever is first

CATEGORICAL EXCLUSION REQUEST

Very simple; 1-2 pages. Describes the activities. Cites 22 CFR 216 to justify the catex.

Initial Environmental Examination (USAID's preliminary assessment)

Timing of 22 CFR 216 documentation. . .

USAID's project design process requires approved Reg. 216 documentation as annex to the Project Appraisal Document

Program Cycle

CDCS

Environmental Planning, FAA 117, 118, 119

Project Design Process

Stage 1:Concept Paper

- Steps 1-10
- Review
- Approve/Disapprove
- if yes then Stage 2

Stage 2: Analytical (PAD)

Gender/ Env/Sust Analysis
7. Anal. & Sust. Considerations
Annex b. Log Frame
Annex k. Env Thresh. Decision
Annex m. Waivers (AUPCS)

Threshold Decision

Stage 3: Project Authorization

AUPCS
mitigating measures in the PAD

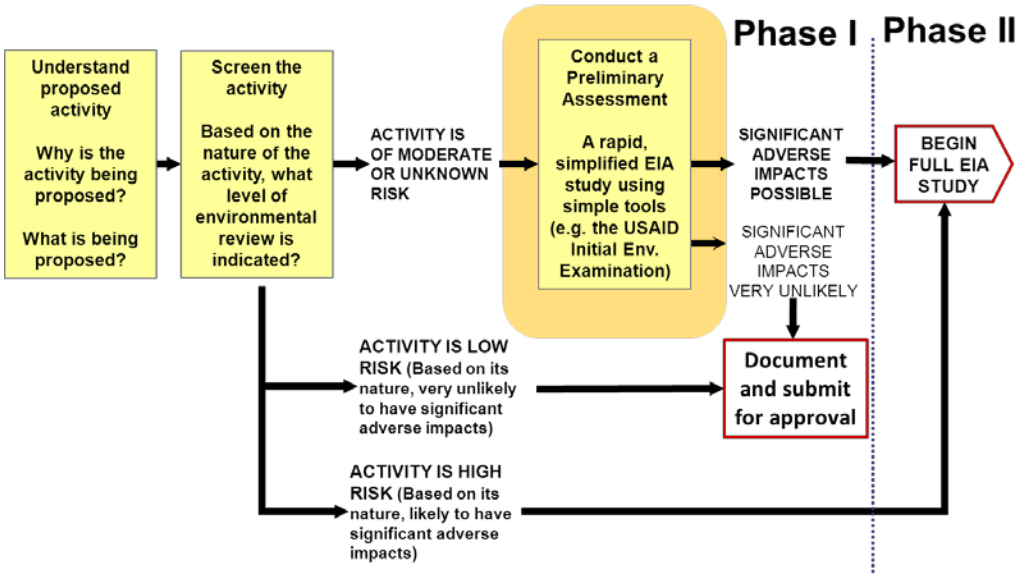
Initial Environmental Examination: What it looks like

Basic IEE outline

1. **Background & Activity Description**
   - Purpose & Scope of IEE
   - Background
   - Description of activities
2. **Country & Environmental information**
   - Locations affected
   - National environmental policies and procedures
3. **Evaluation of potential environmental impacts**
4. **Recommended threshold decisions and mitigation actions**
   - Recommended threshold decisions and conditions
   - Mitigation, monitoring & evaluation

! **The IEE is very similar to preliminary assessments required by other donors and governments.**

Purpose of Initial Environmental Examination



Provides documentation and analysis that:

- Allows the **preparer** to determine <u>whether or not significant adverse impacts are likely</u>
- Allows the **<u>reviewer</u>** to agree or disagree with the preparer's **determinations**
- Sets out mitigation and monitoring for adverse impacts

What determinations result from an IEE?

For **each** activity addressed, the IEE makes one of 4 recommendations regarding its possible impacts:

If the IEE analysis finds. . .	The IEE recommends a. . .	Implications (if IEE is approved)
No significant adverse environmental impacts	**NEGATIVE DETERMINATION**	No conditions. Go ahead.
With specified mitigation and monitoring, no significant environmental impacts	**NEGATIVE DETERMINATION WITH CONDITIONS**	Specified mitigation and monitoring must be implemented
Significant adverse environmental impacts are possible	**POSITIVE DETERMINATION**	Do full EA or redesign activity. Conditions imposed by the EA must be implemented.
Not enough information to evaluate impacts	**DEFERRAL**	You cannot implement the activity until the IEE is amended

PLUS, the IEE will address any CATEGORICAL EXCLUSIONS carried over from the screening process.

When the IEE is duly approved. . .

Recommended determinations & categorical exclusions become THRESHOLD DECISIONS

Conditions become REQUIRED elements of project implementation & monitoring (ADS 204.3.4(b))

Conditions are written into or referenced in solicitation & award documents (ADS 204.3.4(a)(6))

AORs/CORs oversee implementation (ADS 204.3.4(b))

The IEE is posted to USAID's environmental compliance database*

*www.usaid.gov/our_work/environment/compliance/database.html

What if I need to do an Environmental Assessment*?

- First step: a formal scoping process (22 CFR 216.3(a)(4))
- Scoping statement must be approved by Mission Director, Bureau Environmental Officer.
- Informs the SOW for the Environmental Assessment itself.
- EAs are far more detailed than IEEs. They must address alternatives to the proposed activities. Public consultations are required.

If a proposed action may affect the US environment or the global commons, an EIS is required, not an EA. (EIS = **Environmental Impact Statement, per the US National Environmental Policy Act (NEPA)). This is RARE. (*22 CFR 216.7.)

And now: A QUIZ!!

What will the 22 CFR 216 threshold decision likely be?

- **Categorical Exclusion?**
- **Negative Determination?**
- **Negative Determination w/ Conditions?**
- **Positive Determination?**
- **Exemption?**

Categorical Exclusion

Classroom instruction on education curriculum development

Negative Determination with Conditions

Market feeder road rehabilitation on
Liberia

Negative Determination with Conditions, or
Positive Determination (EA)
Commercial Nursery

Negative Determination with Conditions
Promoting Cacao cultivation

Positive Determination (EA)

Forestry activity

Initial – Exemption

Long term – Positive Determination or Negative Determination with Conditions

Hurricane disaster response:
- **Initial?**
- **Long term reconstruction?**

Positive Determination or

Negative Determination with Conditions

Pesticide Procedures

Pesticide use,

Central America

Reg. 216 at the sector/Project Appraisal Document level

Reg. 216 written for the **project/activity level**

But many RCEs/IEEs written at the **Sector Portfolio** level

- To better consider environment in program design
- To satisfy the need for pre-obligation threshold decision
- AND NOW, program design guidance requires Reg. 216 documentation to be in place for the Project Appraisal Document (PAD). Each PAD covers multiple procurement actions.

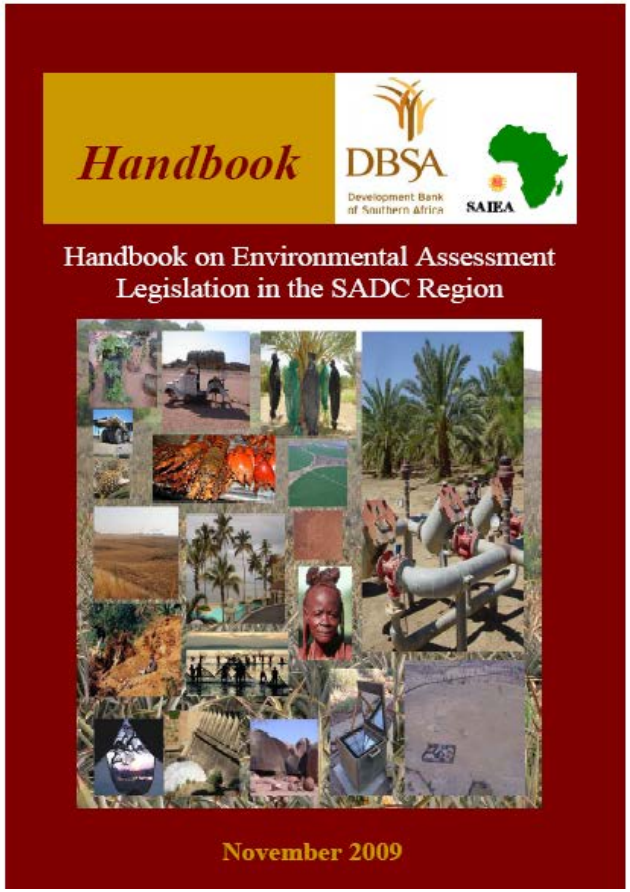
RISKS:

- failure to apply IEE at project level;
- project-level activities outside the scope of the IEE

Operating Units must have a system in place to assure conditions from high-level IEEs are applied at the project level.

What about host-country EIA procedures?

- Most host countries have domestic EIA requirements;
- USAID projects must also comply with these requirements;
- So, during screening, also screen against host country categories.
- If a host-country preliminary assessment or full EIA is required, the objective is to create **one document that satisfies both systems.**



Summary

- 22 CFR 216 defines USAID's pre-implementation environmental review process;
- It is a specific implementation of the general EIA process;
- It begins with a systematic screening and decision-making process that leads to more detailed review, if necessary;
- Documentation and approval processes are clear and mandatory.