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ENCAP FACTSHEET

ENVIRONMENTAL COMPLIANCE: LANGUAGE FOR USE IN SOLICITATIONS AND AWARDS (ECL)

ABOUT THE ECL AND THIS FACTSHEET

The ADS Help Document, “Environmental Compliance: Language for Use in Solicitations and Awards” is a combination of step-by-step guidance and boilerplate text to assemble appropriate, ADS-mandated environmental compliance language for all solicitations and awards. This factsheet is an orientation to the ECL, and particularly targets COs, CTOs, and Activity Managers. It is intended both as a training aid and as a succinct stand-alone reference.

BACKGROUND: USAID’S MANDATORY ENVIRONMENTAL PROCEDURES

Section 117 of the Foreign Assistance Act of 1961, as amended, requires that USAID use an Environmental Impact Assessment (EIA) process to evaluate the potential impact of the Agency’s activities on the environment **prior** to implementation, and that USAID “fully take into account” environmental sustainability in designing and carrying out its development programs. This mandate is codified in Federal Regulations (22 CFR 216 or “Reg. 216”) and in USAID’s Automated Directives System (ADS), particularly Parts 201.3.12.2.b and 204.

Compliance with the procedures is mandatory. With limited exceptions for international disaster assistance, they apply to every program, project, activity, and amendment supported with USAID funds or managed by USAID.

In general, the procedures specify an EIA process must be applied to all activities before implementation—including new activities introduced into an existing program or substantive changes to existing activities. The only exceptions are international disaster assistance activities verified as EXEMPT from the procedures.

The output of this EIA process is “Reg. 216 Environmental Documentation,” which takes one of three forms: a Request for Categorical Exclusion, an Initial Environmental Examination (IEE) or an Environmental Assessment (EA).

This documentation must be cleared by the Mission Environmental Officer (MEO) and the Mission Director AND approved by the Bureau Environmental Officer (BEO) PRIOR to any “irreversible commitment” of resources. Most IEEs and all EAs specify environmental mitigation and monitoring measures (IEE and EA “conditions”) that must be implemented and verified over life-of-project (LOP).¹

PROCUREMENT LANGUAGE AND ENVIRONMENTAL COMPLIANCE

USAID oversees and monitors project/activity environmental compliance. Actual implementation of IEE and EA conditions, however, is the responsibility of the prime contractor/grantee (“partner”) responsible for project/activity implementation. *The ADS therefore requires that all IEE and EA conditions (or a*

Why the environmental procedures?

The procedures are USAID’s principal mechanism to ensure environmentally sound design and management (ESDM) of development activities—and thus to prevent significant adverse impacts on critical environmental resources and ecosystems and on the health and livelihoods of beneficiaries or other groups resulting from inadequate attention to environmental issues in design and operation.

In short, the procedures strengthen development outcomes and help safeguard the good name and reputation of the Agency.

To learn more about ESDM, view the presentation *Environment, Development and Environmentally Sound Design and Management* at www.encapafrika.org/tzWorkshop.htm.

¹ For a more detailed discussion of USAID’s Environmental Procedures, see the “USAID Environmental Procedures Briefing for Mission Staff,” available at www.encapafrika.org/meoEntry.htm.

statement that requires compliance with them) are incorporated into procurement instruments (ADS 204.3.4.a.6; 303.3.6.3e).

Beyond this, however, LOP environmental compliance is best assured when solicitation and award instruments also incorporate the elements set out and justified in the table below:

Environmental compliance elements in solicitation/award instrument	Reason
No activity is implemented unless covered by approved Reg. 216 environmental documentation.	Establishes the importance of maintaining full environmental documentation coverage.
The partner must verify current and planned activities annually against the scope of the approved Reg. 216 environmental documentation.	Guards against a project “creeping” out of compliance due to the addition or modification of activities outside the scope of the approved Reg. 216 environmental documentation. This usually takes place during the annual work planning process.
Where activities demand environmental management expertise, appropriate qualifications and proposed approaches to compliance must be addressed in technical and cost proposals.	Helps ensure that the partner/team selected for the work is capable of implementing the required environmental management activities. Also sends a clear message that environmental management is not an afterthought, but an integral part of the project, and a core qualification.
The partner must develop an Environmental Mitigation and Monitoring Plan (EMMP) fully responsive to all IEE/EA conditions, unless (1) the EMMP already exists in the approved Reg. 216 documentation, or (2) will be developed by USAID.	The EMMP translates the general mitigation directives in the IEE or EA into more specific measures, assigns responsibilities for their implementation, and sets out monitoring/reporting measures to verify their implementation and effectiveness. Without an EMMP, systematic & verifiable implementation of IEE/EA conditions is almost impossible.
Budgets and work plans integrate the EMMP.	Unless the EMMP is integrated in the budget and work plan, it will not be implemented.
PMPs measure EMMP implementation.	As the EMMP is an integral part of project implementation, it should be treated this way in project evaluation and reporting.

Collectively, incorporating these compliance elements in the solicitation and award (1) ensures that necessary compliance mechanisms are in place, (2) integrates monitoring and reporting on environmental compliance into routine project/activity monitoring and reporting, and (3) clearly communicates and establishes partner responsibility for LOP compliance. The result is *improved compliance, improved project outcomes, and reduced demands on mission staff*—particularly on activity managers and CTOs, who are required to actively manage and monitor compliance with any IEE/EA conditions per ADS 202.3.6 and 303.2.f.

WHY USE THE ECL?

The ECL is a non-mandatory help document. However, its use:

- Results in environmental compliance language that conforms to ADS requirements and best practice, as described in the table above, therefore realizing the compliance, outcomes, and manager workload benefits also noted above.
- Substantially reduces the time required to develop environmental compliance language.
- Improves consistency across the Agency in addressing environmental compliance.

HOW TO USE THE ECL AND WHAT YOU NEED IN HAND

Use of the ECL is self-explanatory:

1. Follow the instructions on page 3 of the document to assemble the compliance language, then
2. Finalize the **[text in brackets and blue highlight]**.

However, both steps require familiarity with the Reg. 216 documentation covering the activities involved in the solicitation/procurement. In some cases, an IEE specific to the procurement is prepared (in which case the compliance language should be assembled at the same time). In other cases, the solicitation/procurement is covered by a strategic- or program-level IEE of broader scope. In this case, the CTO and MEO should identify the IEE determinations and conditions that apply to the procurement. Once this is done, use of the ECL is straightforward.

Regardless, it is the responsibility of the CTO and Activity Manager, working with the CO, to assure that appropriate environmental compliance language is incorporated in solicitation and procurement instruments.