

10-23-80
Vol. 45 No. 207
Pages 70209-70426

Federal Register

Thursday
October 23, 1980

Highlights

Document Drafting Handbook

The Office of the Federal Register has issued a revised edition of the handbook. See the Reader Aids section of this issue for details.

- 70352 Grant Programs—Social Justice/NIC** resolicits cooperative agreement grant entitled "National Institute of Corrections Training and Consulting Project"; apply by 11-21-80
- 70390 Pipeline Safety** DOT/RSPA establishes new safety standards governing liquefied natural gas facilities used in transportation of gas by pipeline in or affecting interstate or foreign commerce (Part III of this issue)
- 70412 Transportation** DOT/UMTA proposes regulations governing its program which provides funding for mass transportation projects that enhance urban development; comments by 12-8-80 (Part IV of this issue)
- 70366 Mopeds** DOT/NHTSA advises the public of motorized bicycle safety guidelines for State programs
- 70313 Grant Programs—Environmental Protection** EPA invites comments on and announces opportunity for hearing on its intent to award a grant to the State of Oregon to assist in the funding of its air pollution control program for fiscal year 1981

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(C) A statement signed by the applicant that the applicant's organization has received an official Internal Revenue Service (IRS) ruling or letter of determination stating that the organization or its parent organization qualifies for tax-exempt status under 26 U.S.C. 501(c)(3), (c)(4), or (c)(5).

(D) A statement signed by the applicant that the applicant's organization has applied to the IRS for a determination of tax-exempt status under 26 U.S.C. 501(c)(3), (c)(4), or (c)(5), and that the IRS has not yet issued a final administrative ruling or determination on such status.

(E) A statement signed by the applicant that the applicant's organization has on file with the Virginia Administrator of Consumer Affairs a current registration statement in accordance with the Virginia Annotated Code, Section 57-49 (1978 Cumulative Supplement), "Registration of Charitable Organizations."

2. By amending paragraph (e) of § 159.94 to read as follows:

§ 159.94 Prohibited conduct relating to noncommercial activity.

(e) If that person is selling written or printed matter or soliciting funds, without wearing or displaying, in a conspicuous manner, a solicitation permit and the name of the organization that the person represents.

(Secs. 2 and 4 of the Act for the Administration of Washington National Airport, 54 Stat. 886 as amended by 61 Stat. 94; Secs. 4 and 10 of the Second Washington Airport Act, 64 Stat. 770; sec. 313 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1359); sec. 6, Department of Transportation Act (29 U.S.C. 1655); sec. 501 of Pub. L. 96-183, February 18, 1980)

Note.—The Federal Aviation Administration has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT in Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). In addition, since these amendments are editorial and clarifying in nature, or are relaxatory, and impose no additional burden on any person, the Federal Aviation Administration has determined that the anticipated impact is so minimal that an evaluation is not required.

Issued in Washington, D.C., on October 17, 1980.

Langhorne Bond,
Administrator.

[FR Doc. 80-33142 Filed 10-23-80; 9:45 am]
BILLING CODE 4910-13-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY Agency for International Development

22 CFR Part 216

Environmental Procedures

AGENCY: Agency for International Development.

ACTION: Final amendment of regulations.

SUMMARY: These final regulations amend A.I.D.'s environmental procedures to increase their effectiveness and efficiency and to reduce unnecessary paperwork and delay.

EFFECTIVE DATE: October 23, 1980.*
FOR FURTHER INFORMATION CONTACT:
Albert Printz, A.I.D. Environmental
Coordinator, Agency for International
Development, Department of State,
Washington, D.C. 20523, 202-632-1036.

SUPPLEMENTARY INFORMATION: On October 1, 1979, the Agency for International Development (A.I.D.) published in the Federal Register (44 FR 56378) a notice of proposed rulemaking with proposed amendments to A.I.D.'s environmental procedures. All comments submitted with respect to the proposed amendments were given due consideration. These comments generally were favorable. There were, however, one general and several specific criticisms, each of which are discussed below. Except to the extent modified herein, the supplementary information to the proposed amendments contains a summary of the major changes to A.I.D.'s environmental procedures made by these final amendments.

A. General Comment

A.I.D.'s proposed amendments were criticized for incorporating into the environmental procedures some aspects of the Executive Order 12114, dated January 4, 1979, entitled Environmental Effects Abroad of Major Federal Actions (the Executive Order). The contention was made that reliance on the Executive Order is contrary to both A.I.D.'s obligations under the National Environmental Policy Act of 1970 (NEPA) and a Stipulation, approved by the United States District Court for the District of Columbia, (the Stipulation), in the case of *Environmental Defense Fund et al. v. the Agency for International*

* Actions for which Environmental Assessments or Environmental Impact Statements have been instituted, or contracts for such studies executed, may be completed in accordance with the procedures in effect prior to these amendments or with the amended procedures at the option of the Bureau Environmental Officer.

Development, et al. No. 75-0500 (D.D.C., December 5, 1975) (Order approving Stipulation).¹

A.I.D. does not agree that the amendments adapted from the Executive Order, which are applicable only to the extent an action does not significantly affect the environment of the United States, violate the Stipulation. A.I.D. recognizes its responsibilities to conduct its operations in a manner that mitigates or avoids any potential short- or long-term deleterious environmental effects of local, regional or global proportions. A.I.D. will continue to ensure that environmental consequences of proposed A.I.D. financed activities are identified and properly analyzed.

B. Specific Comments

1. *Section 216.1(a). Purpose.* One commentator suggested that the statement of purpose of the procedures should make it clear that the procedures are adopted in accordance with NEPA.

¹ Plaintiffs in this case sought a declaratory judgment that NEPA applied to A.I.D. and to its assistance in the procurement and use of pesticides; that A.I.D. was in violation of section 102 (2)(C) of NEPA by failing to promulgate procedures ensuring that environmental values may be given appropriate consideration in decision making along with economic and technical considerations; and that A.I.D. failed to prepare, circulate for comment and consider in its decision making process a detailed environmental impact statement concerning A.I.D. financed assistance for the procurement and use of pesticides.

The Stipulation provided in relevant part: A.I.D. will prepare a detailed environmental impact statement in accordance with Section 102 (2) (C) of NEPA, the CEQ Guidelines and A.I.D. regulations on any aspect of A.I.D.'s activities * * * covered by NEPA in each instance in which such a statement is required. Where the proposed action will not require an impact statement, A.I.D. will, nevertheless, assess the potential environmental effects and results of the assessment will be an integral part of its decision making process.

The Stipulation did not conclude that NEPA is applicable to Agency actions that affect the environment of foreign countries. However, as a matter of law, A.I.D. agreed that NEPA does apply to any major A.I.D. action that has a significant effect on the environment of the United States. A.I.D. adopted regulations covering such cases and formalized procedures that institutionalize environmental review to determine when an A.I.D. action has a significant effect on the environment of the United States. These procedures, which are mandatory under NEPA, require an environmental impact statement to be prepared in accordance with CEQ guidelines for such documents whenever such action occurs.

The Stipulation did not require such "impact statements" in cases where Agency actions have significant effects limited to the environment of a foreign country or countries. However, A.I.D. agreed in the Stipulation that "where an action will not require an impact statement, A.I.D. will nevertheless assess the potential environmental effects and the results of that assessment will be an integral part of its decision making process. In 1978, after finding upon the suggestion of the parties that the requirements of the Stipulation had been satisfied, the District Court ordered that the lawsuit against A.I.D. be dismissed."

A.I.D. adopted this suggestion by indicating that § 216.7(a)(2) is intended to implement the requirements of NEPA.

2. *Section 216.1(c). Definition of "Significant Effect"*. Objection was made to the proposed definition of "significant effect" as "an action that does significant harm to the environment." Although this definition is not used with respect to effects on the environment of the United States and is taken from the Executive Order, it was asserted that adoption of the definition is contrary to the requirement in the Stipulation that A.I.D. assess "every proposed new activity significantly affecting the environment."

A.I.D. disagrees. The Stipulation did not define the terms "significant effect" or "significantly affecting the environment." The original A.I.D. procedures adopted pursuant to the Stipulation did not define those terms. NEPA and the regulations implementing that Act which were adopted by the President's Council on Environmental Quality (CEQ) (43 FR 55978) are not applicable to agency actions that have effects limited to the environment of one or more foreign countries. Accordingly, A.I.D. remains free to adopt the definition of significant effect used in the Executive Order regarding environmental effects abroad. This provides consistency within the Executive Branch regarding the environment abroad. Further, it is A.I.D.'s judgment that this definition is adequate to ensure that A.I.D. financed activities are environmentally sound.

A.I.D. does not believe it is necessary to require by regulation a formal environmental assessment in order to study more beneficial alternatives. Other A.I.D. studies conducted in the process of project selection and design are intended to accomplish that purpose. The example of a reforestation project offered by the commentator illustrates this point. The commentator indicated that such a project might be viewed as wholly beneficial, but there are important matters that should be assessed such as the suitability of various tree species and tree planting arrangements. These considerations, however, would be carefully reviewed as standard A.I.D. procedure through technical analysis contained in the A.I.D. project design process. Therefore, it is unnecessary to conduct an environmental assessment for that purpose.

3. *Section 216.1(c)(4) and (5). Definitions of Environmental Assessment and Environmental Impact Statement*. One commentator pointed out that the difference in the description

of an Environmental Assessment* in subsection (4) as a "concise evaluation" and an Environmental Impact Statement in subsection (5) as a "detailed study" can convey the mistaken impression that an Environmental Assessment will be less thorough than an Environmental Impact Statement.** A.I.D. notes that in either case the content and form of an Environmental Assessment is detailed in § 216.6(c), but the brief definition of an Environmental Assessment in § 216.1(c)(4) has been revised to describe it as a "detailed study."

4. *Section 216.1(c)(12). A.I.D. as a Minor Donor*. As proposed, the definition of a minor donor in a multidonor project, which is the subject of a categorical exclusion from preliminary environmental review, has been expanded to include situations in which A.I.D.'s contribution exceeds \$1,000,000 but not 25 percent of total project cost and the environmental procedures of the donor in control over design of the project are followed. Commentators objected because the environmental procedures of other donors might be superficial or inadequate. As finally adopted, the definition requires a determination by the A.I.D. Environmental Coordinator that the environmental procedures of the donor in control of design are adequate. If the lead donor's environmental procedures are not adequate to identify and assess actions significantly affecting the environment, A.I.D. will cooperate with the recipient country and other donors in conducting an Environmental Assessment or conduct its own Environmental Assessment relying on studies performed by other donors when appropriate.

There are instances when planning for a multidonor project is quite advanced before A.I.D. is invited to participate in financing an activity. Frequently, such projects are organized and planned under the auspices of the World Bank or other substantial donor agencies. A.I.D.'s project review process, in these cases, often relies on the studies performed by the lead donor. To do otherwise would be time consuming, duplicative and sometimes wasteful of manpower and resources. Within the

*An Environmental Assessment is defined in § 216.1(c)(4) as a detailed study of the reasonably foreseeable significant effects, both beneficial and adverse, of a proposed action on the environment of a foreign country or countries.

**An Environmental Impact Statement is defined in Section 216.1(c)(5) as a detailed study of the reasonably foreseeable environmental impacts, both positive and negative, or a proposed A.I.D. action and its reasonable alternatives on the United States, the global environment or areas outside the jurisdiction of any nation as described in § 216.7 of these procedures.

limits described in § 216.1(c)(12) A.I.D. believes it is appropriate for it to use the environmental procedures and studies relied on by the lead donor in the same manner as A.I.D. relies on the other studies, such as economic, technical and social analyses, used by the lead donor for decisionmaking.

If the A.I.D. Environmental Coordinator does not believe that the lead donor's procedures are adequate, A.I.D. is required to conduct its own assessment of the project, and A.I.D. may, of course, choose as a matter of policy to conduct an independent Environmental Assessment even when not required to do so by regulation.

5. *Section 216.2(c). Categorical Exclusions*. One commentator requested two changes in the criteria for determining classes of actions generally excluded from environmental review. First, it was suggested that criterion (i) should be changed from "the action does not have an effect on the natural or physical environment" to "the action has no reasonably foreseeable significant impacts on the environment."

A.I.D. has decided not to accept this suggestion because A.I.D. believes that the criterion as originally proposed is a more stringent test for activities included in the categorical exclusions. The A.I.D. formulated criterion does not exclude any action which has an effect on the natural or physical environment from the preliminary environmental review involved in an Initial Environmental Examination to determine whether an action is significant. For example, to the extent an action alters the physical environment, it is not excluded automatically from environmental review. An Initial Environmental Examination will be prepared regarding the alteration to support a Threshold Determination whether its effects are significant. A.I.D. believes that a judgment regarding significance should be made after a threshold environmental review.

The formulation proposed by the commentator, on the other hand, would exclude from environmental review all actions affecting the environment unless they are significant. A.I.D. believes that an action affecting the environment should be subject to environmental review until it can be shown in an Initial Environmental Examination that it will not have a significant effect.

Second, the commentator suggested that criterion (ii) should be revised to delete the reference to A.I.D.'s objective in furnishing the assistance requiring knowledge of or control over the details of the specific activities to be financed. The commentators suggested that the

test simply should be whether A.I.D. has knowledge of or control over the activities.

A.I.D.'s proposed criterion was an effort to have an objective standard. There may be instances when A.I.D. does not have knowledge or control, but the objective A.I.D. is attempting to accomplish should impose on A.I.D. the requirement to obtain knowledge or control over the specific activities. Again, A.I.D. was attempting to develop a more stringent test than that proposed by the commentator.

The amendment adopted by A.I.D. is an effort to clarify this position by requiring environmental review whenever A.I.D. has such knowledge or A.I.D.'s objective in furnishing the assistance requires A.I.D. to have knowledge of or control over the specific activities financed. This has also been clarified in subsection (IX) regarding commodity import programs as suggested by the commentator.

The suggestion made by the commentator that knowledge of specific kinds of proposed activities in Food for Development programs and PVO institutional support grants should prompt environmental review has not been accepted. In those cases, although A.I.D. may know that a local government in a Food for Development Program will conduct a particular activity, A.I.D. will not be involved in the planning or design of the activity. A.I.D. neither approves nor controls the details of specific activities that would have environmental significance, such as the location of activities or the manner in which they are carried out. In such cases, A.I.D. does not, for example, review economic, technical or social analyses. In keeping with the principle that environmental concerns should be integrated in decision making to the same extent as technical, social and economic factors, A.I.D. does not intend to review environmental analysis of specific activities.

Another commentator was concerned about the categorical exclusions for programs involving nutrition, health care or population and family planning services (subsection (c)(2)(viii)) and for programs of maternal or child feeding (subsection (c)(2)(xi)). Acknowledging that these areas traditionally are not viewed as having environmental impacts, the commentator noted that there have been reported cases of health damage, serious injuries and deaths associated with the use of and method of using particular kinds of IUDs and baby milk formulae. Concern was expressed that categorically excluding these activities from environmental review downgrades the importance of

careful analysis by A.I.D. officials of the potentially adverse implications which such activities may have for the people served.

By making such activities the subject of categorical exclusions, A.I.D. did not and does not intend to downplay the importance of careful analysis of their effect on the people served. The effects on people participating in these programs are carefully studied as a matter of agency procedure before the assistance is furnished, and it is not necessary to implement A.I.D.'s concern regarding these programs through the environmental procedures.

With respect to population programs, A.I.D. furnishes to developing countries only pharmaceutical products for which information is available to attest to the safety, efficacy and quality of the product. Generally, such products are approved by the Food and Drug Administration. In addition, clinical trials are frequently conducted, in a manner that complies with regulations of the Department of Health and Welfare for the protection of human subjects, to evaluate health impact and efficacy in selected foreign countries before a new product is included in the program.

With respect to maternal child feeding programs, A.I.D. does not distribute baby milk formula. Food distribution programs are limited to whole grains or processed foods. Before any new food product is used in either domestic or foreign donation programs, it must be approved by the Processed Foods Committee, an interagency committee established by the Department of Agriculture. This committee consists of representatives from the Agricultural Stabilization Service, Science and Education Service, Food and Nutrition Service, Foreign Agricultural Service, Office of the General Sales Manager, Food Safety and Quality Service and the Office of Food for Peace. The committee makes a thorough analysis of the product, including specifications, nutritive value, shelflife, packaging and other aspects. Foods to be included in A.I.D. programs are also evaluated from the perspective of use potential regarding both the type of product and the target group as well as taste acceptance and shipping potential.

Under the circumstances, A.I.D. believes that the categorical exclusions should be retained but careful review of these programs will continue.

6. *Section 216.2(d). Classes of Actions Normally Having a Significant Effect on the Environment.* One commentator suggested adding "deforestation" to the list of classes of actions generally determined to have a significant effect on the environment for which an

Environmental Assessment or Environmental Impact Statement is required without the need for an Initial Environmental Examination. However, the classes of actions in § 216.2(d) are not a catalogue of effects that are considered significant, but a list of actions undertaken for appropriate development purposes that have significant effects warranting an Environmental Assessment. Although A.I.D. believes that any action that has the effect of deforestation warrants an Environmental Assessment, A.I.D. conducts no action where the purpose is deforestation. The suggestion, therefore, has not been accepted.

7. *Section 216.3(a)(3). Negative Declarations.* Concern was raised regarding Negative Declarations* that might be made on the basis of "the fact that a substantial number of Environmental Assessments or Environmental Impact Statements relating to similar activities have been prepared in the past." Although this basis for a Negative Declaration has been in the environmental procedures since originally issued, the commentator stated that thus far A.I.D. environmental reviews have been site specific with little relevance to similar activities in different locations. The suggestion was made that A.I.D. should first determine whether the data collected and lessons learned from the previous assessments or impact statements on similar activities are generally applicable. A.I.D. has always construed this basis for a Negative Declaration to require relevance of the previously conducted environmental review for the proposed action, but § 216.3(a)(3) has been revised to make this requirement clear.

8. *Section 216.3(a)(4). Scoping.* Two comments were offered regarding the scoping process set forth in § 216.3(a)(4).** First the process should eliminate from consideration elements of actions that are adequately covered by approved project design standards or criteria. Second, the process should consider whether the various analyses required as part of an Environmental Assessment should be done in phases.

* A Negative Declaration is a decision made by an Assistant Administrator or the Administrator that the agency will not develop an Environmental Assessment or an Environmental Impact Statement for an action normally requiring such a study. A Negative Declaration may be made on the basis set forth in section 216(a)(3) of the procedures.

** Scoping is a process, adopted from the CEQ Regulations, which attempts to focus analytical attention on the significant issues to be addressed in an Environmental Assessment or an Environmental Impact Statement thereby eliminating unnecessary detail and improving the usefulness of those documents in decision making.

Section 216.3(a)(4) has been revised to adopt both suggestions.

This section also has been revised to state that under certain circumstances the format of the Environmental Assessment that is prescribed in § 216.6 may be modified during the scoping process. This change is more fully described below in the section regarding the content and format of Environmental Assessments.

9. Record of Decision. One commentator suggested the addition of a new provision requiring that a concise record of decision be maintained for all actions involving an Environmental Assessment or Environmental Impact Statement. This suggestion has not been accepted. Such a record is presently available in the Environmental Assessment or Environmental Impact Statement sections of the Project Paper treating the environmental aspects of the action, and other documents used in the process of approving an action. All of these documents are available to the public upon request, and A.I.D. believes that the benefits to be obtained by pulling this information into a single record do not warrant the increased burden to the environmental staff that would be involved.

10. Section 216.3(a)(8). Monitoring. The suggestion was made that the monitoring provision be expanded to ensure that the environmental alternative selected is followed and that design criteria used and mitigating measures adopted are actually implemented. A.I.D. does not believe it is necessary to make such statements in the environmental procedures. Environmental factors are one important aspect among many considered in the authorization for funding of actions, and it is necessary that all important factors in an authorization be included in the implementation of an action or the authorization must be revised. It is not necessary to single out these environmental concerns as proposed because they are accommodated in A.I.D.'s standard operating procedures.

However, § 216.3(a)(8) has been revised to indicate clearly that implementation of A.I.D. actions will be monitored for environmental impacts to the same extent as other aspects of the action are monitored, and if in the course of implementation, it appears that the action will have a significant effect on the environment that was not previously studied in an Environmental Assessment or an Environmental Impact Statement, such a study will be made.

11. Section 216.5. Endangered Species. This proposed section was criticized for failing to require consultation with the Fish and Wildlife Service of the

Department of the Interior (FWS) when endangered or threatened species or their critical habitat are affected by a proposed action. A.I.D. acknowledges that the FWS is the agency of the United States Government having the greatest amount of expertise about the protection of wildlife. A.I.D. has in the past and intends in the future to seek the assistance of FWS in designing actions financed by A.I.D. in order to eliminate or minimize harmful effects on such species and their habitat.

Section 216.3(a)(4) requires the originator of an action to include in the scoping process persons having expertise relevant to the environmental aspects of the proposed action, and requires the Bureau Environmental Officer to circulate the scoping statement to selected federal agencies when, in the judgment of this officer, comments by such agencies will be useful in preparing an Environmental Assessment. These steps would include, of course, FWS when an action involves endangered or threatened species or their critical habitat.

Section 216.5 has been revised to indicate that A.I.D. will not be limited to information supplied by the FWS or the host country regarding the presence of such species or their critical habitat in an area affected by a proposed action. A.I.D. will consider all relevant available information.

12. Section 216.6(b). Collaboration with Affected Nations on Preparation of Environmental Assessments. One commentator objected to the deletion from this section of the statement that A.I.D. missions should encourage and be responsive to host country requests for training and technical assistance to build their capacity to collaborate with A.I.D. in preparing Environmental Assessments. Such training and technical assistance are useful for the developing world and are a part of A.I.D.'s development program. A.I.D. does not believe, however, that it is necessary to include a provision in its regulatory procedures that singles out this type of training and technical assistance from other types routinely offered by A.I.D.

13. Section 216.6(c). Content and Form of Environmental Assessments. One commentator questioned the adoption by A.I.D., for purposes of Environmental Assessments, of the content and format prescribed by CEQ for Environmental Impact Statements that are used by decisionmakers in United States Government agencies when major federal actions significantly affect the environment of the United States. The commentator suggested that such a content and format places emphasis

primarily on identification of impacts and the presentation of environmental problems rather than on useful solutions to those problems. The contention was made that although an enumeration of impacts is interesting to a developing country, the real benefit to a developing country is in identifying practical low cost solutions needed to mitigate adverse environmental impacts, to maximize the effective use of environmental resources and to integrate environmental planning with development projects.

A.I.D.'s experience has been that it is sometimes difficult to integrate effectively Environmental Assessments with realistic, timely development planning. On the other hand, A.I.D. believes that the content and format developed by CEQ eliminates repetitive discussion, stresses the major conclusions including mitigating measures, highlights the areas of controversy and focuses on the issues to be resolved. The content and format prescribed in § 216.6(c) generally will be followed. However, this will not be required inflexibly in all cases at the expense of effectively integrating environmental planning in the design of A.I.D. actions. If in the process of scoping it appears that variations should be made in the content or format of the Environmental Assessment to be prepared for the action in order to improve the benefit of the assessment to the developing country or to integrate environmental planning more effectively in the design of the action, the variations may be made. They should be described in the scoping statement and are subject to the review and approval of the Bureau Environmental Officer in the same manner as the remainder of the scoping statement.

Section 216.6(c) has been revised to indicate that the format prescribed will be followed, if appropriate, and § 216.3(a)(4) has been revised to indicate that the scoping statement may describe, subject to the approval of the Bureau Environmental Officer, variations in the format when appropriate for the reasons set forth above.

14. Section 216.6(d). Program Assessments. One commentator suggested that programmatic evaluations regarding the establishment of new categorical exclusions or approved project design standards or criteria should be made available for public comment. In addition, the section should indicate who within A.I.D. will be responsible for approving additional categorical exclusions and design standards or criteria. Section 216.6(d)

has been revised to adopt both suggestions. The Administrator of A.I.D. will approve additional categorical exclusions. Since design considerations will be approved by varying offices within A.I.D. depending on whether they involve health, engineering, agricultural and other factors, it is not possible to indicate who will be responsible for approving each set of such considerations. They will be approved in accordance with usual A.I.D. procedures.

15. *Section 216.6. Consultation and Review.* Objection was made to the deletion of former § 216.5(d) regarding consultation with and review by host governments at the outset and conclusion of Environmental Assessments. This provision was proposed for deletion because it was considered unnecessary. A.I.D. provides financing for actions that are requested by host countries which are involved in a collaborative manner with A.I.D. at each step of design and approval of an action. A.I.D. consults with the host government at the outset of an assessment and at its conclusion, as well as at other appropriate points, just as A.I.D. does with respect to other analyses that are important to A.I.D. and the host country in decision making. Moreover, A.I.D. will continue to encourage host governments to make Environmental Assessments available to the public. Although it is not necessary for A.I.D.'s environmental procedures to include these statements, they will be retained to emphasize the importance of such consultation and review. Former § 216.5(d)(5) has been reinstated as § 216.6(e).

16. *Section 216.9. Bilateral or Multilateral Studies and Concise Reviews.* Objection was made to the provision permitting the Administrator of A.I.D. to approve the use of bilateral or multilateral studies or a concise review of the environmental issues as a substitute for an Environmental Assessment. These are approved documents under the Executive Order, but the commentator contended that the use of such documents is contrary to the requirement of the Stipulation that "where the proposed action will not require an impact statement A.I.D. will nevertheless assess the potential environmental effects and results of that assessment will be an integral part of the decision making process."

Although the Stipulation indicated that A.I.D. will assess potential environmental effects, it did not prescribe the content or format of such an assessment. A.I.D. subsequently adopted its original environmental

procedures which prescribed the content and form of an Environmental Assessment, but that does not mean that A.I.D. cannot satisfy its obligation under the Stipulation to "assess environmental consequences" by using some other format adequate to accomplish that purpose.

A.I.D. intends to continue to assess environmental consequences of proposed actions by means of Environmental Assessments. However, A.I.D. believes it is useful, in extraordinary circumstances, for the Administrator to have the opportunity to approve the use of other documents authorized under the Executive Order to assess the environmental consequences of A.I.D. actions. Such authority will be used sparingly and only when the Administrator concludes that it is appropriate and adequate to address environmental concerns.

17. *Section 216.10. Records and Reports.* One commentator suggested that scoping statements be made available to other federal agencies upon request and that final Initial Environmental Examinations and Scoping Statements be placed in a permanent file available to the public when requested. Section 216.10 has been revised to adopt both suggestions.

C. Finally, Substantial Editorial Changes Have Been Made in the Text of the Procedures

Accordingly 22 CFR Part 216 is amended as follows:

1. Sections 216.1, 216.2 and 216.3 (a) and (b)(1)(iii) (g) are revised to read as follows:

§ 216.1 Introduction.

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

(b) *Environmental Policy.* In the conduct of its mandate to help upgrade the quality of life of the poor in developing countries, A.I.D. conducts a

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

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

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

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

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

(c) *Definitions.*—(1) *CEQ Regulations.* Regulations promulgated by the President's Council on Environmental Quality (CEQ) (Federal Register, Volume 43, Number 230, November 29, 1978) under the authority of NEPA and Executive Order 11514, entitled Protection and Enhancement of Environmental Quality (March 5, 1970) as amended by Executive Order 11991 (May 24, 1977).

(2) *Initial Environmental Examination.* An Initial Environmental Examination is the first review of the reasonably foreseeable effects of a proposed action on the environment. Its function is to provide a brief statement of the factual basis for a Threshold Decision as to whether an Environmental Assessment or an

Environmental Impact Statement will be required.

(3) *Threshold Decision.* A formal Agency decision which determines, based on an Initial Environmental Examination, whether a proposed Agency action is a major action significantly affecting the environment.

(4) *Environmental Assessment.* A detailed study of the reasonably foreseeable significant effects, both beneficial and adverse, of a proposed action on the environment of a foreign country or countries.

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

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

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

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

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

(10) *Environment.* The term environment, as used in these procedures with respect to effects occurring outside the United States, means the natural and physical environment. With respect to effects occurring within the United States see § 216.7(b).

(11) *Significant Effect.* With respect to effects on the environment outside the United States, a proposed action has a significant effect on the environment if it does significant harm to the environment.

(12) *Minor Donor.* For purposes of these procedures, A.I.D. is a minor donor to a multidonor project when A.I.D. does not control the planning or design of the multidonor project and either (i) A.I.D.'s total contribution to the project is both less than \$1,000,000 and

less than 25 percent of the estimated project cost, or (ii) A.I.D.'s total contribution is more than \$1,000,000 but less than 25 percent of the estimated project cost and the environmental procedures of the donor in control of the planning or design of the project are followed, but only if the A.I.D. Environmental Coordinator determines that such procedures are adequate.

§ 216.2 Applicability of procedures.

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

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

- (i) International disaster assistance;
- (ii) Other emergency circumstances; and
- (iii) Circumstances involving exceptional foreign policy sensitivities.

(2) A formal written determination, including a statement of the justification therefore, is required for each project, program or activity for which an exemption is made under paragraphs (b)(1)(ii) and (iii) of this section, but is not required for projects, programs or activities under paragraph (b)(1)(i) of this section. The determination shall be made either by the Assistant Administrator having responsibility for the program, project or activity, or by the Administrator, where authority to approve financing has been reserved by the Administrator. The determination shall be made after consultation with CEQ regarding the environmental consequences of the proposed program, project or activity.

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

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

significant effect as a result of limited scope, carefully controlled nature and effective monitoring.

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

- (i) Education, technical assistance, or training programs except to the extent such programs include activities directly affecting the environment (such as construction of facilities, etc.);
- (ii) Controlled experimentation exclusively for the purpose of research and field evaluation which are confined to small areas and carefully monitored;
- (iii) Analyses, studies, academic or research workshops and meetings;
- (iv) Projects in which A.I.D. is a minor donor to a multidonor project and there is no potential significant effects upon the environment of the United States, areas outside any nation's jurisdiction or endangered or threatened species or their critical habitat;
- (v) Document and information transfers;
- (vi) Contributions to international, regional or national organizations by the United States which are not for the purpose of carrying out a specifically identifiable project or projects;
- (vii) Institution building grants to research and educational institutions in the United States such as those provided for under Section 122(d) and Title XII of Chapter 2 of Part I of the FAA (22 USCA §§ 2151 p. (b) 2220a. (1979));
- (viii) Programs involving nutrition, health care or population and family planning services except to the extent designed to include activities directly affecting the environment (such as construction of facilities, water supply systems, waste water treatment, etc.);
- (ix) Assistance provided under a Commodity Import Program when, prior to approval, A.I.D. does not have knowledge of the specific commodities to be financed and when the objective in furnishing such assistance requires neither knowledge, at the time the assistance is authorized, nor control, during implementation, of the commodities or their use in the host country.
- (x) Support for intermediate credit institutions when the objective is to assist in the capitalization of the institution or part thereof and when such support does not involve reservation of the right to review and approve individual loans made by the institution;
- (xi) Programs of maternal or child feeding conducted under Title II of Pub. L. 480;
- (xii) Food for development programs conducted by food recipient countries

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

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

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

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

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

(d) *Classes of Actions Normally Having a Significant Effect on the Environment.* (1) The following classes of actions have been determined generally to have a significant effect on the environment and an Environmental Assessment or Environmental Impact Statement, as appropriate, will be required:

(i) Programs of river basin development;

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

(iii) Agricultural land leveling;

(iv) Drainage projects;

(v) Large scale agricultural mechanization;

(vi) New lands development;

(vii) Resettlement projects;

(viii) Penetration road building or road improvement projects;

(ix) Powerplants;

(x) Industrial plants;

(xi) Potable water and sewerage projects other than those that are small-scale.

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

(e) *Pesticides.* The exemptions of § 216.2(b)(1) and the categorical exclusions of § 216.2(c)(2) are not applicable to assistance for the procurement or use of pesticides.

§ 216.3 Procedures.

(a) *General Procedures—(1) Preparation of the Initial Environmental Examination.* Except as otherwise provided, an Initial Environmental Examination is not required for activities identified in § 216.2(b)(1), (c)(2), and (d). For all other A.I.D. activities described in § 216.2(a) an Initial Environmental Examination will be prepared by the originator of an action. Except as indicated in this section, it should be prepared with the PID or PAIP. For projects including the procurement or use of pesticides, the procedures set forth in § 216.3(b) will be followed, in addition to the procedures in this paragraph. Activities which cannot be identified in sufficient detail to permit the completion of an Initial Environmental Examination with the PID or PAIP, shall be described by including with the PID or PAIP: (i) an explanation indicating why the Initial Environmental Examination cannot be completed; (ii) an estimate of the amount of time required to complete the Initial Environmental Examination; and (iii) a recommendation that a Threshold Decision be deferred until the Initial Environmental Examination is completed. The responsible Assistant Administrator will act on the request for deferral concurrently with action on the PID or PAIP and will designate a time for completion of the Initial Environmental Examination. In all instances, except as provided in § 216.3(a)(7), this completion date will be in sufficient time to allow for the completion of an Environmental Assessment or Environmental Impact

Statement, if required, before a final decision is made to provide A.I.D. funding for the action.

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

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

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

(3) *Negative Declaration.* The Assistant Administrator, or the Administrator in actions for which the approval of the Administrator is required for the authorization of financing, may make a Negative Declaration, in writing, that the Agency will not develop an Environmental Assessment or an Environmental Impact Statement regarding an action found to have a significant effect on the environment when (i) a substantial number of Environmental Assessments or Environmental Impact Statements relating to similar activities have been prepared in the past, if relevant to the proposed action, (ii) the Agency has previously prepared a programmatic Statement or Assessment covering the activity in question which has been considered in the development of such activity, or (iii) the Agency has developed design criteria for such an action which, if applied in the design of the action, will avoid a significant effect on the environment.

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

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

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

(c) A description of (1) the timing of the preparation of environmental analyses, including phasing if appropriate, (2) variations required in the format of the Environmental Assessment, and (3) the tentative planning and decision making schedule; and

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

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

(ii) *Circulation of Scoping Statement.* To assist in the preparation of an Environmental Assessment, the Bureau Environmental Office may circulate copies of the written statement, together with a request for written comments, within thirty days, to selected federal agencies if that Officer believes comments by such federal agencies will be useful in the preparation of an

Environmental Assessment. Comments received from reviewing federal agencies will be considered in the preparation of the Environmental Assessment and in the formulation of the design and implementation of the project, and will, together with the scoping statement, will be included in the project file.

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

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

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

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

(iii) Draft and final Environmental Impact Statements will be reviewed and

cleared by the Environmental Coordinator and the Office of the General Counsel.

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

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

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

(vi) When environmental review will not be completed for an entire project, program or activity prior to

authorization, the Initial Environmental Examination and Threshold Decision required under § 216.3(a)(1) and (2) shall identify those aspects of the project, program or activity for which environmental review will be completed prior to the time financing is authorized. It shall also include those subprojects or aspects for which environmental review will be deferred, stating the reasons for deferral and the time when environmental review will be completed. Further, it shall state how an irreversible commitment of funds will be avoided until environmental review is completed. The A.I.D. officer responsible for making environmental decisions for such projects, programs or activities shall also be identified (the same officer who has decision making authority for the other aspects of implementation). This deferral shall be reviewed and approved by the officer making the Threshold Decision and the officer who authorizes the project, program or activity. Such approval may be made only after consultation with the Office of General Counsel for the purpose of establishing the manner in which conditions precedent to disbursement or covenants in project and other agreements will avoid an irreversible commitment of resources before environmental review is completed.

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

appropriate, a Threshold Decision, Scoping and an Environmental Assessment or Environmental Impact Statement.

(9) *Revisions.* If, after a Threshold Decision is made resulting in a Negative Determination, a project is revised or new information becomes available which indicates that a proposed action might be "major" and its effects "significant", the Negative Determination will be reviewed and revised by the cognizant Bureau and an Environmental Assessment or Environmental Impact Statement will be prepared, if appropriate. Environmental Assessments and Environmental Impact Statements will be amended and processed appropriately if there are major changes in the project or program, or if significant new information becomes available which relates to the impact of the project, program or activity on the environment that was not considered at the time the Environmental Assessment or Environmental Impact Statement was approved. When 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, the procedures outlined in this part will be followed.

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

(b) * * *
 (1) * * *
 (iii) * * *
 (a) Any pesticide other than one registered for the same or similar uses by USEPA without restriction or for restricted use on the basis of user hazard; or

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 2. Section 216.8 is Removed.
 3. Section 216.7 is redesignated as § 216.80.
 4. Sections 216.4, 216.5 and 216.6 are revised.
 5. A new § 216.7 is added.

§ 216.4 Private applicants.

Programs, projects or activities for which financing from A.I.D. is sought by

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

§ 216.5 Endangered species.

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

§ 216.6 Environmental assessments.

(a) *General Purpose.* The purpose of the Environmental Assessment is to provide Agency and host country decision makers with a full discussion of significant environmental effects of a

proposed action. It includes alternatives which would avoid or minimize adverse effects or enhance the quality of the environment so that the expected benefits of development objectives can be weighed against any adverse impacts upon the human environment or any irreversible or irretrievable commitment of resources.

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

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

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

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

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

(4) *Affected Environment.* The Environmental Assessment shall succinctly describe the environment of the area(s) to be affected or created by the alternatives under consideration.

The descriptions shall be no longer than is necessary to understand the effects of the alternatives. Data and analyses in the Environmental Assessment shall be commensurate with the significance of the impact with less important material summarized, consolidated or simply referenced.

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

(6) *List of Preparers.* The Environmental Assessment shall list the names and qualifications (expertise, experience, professional discipline) of the persons primarily responsible for preparing the Environmental Assessment or significant background papers.

(7) *Appendix.* An Appendix may be prepared.

(d) *Program Assessment.* Program Assessments may be appropriate in order to assess the environmental effects of a number of individual actions and their cumulative environmental impact in a given country or geographic area, or the environmental impacts that are generic or common to a class of agency actions, or other activities which are not country-specific. In these cases, a single, programmatic assessment will be prepared in A.I.D./Washington and circulated to appropriate overseas Missions, host governments, and to

interested parties within the United States. To the extent practicable, the form and content of the programmatic Environmental Assessment will be the same as for project Assessments. Subsequent Environmental Assessments on major individual actions will only be necessary where such follow-on or subsequent activities may have significant environmental impacts on specific countries where such impacts have not been adequately evaluated in the programmatic Environmental Assessment. Other programmatic evaluations of classes of actions may be conducted in an effort to establish additional categorical exclusions or design standards or criteria for such classes that will eliminate or minimize adverse effects of such actions, enhance the environmental effect of such action or reduce the amount of paperwork or time involved in these procedures. Programmatic evaluations conducted for the purpose of establishing additional categorical exclusions under § 216.2(c) or design considerations that will eliminate significant effects for classes of actions shall be made available for public comment before the categorical exclusions or design standards or criteria are adopted by A.I.D. Notice of the availability of such document shall be published in the Federal Register. Additional categorical exclusions shall be adopted by A.I.D. upon the approval of the Administrator, and design consideration in accordance with usual agency procedures.

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

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

(f) *Effect in Other Countries.* In a situation where an analysis indicates that potential effects may extend beyond the national boundaries of a recipient country and adjacent foreign

nations may be affected, A.I.D. will urge the recipient country to consult with such countries in advance of project approval and to negotiate mutually acceptable accommodations.

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

§ 216.7 Environmental impact statements.

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

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

(2) The environment of the United States; or

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

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

(c) *Other Effects: Content and Form.* An Environmental Impact Statement relating to paragraphs (a)(1) and (a)(3) of this section will generally follow the CEQ Regulations, but will take into account the special considerations and concerns of A.I.D. Circulation of such Environmental Impact Statements in draft form will precede approval of a Project Paper or equivalent and comments from such circulation will be considered before final project authorization as outlined in § 216.3 of these procedures. The draft Environmental Impact Statement will also be circulated by the Missions to affected foreign governments for information and comment. Draft Environmental Impact Statements generally will be made available for comment to Federal agencies with jurisdiction by law or special expertise with respect to any environmental impact involved, and to public and

private organizations and individuals for not less than forty-five (45) days. Notice of availability of the draft Environmental Impact Statements will be published in the Federal Register. Cognizant Bureaus and Offices will submit these drafts for circulation through the Environmental Coordinator who will have the responsibility for coordinating all such communications with persons outside A.I.D. Any comments received by the Environmental Coordinator will be forwarded to the originating Bureau or Office for consideration in final policy decisions and the preparation of a final Environmental Impact Statement. All such comments will be attached to the final Statement, and those relevant comments not adequately discussed in the draft Environmental Impact Statement will be appropriately dealt with in the final Environmental Impact Statement. Copies of the final Environmental Impact Statement, with comments attached, will be sent by the Environmental Coordinator to CEQ and to all other Federal, state, and local agencies and private organizations that made substantive comments on the draft, including affected foreign governments. Where emergency circumstances or considerations of foreign policy make it necessary to take an action without observing the provisions of § 1506.10 of the CEQ Regulations, or when there are overriding considerations of expense to the United States or foreign governments, the originating Office will advise the Environmental Coordinator who will consult with Department of State and CEQ concerning appropriate modification of review procedures.

§ 216.8 [Redesignated from § 216.7]

Sections 216.9 and 216.10 are added to read:

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

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

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

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

§ 216.10 Records and reports.

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

(22 U.S.C. 2381; 42 U.S.C. 4332)

Dated October 9, 1980.

Joseph C. Wheeler,
Acting Administrator.

[FR Doc. 80-33106 Filed 10-22-80; 8:45 am]

BILLING CODE 4710-02-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Urban Mass Transportation Administration

23 CFR Part 450

Urban Transportation Planning in Small Metropolitan Areas

AGENCIES: Federal Highway Administration (FHWA) and Urban Mass Transportation Administration (UMTA), DOT.

ACTION: Notice of guidance.

SUMMARY: The FHWA and UMTA have developed guidance for meeting the minimum requirements of the joint transportation planning regulations (23 CFR Part 450, Subparts A and C) for urbanized areas of less than 200,000 population. The purpose of this notice is to publish this guidance for the information of the general public. **FOR FURTHER INFORMATION CONTACT:** FHWA: Sam W. P. Rea, Jr., Urban