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MALAWI

MISSION ORDER No: 1011 **EFFECTIVE DATE: February 12, 2009**
SUPERSEDES M.O#: 1011 – Environmental Mitigation dated September 22, 2004
SUBJECT: MISSION IMPLEMENTATION OF USAID ENVIRONMENTAL POLICIES AND PROCEDURES

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Attachments:

1. *Environmental Compliance Language for Use in Solicitations and Awards*
2. *Annotated Environmental Mitigation and Monitoring Plan (EMMP) Template*

Purpose

This Mission Order reaffirms USAID/Malawi’s commitment to full compliance with USAID’s mandatory environmental procedures, summarizes these procedures in plain language, and sets out the roles and responsibilities of organizational units and functions in the Mission in achieving and assuring compliance.

This Mission Order does not supersede the statutory, regulatory and ADS language that governs and constitutes these procedures. This statutory and regulatory language may be accessed via <http://www.encapafrica.org/meoEntry.htm> or from [P drive](#).

Legal Authority for and Purpose of USAID’s 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 [201.3.11.2.b](#) and [204](#).

These 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. They strengthen development outcomes and help safeguard the good name and reputation of the Agency.

Compliance with these 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. USAID/Malawi is fully committed to their systematic and complete implementation.

Environmental Compliance Requirements over Life of Project

In general, the procedures specify an EIA process that must be applied to all activities *before implementation*—including new activities introduced into an existing program or substantive changes to existing activities. This pre-implementation EIA process, defined by Reg. 216, frequently results in environmental management requirements (mitigative measures) that must be implemented and monitored over the life of the activity.

Specifically, EXCEPT for international disaster assistance activities, emergency and circumstances involving exceptional foreign policy sensitivities verified as EXEMPT from the procedures. The procedures impose the following compliance requirements over life of project (LOP). These requirements will be fully implemented in all USAID/Malawi activities,

- 1. Environmental considerations must be taken into account in activity planning.** ([ADS 201.3.11.6](#) & [204.1](#))
- 2. No activity is implemented without approved Reg. 216 environmental documentation. This documentation must be approved PRIOR to any irreversible commitment of resources.** ([ADS 204.3.1](#)).

This documentation is the output of the EIA process specified by Reg. 216 and takes one of three forms: Request for Categorical Exclusion, Initial Environmental Examination (IEE) or Environmental Assessment (EA).

Documentation is APPROVED only when it is signed by the Mission Director and the Bureau Environmental Officer. As a condition of approval, most IEEs and all EAs contain environmental mitigation and monitoring requirements (“IEE or EA conditions”).

Note that Activity Approval Documents must summarize how environmental documentation requirements have been met. ([ADS 201.3.11.16](#))

- 3. All IEE and EA conditions are incorporated in procurement instruments.** ([ADS 204.3.4.a.6](#); [303.3.6.3e](#)).

4. **All IEE and EA conditions are implemented, and this implementation is monitored and adjusted as necessary.** ([ADS 204.3.4](#); [303.2.f](#)).

Operationally, this requires that (1) conditions established in program – Assistance Objective (AO) formerly (“SO”) level IEEs and EAs are mapped to the activity level; (2) Environmental Mitigation and Monitoring Plans (EMMPs) are developed at the project or activity level to implement these conditions; (3) project workplans and budgets specifically provide for implementation of EMMPs; and (4) PMPs incorporate measures of EMMP implementation. USAID/Malawi mission policy is that each of these prerequisites for successful implementation of IEE and EA conditions will be executed in full.

An annotated EMMP template is attached to this Order and also available at www.encapafrika.org/meoEntry.htm and on [P drive](#).

5. **Environmental compliance is assessed in annual performance reports.** ([ADS 203.3.8.5](#); [204.3.3.a](#)).

Each Operating Unit must include a brief summary sentence of the status of compliance with 22 CFR 216 in the Operating Unit Performance Summary and must complete the Supplementary Reference: Environmental Compliance template in the FACTS system.

6. **Environmental compliance documentation is maintained in Program Area Team files.** ([ADS 202.3.4.6](#)).

A more extensive discussion of LOP environmental compliance requirements is found in the Bureau for Africa’s MEO Handbook, available via www.encapafrika.org/meoentry.htm and on [P drive](#).

Responsibilities for Implementation

Primary responsibility: Team Leaders, Contracting Officers Technical Representatives (COTRs), or Agreement Officer Technical Representatives (AOTRs) and Activity Managers. The ADS makes it clear that responsibility and accountability for environmental compliance is shared by the Team Leader and each COTR/AOTR or Activity Manager. *Specific responsibilities established by the ADS and Mission policy for these positions are set out in the table below. All USAID/Malawi staff must fulfill the enumerated environmental compliance responsibilities attached or related to their position.*

Final responsibility: Mission Director. Final responsibility for environmental compliance lies with the Mission Director. The Mission Director must approve all Reg. 216 documentation for Mission activities.

Field Implementation: Contractors and Implementing Partners. Environmental management must be an integral part of project implementation, and thus field implementation of environmental mitigation is the responsibility of contractors/Implementing Partners with oversight from USAID.

Advice & Gatekeeping: Mission Environmental Officer (MEO). The MEO

- 1) is a core member of each mission program team and serves the team as a compliance advisor;

- 2) serves as a gatekeeper (quality and completeness reviewer) for Reg. 216 Documentation and must clear all documentation before submission to the Mission Director; and
- 3) is the primary point of Mission contact with the Bureau Environmental Officer and the Regional Environmental Advisor (see below).

A more complete description of MEO roles and responsibilities is provided by the Bureau for Africa's MEO Handbook, available via www.encapafrica.org/meoEntry.htm and on P drive.

Regional Environmental Advisors (REAs). REAs advise MEOs and program teams on environmental compliance, including development of Reg. 216 documentation and monitoring protocols, and can assist teams in obtaining additional environmental expertise when required. REAs also help to monitor the mission's implementation of the Agency's Environmental Procedures. The MEO is the liaison with the REA on behalf of program teams. The REA supporting Malawi is based at USAID/SA in Pretoria.

Bureau Environmental Officers (BEOs). The BEOs, based in Washington, DC, must clear and issue a Threshold Determination on all Reg. 216 documentation for activities under the purview of their Bureau. USAID/Malawi activities are under the purview of the AFR, EGAT and DCHA, GH Bureaus.

Environmental Compliance Responsibilities of USAID/Malawi Team Leaders, CTOs, Activity Managers and the MEO

Compliance action	Responsible parties
Prepare Reg 216 environmental documentation Reg 216 documentation includes: <ul style="list-style-type: none"> ✓ Requests for Categorical Exclusions (RCEs) ✓ Initial Environmental Examinations (IEEs) ✓ Environmental Assessments (EAs) ✓ Amendments to all of the above 	COTR/AOTR/Activity Manager (MEO reviews/provides advice). EXCEPT: <ul style="list-style-type: none"> ✓ Teams may engage partners or outside contractors to prepare IEEs under the supervision of the COTR/AOTR/Activity Manager. EAs are almost always prepared by 3rd-party contractors. ✓ Title II IEEs are prepared by Implementing Partners as part of their MYAP submissions
Approve and Clear Reg. 216 Documentation	All of the following must clear: <ul style="list-style-type: none"> ✓ COTR/AOTR, Activity Manager or Team Leader ✓ MEO ✓ Mission Director ✓ Bureau Environmental Officer
Clear sub-project/sub-grant Environmental Reviews	Activity Manager and MEO (higher-risk activities are forwarded for REA & BEO review)
Incorporate environmental compliance requirements into procurement documents	Contracting or Agreement Officers, COTR/AOTR/Activity manager (MEO assists)
Ensure Reg. 216 documentation is current and covers all activities being implemented	COTR/AOTR/Activity Manager
Assure an EMMP addressing all relevant mitigation and monitoring conditions is developed, and reflected in workplan, budget, and PMP.	COTR/AOTR/Activity Manager (MEO may review) Contractors/IPs will in most cases develop EMMPs for COTR/AOTR/Activity Manager review. If they do not, this responsibility falls directly on the COTR/AOTR/Activity Manager.
Monitoring to ensure partner/contractor compliance with IEE/EA conditions.	COTR/AOTR/Activity Manager (MEO and REA assist)
Ensure that environmental compliance lessons learned are incorporated in close out reports & environmental compliance issues are included in SOWs for evaluations.	MEO, with REA assistance as necessary
Prepare environmental compliance section of Mission Annual Reports	MEO, with support from COTRs/AOTRs and Activity Managers
Maintain environmental compliance documentation	Program Officer, COTR/AOTR/Activity Manager/Team Leader, MEO

Additional Directives

In the course of and in addition to fulfilling the responsibilities listed in the table above, the following directives and responsibilities apply Mission-wide:

1. **Awareness of Activity Determinations and Conditions.** It is the responsibility of each COTR/AOTR and Activity Manager to know the Reg. 216 Determination, including any conditions, assigned to the activities under their purview. These conditions are assigned in

the Reg. 216 documentation that applies to the activity. The possible determinations are enumerated in the table below:

Categorical Exclusion	The activity falls into one of the classes of activities enumerated by Reg. 216 as posing low risks of significant adverse environmental impacts, and no unusual circumstances exist to contradict this assumption. The activity has no attached environmental management conditions.
Negative Determination	Per analysis set out in an IEE, the activity is found to pose very low risk of significant adverse environmental impact. The activity has no attached environmental management conditions.
Negative Determination with Conditions	Per analysis set out in an IEE, the activity is found to pose very low risk of significant adverse environmental impact if specified environmental mitigation and monitoring measures are implemented. The activity proceeds on the condition and requirement that these measures ("conditions") are fully implemented.
Positive Determination	Per analysis set out in an IEE, the activity is found to pose substantial risks of significant adverse environmental impacts. Therefore, the activity cannot proceed until an Environmental Assessment (EA) is developed and duly approved, and then on the condition that environmental mitigation and monitoring measures specified by the EA are fully implemented

The only activities that are exempted from the Reg. 216 procedures and the above determinations are international disaster assistance activities, emergency and circumstances involving exceptional foreign policy sensitivities. COTRs/AOTRs and Activity Managers must also be aware of any activities under their purview having exemption status.

2. **Team-level Compliance Planning.** As specified by [ADS 204.3.4](#), each program team must collaborate effectively with the MEO during all program designs and approvals to create a system and adequate resources to ensure compliance with the Agency's Environmental Procedures.
3. **Functional specifications for Environmental Compliance Language for Procurement Instruments.** The ADS states that COTRs/AOTRs and/or Activity Managers are responsible for ensuring that environmental conditions from IEEs and EAs are incorporated into solicitation and award documents. ([ADS 204.3.4.a.6](#); [303.3.6.3e](#)). Beyond this, **it is Mission policy that environmental compliance language in all solicitation and award instruments requires that:**
 - The partner verifies current and planned activities annually against the scope of the approved environmental documentation.
 - Where activities demand environmental management expertise, appropriate qualifications and proposed approaches to compliance are addressed in technical and cost proposals.
 - The partner develop an EMMP full responsive to all IEE/EA conditions, unless this already exists in the Reg. 216 documentation or will be developed by program staff
 - Budgets and workplans integrate the EMMP.
 - PMPs measure EMMP implementation.

The ADS help document *Environmental Compliance Language for Use in Solicitations and Awards* (ECL) provides a combination of step-by-step guidance and standard text to

assemble environmental compliance language meeting these requirements for any solicitation or award. Its use is strongly recommended.

The ECL and an annotated EMMP template are attached to this Order and also available at www.encapafrika.org/meoentry.htm and [P drive](#).

4. **Confirming Reg. 216 documentation coverage in the course of project designs, amendments, extensions, and during the preparation of the Annual Reports.** During these exercises, the Team should review planned/ongoing activities against the scope of existing, approved Reg. 216 documentation and either: (1) confirm that the activities are fully covered or (2) assure that such documentation is developed and approved *prior* to implementation. For activities begun under a disaster assistance exemption, the Team must confirm that their exempt status still applies.

*Activities modified or added during project implementation may require new or amended Reg. 216 documentation. Maintaining Reg. 216 documentation coverage of all activities is critical, as the ADS requires that ongoing activities found to be outside the scope of approved Reg. 216 documentation **be halted** until an amendment to the documentation is approved by the Mission Director and the BEO.*

Critical Non-Compliance Situations

If any USAID/Malawi staff member believes that (1) failure to implement mitigation measures or (2) unforeseen environmental impacts of project implementation is **creating a significant and imminent danger to human health or the integrity of critical environmental resources**, **IMMEDIATELY notify the COTR/AOTR, MEO and Mission Management.**

Environmental Compliance Resources and Key Contacts


The MEO Resource Center contains a wide range of environmental compliance and best practice materials, including step-by-step guidance to development of Reg. 216 documentation and sectoral guidance for design of Environmental Mitigation and Monitoring Measures. The Center is hosted on Africa Bureau’s ENCAP website (www.encapafrika.org/meoEntry.htm) and copied in full on [P drive](#).

Reg. 216 documentation for Mission programs is posted on [P drive](#).

Key contacts: As of January 2009, key environmental compliance contacts for USAID/Malawi are as follows. Up-to-date contacts are available via www.encapafrika.org/meoEntry.htm.

Mission Environmental Officer	Mark Visocky, mvisocky@usaid.gov , ext. 302
Assistant MEO	Madalitso Chisale, mchisale@usaid.gov , ext. 139
Regional Environmental Advisor (REA)	Camilien J.W. Saint-Cyr USAID/Southern Africa , Pretoria, : csaint-cyr@usaid.gov
Bureau Environmental Officers (BEOs), Washington, DC	Bureau for Africa (AFR/SD): <i>Brian Hirsch</i> , bhirsch@usaid.gov

	Bureau for Economic Growth, Agriculture & Trade Bureau (EGAT): <i>Joyce A. Jatko</i> jjatko@usaid.gov Democracy, Conflict and Humanitarian Assistance (DCHA): <i>Erika Clesceri</i> eclesceri@usaid.gov Global Health Bureau (GH): <i>Teresa Bernhard</i> tbernhard@usaid.gov
Bureau Environmental Advisor, Washington DC	AFR/SD: <i>Tim Resch</i> , tresch@usaid.gov

Approval: 
 Richard Kimball, Acting Mission Director

2/12/09
 Date

Drafter: Madalitso Chisale Madalitso Chisale Date: 01/23/2009

Clearances:

SEG: Mark Visocky Mark Visocky Date: 1/23/2009

HPN: Alisa Cameron Alisa M Cameron Date: 1/25/2009

EDU: Marisol Perez Marisol Perez Date: 29 Jan 09

DG: Stephen Mwale Stephen Mwale Date: 02/02/09

EXO: John Marks John Marks Date: 2/02/09

PDA: Patrick Wesner Patrick Wesner Date: 2/4/09

GDO: Richard Kimball Richard Kimball Date: 2/4/09

FMO: Marisa Parente Marisa Parente Date: 2/11/2009

NO

Approval: [Signature]

Date: 2/12/09

R. Kimball Curt Reintsma, Mission Director
Acting

RCA: J. Sandefur (see email attached) Date: 2/12/09

Drafter: Madalitso Chisale _____ Date: _____

Clearances:

SEG: Mark Visocky _____ Date: _____

HPN: Alisa Cameron _____ Date: _____

EDU: Marisol Perez _____ Date: _____

DG: Stephen Mwale _____ Date: _____

EXO: John Marks _____ Date: _____

PDA: Patrick Wesner _____ Date: _____

GDO: Richard Kimball _____ Date: _____

FMO: Marisa Parente _____ Date: _____

REA: Camilien Saint-Cyr_/Cleared via email/____ Date: _02/06/2009_____

RLA: Joel Sanderfur_/Cleared via email/_____ Date: __02/12/2009_____

Approval: _____ Date: _____
Richard Kimball, Acting Mission Director

Kimball, Richard (Lilongwe)

From: Sandefur, Joel (PRETORIA/RLA)
Sent: Thursday, February 12, 2009 4:12 PM
To: Chisale, Madalitso (Lilongwe)
Cc: Visocky, Mark (Lilongwe); Kimball, Richard (Lilongwe); Wesner, Patrick (Lilongwe); Saint-Cyr, Camilien (PRETORIA/PPD)
Subject: RE: Malawi Environmental Compliance Mission Older

Madalitso,

I only checked a few of the ADS references and they looked correct. I will assume the others are current as well. This looks fine to me. I clear.

Thanks,
Joel

From: Chisale, Madalitso (Lilongwe)
Sent: Thursday, February 12, 2009 3:55 PM
To: Sandefur, Joel (PRETORIA/RLA)
Cc: Visocky, Mark (Lilongwe); Kimball, Richard (Lilongwe); Wesner, Patrick (Lilongwe); Saint-Cyr, Camilien (PRETORIA/PPD)
Subject: Malawi Environmental Compliance Mission Older

Hi Joel,

Attached is USAID/Malawi's draft Environmental Compliance Mission Order for your clearance.

Looking forward to hearing from you.

Thanks.

Madalitso.

USAID/MALAWI ENVIRONMENTAL MITIGATION AND MONITORING PLAN (EMMP), FY 2009

February 11, 2009

Activity Title: _____

Implementing Partner: _____

Activity	Mitigation measure(s)	Monitoring indicator(s)	Monitoring and Reporting Frequency	Party(ies) responsible.
<p>List all activities in IEE that received a “negative determination with conditions.”</p> <p><i>Do not list any other activities.</i></p>	<p>If mitigation measures are well-specified in the IEE, quote directly from IEE</p> <p>If they are not well-specified in the IEE, define more specifically here.</p>	<p>Specify indicators to (1) determine if mitigation is in place and (2) successful.</p> <p>For example, visual inspections for seepage around pit latrine; sedimentation at stream crossings, etc.)</p>	<p>For example: “monitor weekly, and report in quarterly reports. If XXXX occurs, immediately inform USAID activity manager.”</p>	<p>If appropriate, <i>separately</i> specify the parties responsible for mitigation, for monitoring and for reporting.</p>

- An EMMP should either be included in or developed for (1) all IEEs that have at least one “Negative Determination with Conditions” and (2) all Environmental Assessments (EAs).
- If the EMMP is not developed as part of the IEE, the implementing partner should usually lead development of the EMMP, subject to review and oversight by the MEO and CTO.
- In all cases, the tasks identified in the EMMP should be incorporated into the implementing partner’s Work Plan, budget, and reporting.