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Summary Description of FAA sections 118(e) and 119(d) Requirements for Preparing Strategic Plans

To: John Power@GC@Aidw
From: Olivier Carduner@PPC.PC@AIDW Cc: James
Hester@PPC.ENV@AIDW,Larry Laird@PPC.PC@AIDW Subject: re: fwd: Slightly
revised requested edits to ADS 201 and 203 Attachment:
Date: 07/10/2000 5:20 PM
John , Thanks! This is very helpful.

----- Original Text -----

From: John Power@GC@Aidw, on 06/26/2000 11:01 AM:

Olivier, Mary Alice and I have the following response to your question regarding the biodiversity analyses done during Strategic Planning.

The biodiversity and related tropical forestry planning requirement comes from the following two FAA provisions

I. 118(e)

"Country Analysis Requirements.--Each country development strategy statement or other country plan prepared by the Agency for International Development shall include an analysis of-- (1) the actions necessary in that country to achieve conservation and sustainable management of tropical forests, and (2) the extent to which the actions proposed for support by the Agency meet the needs thus identified."

II. 119(d)

"Country Analysis Requirements.--Each country development strategy statement or other country plan prepared by the Agency for International Development shall include an analysis of-- (1) the actions necessary in that country to conserve biological diversity, and
(2) the extent to which the actions proposed for support by the Agency meet the needs thus identified."

Neither of these two provisions require analyses for regional or global plans.

There is no provision in either 118(e) or 119(d) for a waiver. A waiver of these provisions is possible under FAA 614 (Presidential waiver for important USG security interest) and 451 (SecState for unanticipated contingencies with ESF but not DA) but we are not aware of any waiver having been granted under either section and we doubt that one would be. We do not see any authority for the USAID Administrator to waive these requirements. In some cases, there are full notwithstanding clauses ("notwithstanding any other provision of law") for certain programs that would allow USAID to proceed without complying with the FAA 118(e) and 119(d) requirements (e.g., FY2000 appropriations act section 538 for displaced children and victims of war, FAA 491 for disaster assistance).

The statute does not distinguish between types of country plans as PPC's proposed ADS 201.3.3.3 does, in which there is described sustainable development strategic plans and more abbreviated mid-term or interim strategic plans. Since both are country planning documents, it would be hard to conclude that they do not fit within the statutory definition of a "country development strategy statement or other country plan."

We have not been able to locate much Agency guidance on this subject. There is a mention of the subject in ADS 201.5.10g and we have a February 3, 1988 cable (032584) on it. In addition, AFR has prepared fairly extensive guidelines on the consideration of biological diversity and tropical forestry in the context of country program strategy planning. (These guidelines were issued in 1994 guidance and are being updated now.) While a country analysis is required, Bureau guidance and the Bureau environmental officer would need to be consulted on the extent of the analysis (i.e., minimum information requirements) needed in highly volatile or crisis countries where, as your proposed guidance says, mid-term or interim plans (up to 3 years) are appropriate because long term planning is precluded.

Mary Alice has the following three comments to Jim Hester's revisions:

1. At the end of the paragraph regarding mitigative measures it would be useful to add the following sentence: "Thus, Reg. 16 documents must be submitted early in the design process to allow inclusion of IEE requirements in the design. Since Reg. 16 requires IEE review with PIDs, documents no longer used, the review must occur at a similarly early point."
2. Can a citation and hyperlink to biosafety requirements be provided?
3. I don't see a need to delete the page 26 clause, which covers much more than the 118/119 annex, since a subsequent discussion specific to 118/119 states that it can not be waived.

John

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From: Olivier Carduner@PPC.PC@AIDW, on 06/12/2000 9:33 AM:

Mary Alice and John,

Attached are Jim Hester's suggested changes to the new ADS chapters. There is a question of interpretation of legal requirements with respect to biodiversity analyses done during Strategic Planning. We need your help to confirm how the requirement to do a biodiversity analysis applies to various possible strategic plans -- specifically the normal "country-level sustainable development strategy", an "interim" strategy, and regional or global strategies. If I remember correctly, the requirement to do a biodiversity analysis does not apply to the regional or global strategies, but does apply to the first two. Jim Hester advised that he believed that an AA does not have the authority to waive this requirement, nor can we waive it in the case of an "interim" strategy. We need to be very clear on what is the minimum required by law and what authorities USAID does or does not have to waive or modify the requirement. I understand you are looking at this question as part of your review. Can you add this question as well? Thanks.

From: James Hester@PPC.ENV@AIDW, on 06/12/2000 9:30 AM: To: Parrie Henderson@PPC.PC@AIDW
Cc: John Grayzel@PPC.CCI@AIDW,Olivier Carduner@PPC.PC@AIDW

Attached are my slightly revised requested edits for ADS 201 and 203. These are slightly different from the ones I sent last week in that the text in the Biosafety edits is further clarified. These are slight but important edits.

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