



**USAID**  
FROM THE AMERICAN PEOPLE

# Overview of Reg. 216

Environmental Compliance/ESDM Training Workshops  
Lake Naivasha, Kenya ■ January & February 2010

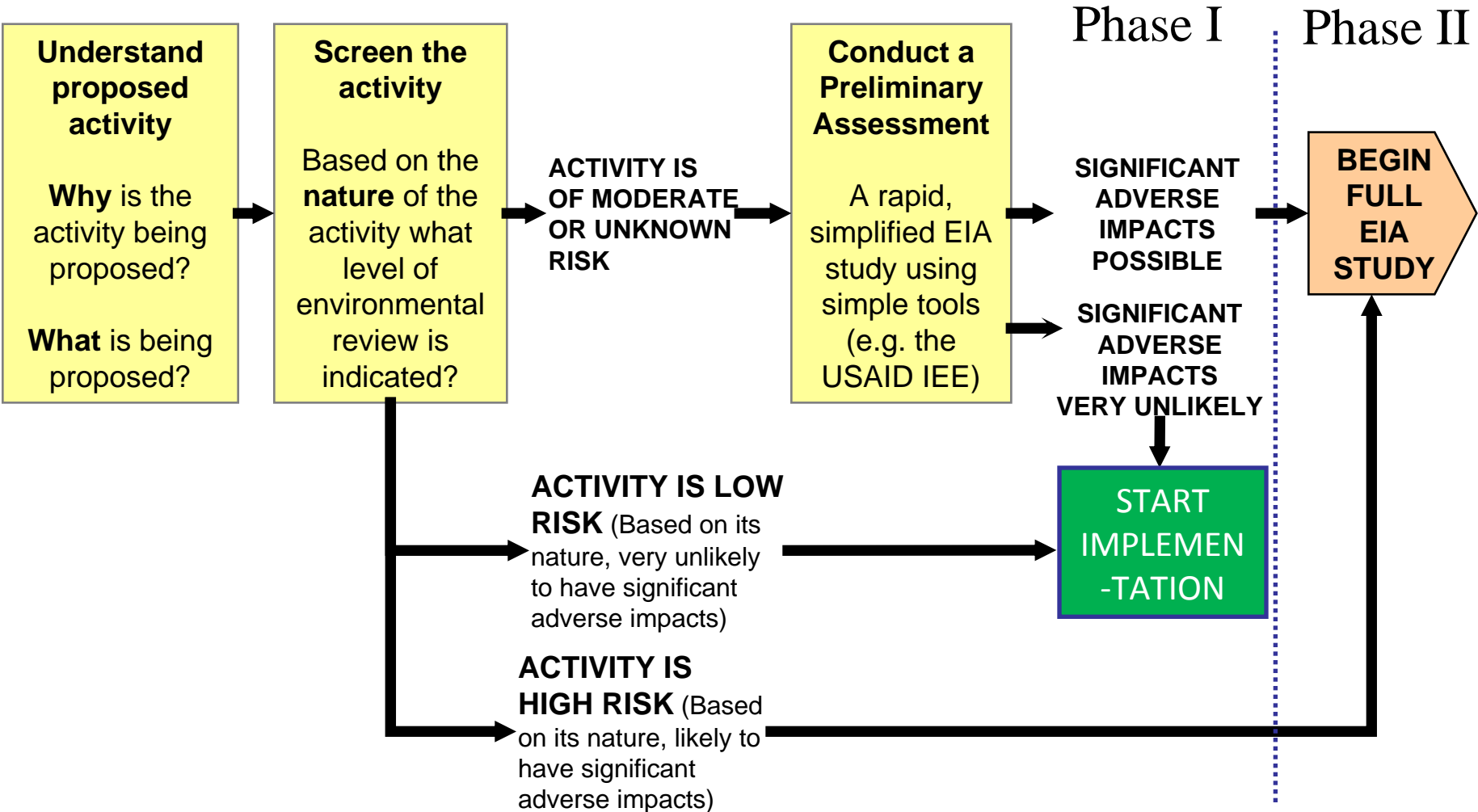


# What is Reg. 216?

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

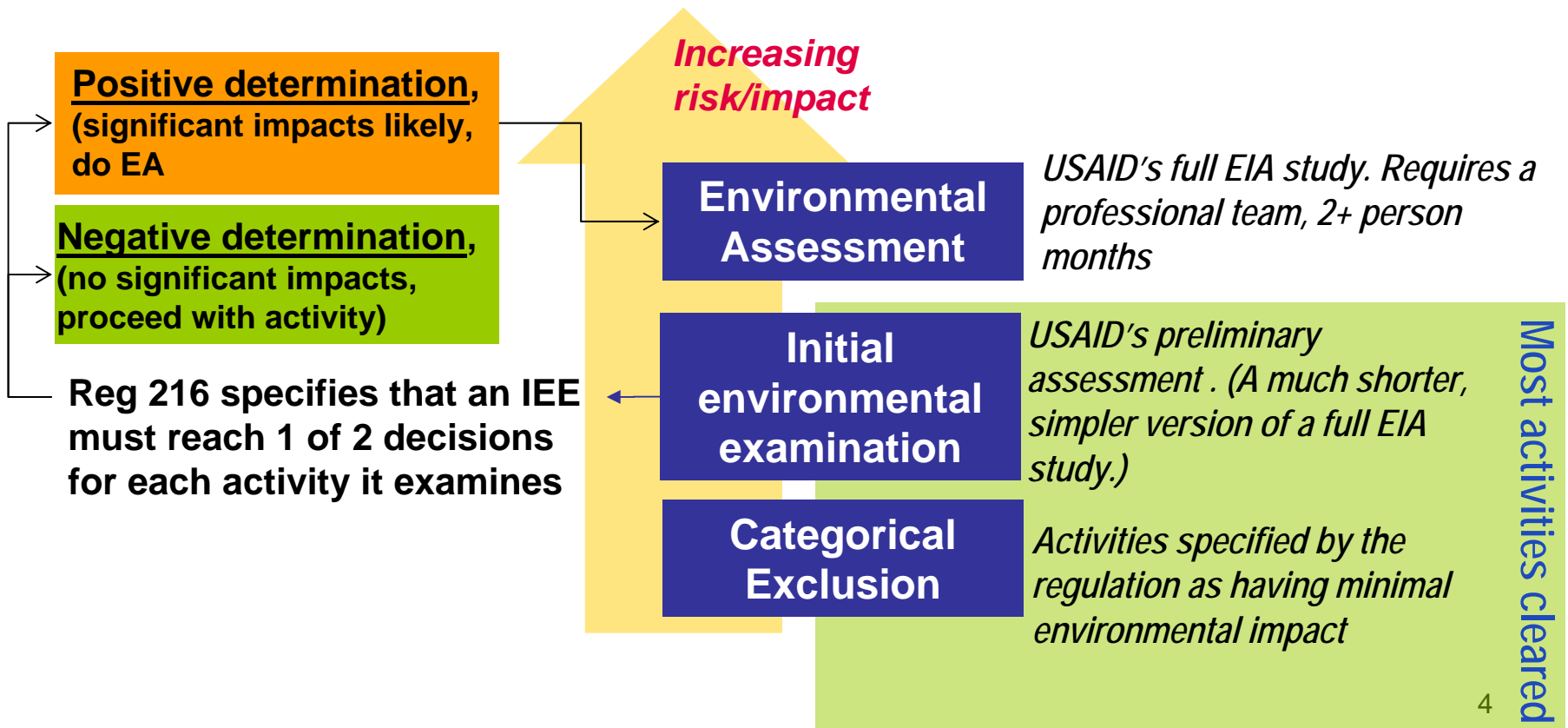
 Reg. 216 (22 CFR 216) is a **US FEDERAL REGULATION. Compliance is mandatory.**

# Review of the EIA Process



# Reg 216: The big picture

*Like any EIA system, Reg. 216 features a **tiered review system** to focus review effort where it is needed.*





# Screening under Reg. 216



1. Is the activity an **EMERGENCY**?

**YES**

## Screening results & their meaning

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### “EXEMPTION”

No environmental review required, but anticipated adverse impacts should be mitigated

**NO**

2. Is the activity **VERY LOW RISK**?

**YES**

### “CATEGORICAL EXCLUSION”

In most cases, no further environmental review is necessary.

**NO**

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

**YES**

### ATTENTION:

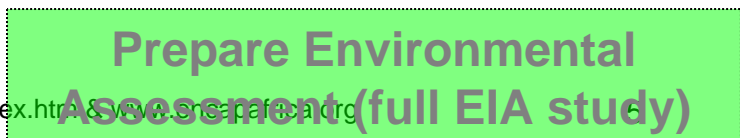
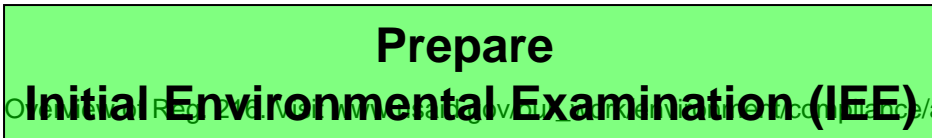
You probably must do a full Environmental Assessment (EA) or revise the activity

(or not yet clear)

**NO**

*recommended*

Allowed by Reg. 216  
But not recommended



# USAID Screening Categories: Exemptions

start

1. Is the activity  
an **EMERGENCY**?

YES



**TO ANSWER “YES”, THE ACTIVITY  
MUST MEET THE REG’S  
DEFINITION OF “EXEMPTION”**

# USAID Screening Categories: Exemptions

Under Reg 216,  
**EXEMPTIONS** are ONLY...

**1. International disaster assistance**

**2. Other emergency situations**

*requires Administrator (A/AID) or  
Assistant Administrator (AA/AID)  
formal approval*

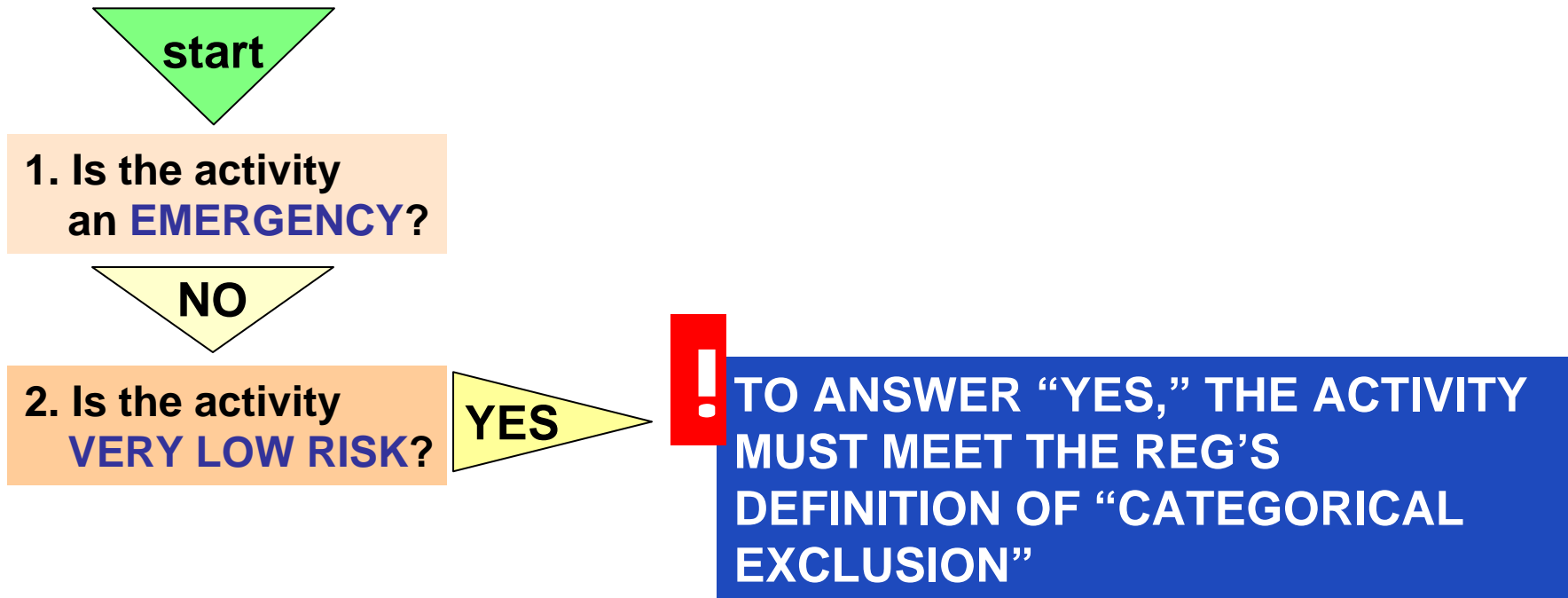
**3. Circumstances with “exceptional  
foreign policy sensitivities”**

*requires A/AID or AA/AID formal  
approval*

**!** “Exempt” activities  
often have significant  
adverse impacts.

**Good practice  
requires mitigating  
these impacts, where  
possible.**

# USAID Screening Categories: Categorical Exclusions





# USAID Screening Categories: Categorical Exclusions (CEs)

Under Reg. 216,  
**ONLY** a specific set of activities may  
receive categorical exclusions. . .

1. Education, tech. assistance, training
2. Documents or information transfers
3. Analyses, studies, academic or research workshops and meetings
4. Support to intermediate credit institutions *where USAID does not review loans*
5. Nutrition, health, family planning activities *except where infectious medical waste is generated*

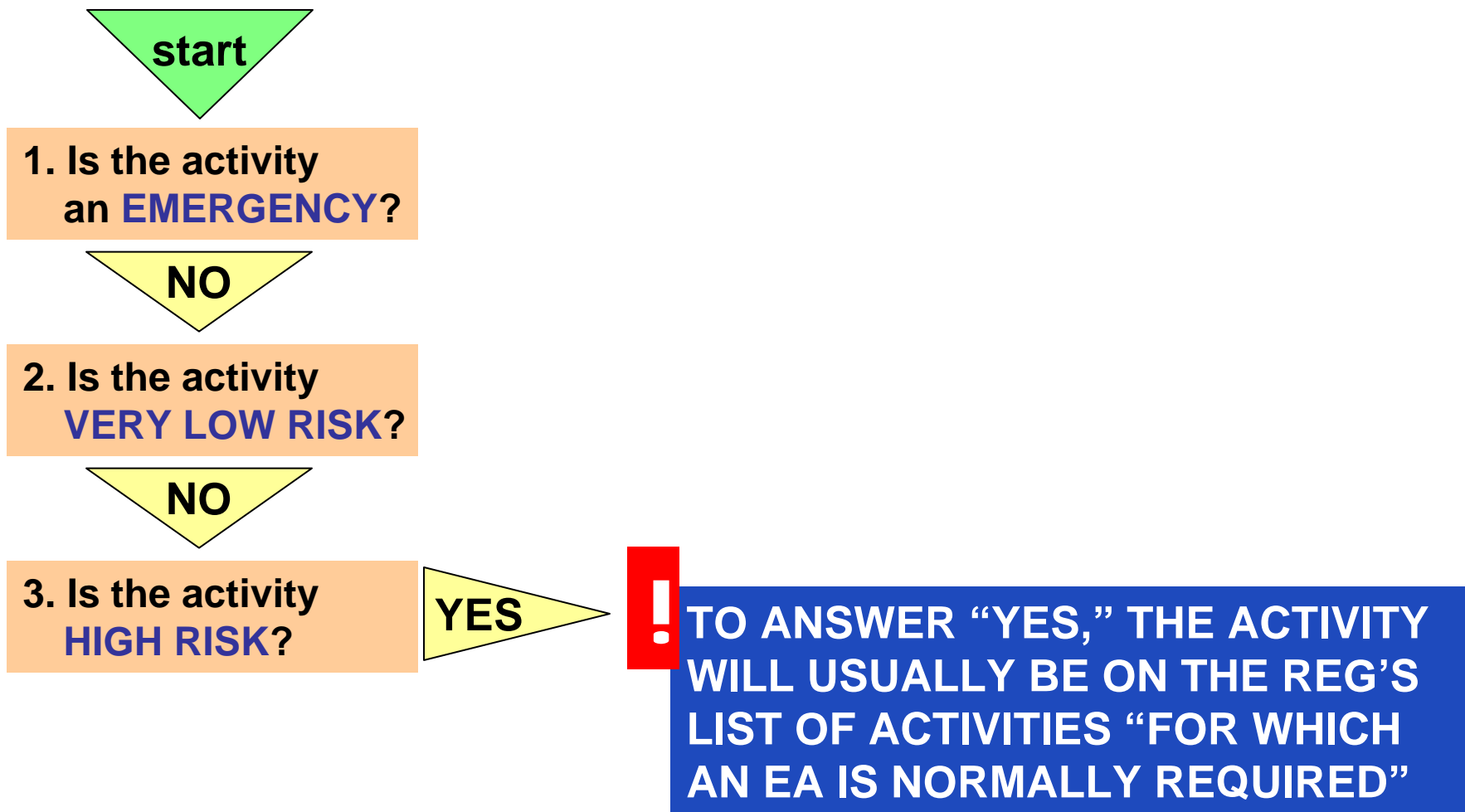
*And certain other situations where USAID does not have direct knowledge or control*

**!** No categorical exclusions are possible when an activity involves pesticides

**!** CEs do NOT apply when a significant adverse direct or indirect effect on the environment is possible.

**Note:**  
see 22 CFR 216.2(c)(2)  
**for full list**

# USAID Screening Categories: EA Typically Required



# USAID Screening Categories: EA Typically Required

Under Reg. 216, the following activities **USUALLY** require a full environmental assessment

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

**AND . . .**

**!** Reg. 216 does not specify scales for these activities.

# USAID Screening Categories: EA Typically Required

AND . . .

Sections 118 & 119 of the Foreign Assistance Act require an EA for . . .

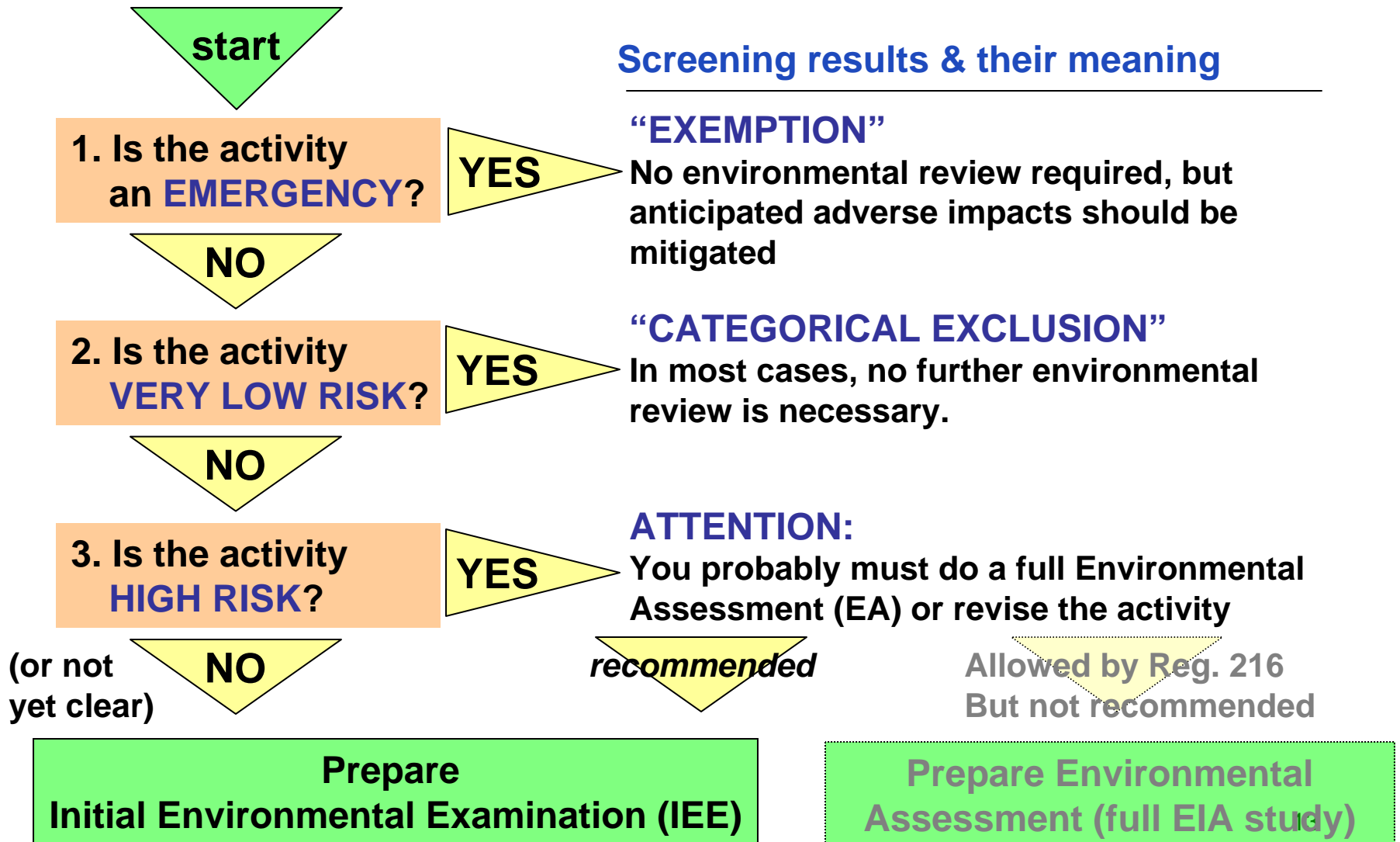
1. **Activities involving procurement or use of logging equipment.**
2. **Activities with the potential to significantly degrade national parks or similar protected areas or introduce exotic plants or animals into such areas.**

**!** Reg. 216 allows you to proceed directly to an Environmental Assessment for these activities.

However, we generally recommend doing a preliminary assessment (IEE) first.



# Review: Screening under Reg. 216



# What documentation is required?

- ❖ **The outcome of your screening process determines the documentation you must submit:**

Overall screening results	Environmental documentation required
All activities are exempt	None*
All activities are categorically excluded	Categorical Exclusion request*
All activities require an IEE	IEE covering all activities*
Some activities are categorically excluded, some require an IEE	An IEE that*: <ul style="list-style-type: none"><li>■ covers activities for which an IEE is required AND</li><li>■ Justifies the categorical exclusions</li></ul>

**\*plus a  
Compliance  
facesheet**



# Basic Reg. 216 compliance documents

1

## Initial Environmental Examination

1. Goals and purpose of project; list of activities
2. Baseline information
3. Evaluation of potential environmental impacts
4. Recommended findings, mitigation & monitoring

**The IEE is USAID's "preliminary assessment"**

2

## Request for Categorical Exclusion

1. Goals and purpose of project: list activities
2. Justification for a Categorical Exclusion (must cite the appropriate section of Reg. 216.)

**The RCE is a simple document used when ALL activities are "low risk"**

3

**A "facesheet" accompanies both the IEE & the CatEx Request**

**!** **No activities may be implemented without APPROVED Reg. 216 environmental documentation in hand.**

**IEEs for activities involving pesticides. . .**

**must satisfy additional requirements via a Pesticide Evaluation Report and Safe Use Action Plan (PERSUAP)**



# What does “approved” mean?

- ❖ Both IEEs and RCEs must be cleared at the Mission Level & by the BEO
- ❖ BEO concurrence *not* automatic or guaranteed
- ❖ Back-and-forth dialogue is sometimes required

## Who signs?

### Clearances:

- Team leader
- MEO
- Regional Environmental Advisor
- Mission Director

### Concurrence

- Bureau Environmental Officer

### Approval

- General Counsel (rarely)

## Be aware. . .



**Categorical  
exclusions exist AT  
THE DISCRETION of  
the BEO**

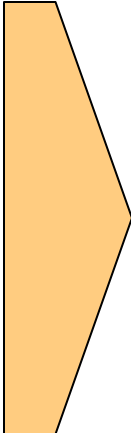
**To avoid rejection or delay  
of IEEs, RCEs . .**

**Consult with the MEO/BEO/  
REA on difficult issues  
BEFORE submission.**

**Submit a quality IEE (coming  
up)**

# An IEE is a likely result of the screening process. . .

**The most common screening result is that an IEE is required.**

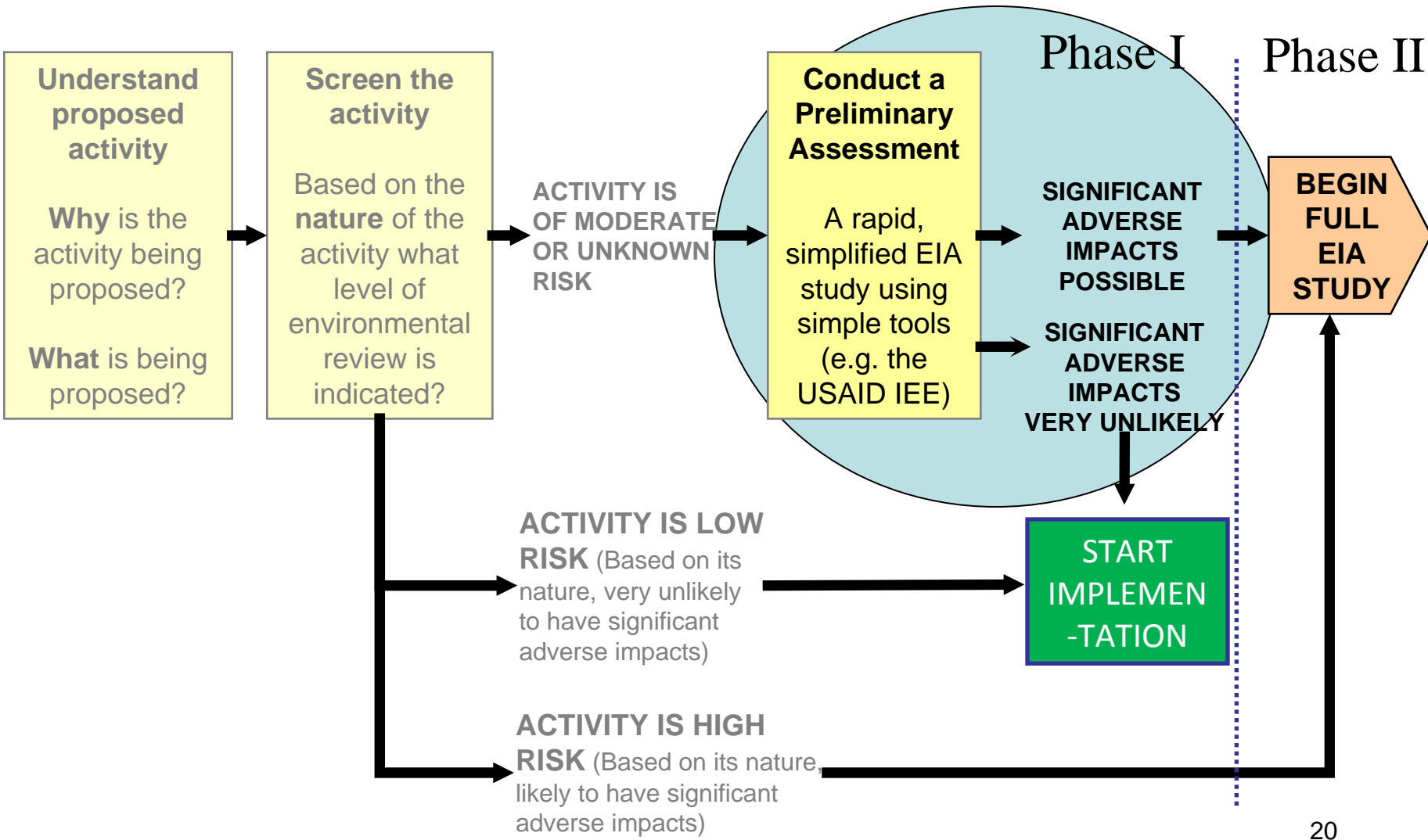


**The IEE is USAID's "preliminary assessment"**

**What is the purpose of a preliminary assessment?**



# Review: Purpose of the Preliminary Assessment



# Purpose of the IEE

Like any preliminary assessment the purpose of the IEE is to . . .

Provide documentation and analysis that:

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

**What  
determinations  
result from an  
IEE?**



# Recommended Determinations in the IEE

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

Recommendation	Reg. 216 terminology	Implications (if IEE is approved)
No significant adverse environmental impacts	<b><i>NEGATIVE DETERMINATION</i></b>	Activity passes environmental review
With specified mitigation and monitoring, no significant environmental impacts	<b><i>NEGATIVE DETERMINATION WITH CONDITIONS</i></b>	The activity passes environmental review on the condition that the specified mitigation and monitoring is implemented
Significant adverse environmental impacts are possible	<b><i>POSITIVE DETERMINATION</i></b>	Do full EA or redesign activity
Not enough information to evaluate impacts	<b><i>DEFERRAL</i></b>	You cannot implement the activity until the IEE is finalized



**Note:**

**If a  
“negative determination  
with conditions”  
is approved, those  
conditions become  
REQUIRED parts of  
project implementation  
& monitoring**



# Applying Reg. 216 at the Sector level

- ❖ **Reg. 216 was written with the idea that it would be applied at the project or activity level**
- ❖ **Over the past decade, many IEEs written at the SO/Sector Program level**
  - *To make MEO, BEO workload more manageable*
  - *To better consider environmental issues early in program design*
- ❖ **The success of these IEEs depends on:**
  - *Mitigation and monitoring conditions successfully transferred to projects (e.g., written into contractor/partner SOWs)*
  - *Effective implementation of sub-project review where required*