

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Overseas Private Investment Corporation

Request for Comments on Draft Environmental Handbook; Notice.

AGENCY: Overseas Private Investment Corporation, IDCA.

ACTION: Notice of publication and request for comments.

SUMMARY: The Overseas Private Investment Corporation (OPIC, or the "Corporation") has published a second version of its Environmental Handbook (Handbook) which represents the current environmental policies and procedures in use at the Corporation. Section 231(n) of the Foreign Assistance Act of 1961 (22 U.S.C. 2191(k)(2), as amended), requires OPIC to: "Refuse to insure, reinsure, guarantee, or finance any investment in connection with a project which the Corporation determines will pose an unreasonable or major environmental, health, or safety hazard, or will result in the significant degradation of national parks or similar protected areas."

An earlier draft of the Handbook was published as a notice in the **Federal Register** on February 6, 1997. Based on the comments received in response to that notice, OPIC has revised the Handbook. Comments are now invited on the revised version of the Handbook that appears in this document.

The Handbook consolidates a number of sources of information into a single, easy-to-review and easily accessible document. The Handbook is also available on OPIC's Internet web site at WWW.OPIC.GOV. OPIC will consider further revision of the Handbook based on the comments we receive.

DATES: Comments must be received on or before June 25, 1998.

ADDRESSES: Comments should be submitted to Mr. Jonathan Sohn, Department of Financial Management and Statutory Review, Overseas Private Investment Corporation, 1100 New York Avenue, N.W., Washington, D.C. 20527, or via Internet e-mail at JSOHN@OPIC.GOV.

FOR FURTHER INFORMATION CONTACT: Contact Mr. Sohn by telephone at (202) 408-6265, by facsimile transmission at (202) 218-0288, or via Internet e-mail at JSOHN@OPIC.GOV.

SUPPLEMENTARY INFORMATION: Message from OPIC President George Muñoz:

OPIC has a 27-year history of mobilizing private capital and skills in the economic and social development of

less developed nations while supporting the foreign policy and economic goals of the United States. OPIC is releasing this draft of its Environmental Handbook for public comment as part of a process to ensure we are meeting the mandate of our statute to decline support for "a project which * * * will pose an unreasonable or major environmental, health or safety hazard." OPIC has been a leader among agencies in international investment in fairly applying environmental standards. The new draft guidelines were developed to clarify current policies and strengthen them where appropriate.

While it is difficult to address all concerns, our goal is a fair balance between the public's interest in environmental safeguards and business' legitimate need to make prompt decisions as they consider international projects—projects which are critical for the fulfillment of OPIC's mission. OPIC is also mindful that companies supported by our foreign counterparts often do not have to meet comparable environmental standards. This will be an important issue going forward. OPIC is committed to leveling the playing field through international harmonization of standards for all countries.

Developing nations are confronted with a range of environmental challenges. We believe that in the long run a transparent decision-making process involving public disclosure of environmental impact assessments is good for business and good for sustainable development. It can promote consensus building and broad support for the long-term economic and environmental sustainability of OPIC-supported projects in developing countries.

The new draft guidelines include:

- A 60-day public comment period to review a project's environmental impact assessment;
- Adoption of the new 1997 World Bank draft guidelines;
- Clarification of prohibitions; and
- An independent audit requirement for environmentally sensitive projects.

OPIC welcomes comments from all interested members of the public. OPIC will make use of the information highway to broaden its reach and to accommodate input in its decision making; OPIC may be contacted via Internet e-mail at WWW.OPIC.GOV. There will be a 120-day comment period from the date hereof before the guidelines are made final. OPIC will carefully review comments on the draft guidelines and will be particularly interested in hearing views on the importance of the guidelines in ensuring fulfillment of OPIC's mission.

OPIC looks forward to your thoughts and comments.

OPIC Environmental Handbook

February 1998 Edition

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OPIC'S Mission Statement

OPIC's mission is to mobilize and facilitate the participation of United States private capital and skills in the economic and social development of less developed countries and areas, and countries in transition from nonmarket to market economies. In accomplishing its mission, OPIC will promote positive U.S. effects and host country development effects. OPIC will assure that the projects it supports are consistent with sound environmental and worker rights standards. In conducting its programs, OPIC will also take into account guidance from the Administration and Congress on a country's observance of, and respect for, human rights. In accomplishing its mission, OPIC will operate on a self-sustaining basis.

Introduction: Statement of Purpose and Objectives

This Handbook is intended to provide information to OPIC's users, as well as the interested public, with respect to the general environmental guidelines, assessment and monitoring procedures that OPIC applies, in its discretion, to prospective and ongoing investment projects. The standards and procedures described in this Handbook generally reflect existing practice at OPIC as it has evolved since the enactment in 1985 of

statutory environmental provisions applicable to OPIC. (The environmental provisions contained in OPIC's statute are reprinted in Appendix A.) (OPIC is also subject to Executive Order 12114, "Environmental Effects Abroad of Major Federal Actions." Environmental Assessment Procedures for EO 12114 are included in Appendix A, as well as a reprint of a 1979 FR notice implementing the EO.) Additionally, the Handbook reflects general policy initiatives announced by President Clinton at the United Nations Special Session on the Environment in June of 1997 as well as comments from OPIC's users and other members of the public in response to OPIC's publication of the Handbook in the **Federal Register** as a notice on February 6, 1997. OPIC received comments on that notice for four months after its publication. The provisions noted in this Handbook apply to all political risk insurance, project finance and OPIC-supported financial intermediaries unless otherwise noted.

Since 1985, OPIC has been required by statute to assess the environmental impacts of projects under consideration for political risk insurance and financing. OPIC's authorizing statute was also amended at that time to direct the Corporation to decline assistance to projects posing an "unreasonable or major hazard to the environment, health or safety" or resulting in the "significant degradation of a national park or similar protected area." OPIC was also directed to operate its programs consistent with the intent of sections 117, 118 and 119 of the Foreign Assistance Act relating to environmental impact assessment, tropical forests, biological diversity and endangered species. Then and since Congress has continued to express its intent that "great care * * * be paid to assuring the environmental soundness of U.S. Government supported foreign assistance projects." This is particularly important given OPIC's self-sustaining mandate. OPIC strongly supports these principles on their own merits.

Over the years OPIC has worked with counterpart organizations providing similar services to investors in the U.S., overseas and on a multilateral basis as environmental procedures were developed. Many of the OPIC standards and procedures described in this Handbook are also applied by organizations such as the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA), both affiliates of the World Bank; the European Bank for Reconstruction and Development (EBRD); and the U.S. Export-Import Bank (US Exim). In OPIC's experience,

the progressive harmonization of standards and procedures similar to those used by these and other similar organizations worldwide has facilitated co-financing and co-insurance arrangements and made it simpler for clients to address environmental requirements.

The Handbook is not designed to be a static document but rather an evolving process. OPIC welcomes comments from business and public interest organizations seeking to enhance OPIC's environmental assessment and management process.

Summary of OPIC Environmental Procedures

OPIC projects receive thorough yet efficient environmental review, following the process described below. Applicants should carefully review the entire Environmental Handbook, including all Appendices, to ensure full understanding of OPIC's Environmental Procedures.

(1) OPIC screens the application to determine whether its support of the project would violate any categorical prohibitions required by OPIC's statute or policy (See "Categorical Prohibitions", Appendix F) to the extent possible at this early stage. If the project is ineligible, OPIC informs the applicant immediately so as to avoid any unnecessary effort or expense on the part of the applicant.

(2) If the project is not categorically ineligible, OPIC continues to screen the application to determine the level of environmental sensitivity associated with the industry sector or site involved (See "Environmental Screening") and to request the appropriate type of information from the applicant.

(3) If the project is identified as a Category A project, an Environmental Impact Assessment (EIA) or Initial Environmental Audit (IEAU) is required. Category B projects are subject to internal OPIC assessment based on information supplied by the applicant that need not take the form of an EIA. Category C projects do not have material impacts on the environment and are not subject to environmental assessment (See "Environmental Assessment").

(4) OPIC requires that applicants for Category A projects submit the EIA or IEAU in a form that can be made public without compromising business confidential information. With the consent of the applicant, the country and industry sector involved in a Category A project (but not the name of the applicant), are listed on OPIC's Internet Web Site and the EIA or IEAU is made publicly available on request for a designated comment period of 60 days

prior to any final OPIC commitment to a project. No application for a Category A project can be processed without this public disclosure and review process. Environmentally sensitive projects are also subject to host government notification prior to final commitment (See "Public Consultation and Disclosure" and Appendix H).

(5) Concurrent with this public notification process, OPIC conducts an internal assessment of the project based on the EIA and other available information, including any comments it receives from the public. Category B projects are also subject to an internal environmental assessment. Through this review process, OPIC environmental staff assess the impacts of the project and the standards and mitigative conditions applicable to OPIC support (See "Environmental Standards").

(6) These conditions are discussed with the applicant and included as representations, warranties and covenants in the loan agreement or political risk insurance contract (See "Conditionality").

(7) OPIC monitors project compliance with contractual conditions throughout the term of the OPIC loan agreement or insurance contract (See "Monitoring and Compliance").

(8) Category A projects are also required to conduct at least one independent environmental audit during the first three years of OPIC support (See "Compliance Audit").

Similar procedures, but with restrictions on public disclosure and consultation, apply to OPIC consideration and support of projects supported by an OPIC-guaranteed investment fund or other financial intermediaries (See "Investment Funds Policy").

Environmental Screening

Environmental screening is the process of identifying, at the earliest stage possible, the potential adverse environmental impacts of a proposed project that could preclude OPIC support on categorical grounds. If a project is determined to be categorically prohibited, OPIC will promptly notify the investor that the application cannot be considered for environmental clearance and ultimate project approval. Examples of such projects include large dams that disrupt natural ecosystems, infrastructure and raw material extraction in primary tropical forests and other protected or ecologically fragile areas. (A complete list of Categorical Prohibitions is provided in Appendix F.)

For projects that are not categorically ineligible for further consideration,

OPIC continues its screening process to determine the level of effort and public disclosure required for the satisfaction of OPIC's environmental assessment requirements. OPIC's Environmental Unit assigns each project to one of the following categories:

Category A: The appropriate category for projects likely to have significant adverse environmental impacts that are sensitive (e.g., irreversible, affect vulnerable population groups, involve involuntary resettlement, affect cultural heritage sites, etc.), diverse, or unprecedented.¹ Such projects can be readily identified on the basis of industry sector or site sensitivity. They require a full-scale EIA or IEAU, as well as an EMMP or ENR. A fairly comprehensive list of industries and sites within this category is provided in Appendix E.

Category B: The appropriate category for projects likely to have adverse environmental impacts that are less significant than those of Category A projects, meaning that few if any of the impacts are likely to be irreversible, that they are site-specific, and that mitigatory measures can be designed more readily than for Category A projects.² The EA normally consists of a limited environmental review, identifying suitable mitigating and management measures, and incorporating them into the project. Projects not included in Categories A, C, D or E (as defined below) can be expected to belong to Category B. Examples of such project categories include: agriculture, electrical distribution, electronics, food processing, light manufacturing, telecommunications (involving infrastructure such as new telephone lines with rights of way and towers, or that manufacture telecommunications equipment), textiles and tourism. Information required from the applicant typically includes the following: site description; processes involved; materials used and stored on site; air, liquid, and solid wastes generated in relation to applicable standards; and occupational health and safety measures.

Category C: The appropriate category for projects that are likely to have minimal or no adverse environmental impacts. Projects in this category that are normally exempt from all environmental assessment.³ Examples of such projects include branch banking,

computer software development and telecommunications (involving privatization of existing service or other projects involving no infrastructure).

Category D: This category includes financial intermediaries (FIs) that make investments in or provide financing (loans, leases, etc.) to identifiable projects or enterprises ("subprojects") engaged in activities within categories A and B. OPIC screens these subprojects to determine the type of environmental review required. Also taken into account is the nature and size of the FI's involvement in the subproject. Expedited reviews are conducted for Category B subprojects involving less than \$5.0 million in investment, subject to further review if the FI proceeds with additional investments in the same subproject. (See section on Investment Funds' Policy.)

Category E: This category includes small-scale, stand-alone business ventures that have demonstrable environmentally beneficial impacts.⁴ Such projects may seek to promote conservation of natural ecosystems or biological diversity and attempt to involve local indigenous peoples and non-governmental organizations (NGOs) in the management process. Ecotourism (as defined below) projects are an example of this category of project. Certain Category E projects may be subject to OPIC's public consultation and disclosure processes, as described on page A-13, due to site sensitivity.

Category F: Categorical Prohibitions: This category includes projects that OPIC will not support due to negative environmental impacts or siting concerns. If a project is determined to be categorically prohibited, OPIC will promptly notify the investor that the application cannot be considered for environmental clearance and ultimate project approval. Examples of such projects include large dams that disrupt natural ecosystems, infrastructure or raw material extraction in primary tropical forests and other protected or ecologically fragile areas. (A complete list of Categorical Prohibitions is provided in Appendix F.)

Environmental Assessment (EA)

The primary purpose of OPIC's environmental review is to determine the eligibility of the project based on OPIC's statutory obligation to decline support for projects posing "unreasonable or major environmental, health or safety hazards." OPIC interprets "health or safety" to apply

both to project employees and to the affected public living or working in the vicinity of the project.

In addition, OPIC is also required by statute to operate its programs in a manner consistent with Sections 117, 118 and 119 of the Foreign Assistance Act (FAA). These provisions pertain to environmental assessment, and the protection of tropical forests, biodiversity and endangered species, respectively.

Grounds for Declining Assistance to Projects. In addition to the Categorical Prohibitions outlined above (See Screening and Appendix F) there are several other circumstances under which OPIC will decline support for a project on environmental grounds:

- The applicant fails to provide OPIC with an EIA for a Category A project or with adequate information about a Category B project to conduct a review sufficient to determine project eligibility on environmental grounds.
- The project will, in OPIC's determination, result in
 - Significant degradation of a national park, similar protected area or tropical rainforest;
 - The destruction of or significant degradation in the habitat of an endangered species; and/or
 - Other "unreasonable or major environmental health or safety hazards."

Environmental assessment (EA) is the tool used by OPIC to make these determinations and is the process of evaluating the environmental and social impacts of a project and identifying ways to improve the project by preventing, minimizing, mitigating, remediating or compensating for adverse impacts as a condition of OPIC support. In a broader sense, EA is the process of managing the environmental aspects⁵ of a policy, strategy, program or project, from the earliest stages of identifying potential actions to their completion and evaluation. The process encompasses identification of potential adverse environmental impacts; assessment of these impacts and comparison with impacts of alternative approaches; design and implementation of measures and plans to avoid, minimize, mitigate, or compensate for adverse impacts; and design and implementation of associated management and monitoring measures.

⁵ World Bank Group Pollution Prevention and Abatement Handbook, September 1997. The term 'environment' encompasses the natural environment (air, water, and land); human ecology and health and safety; and sociocultural aspects (including involuntary resettlement and indigenous peoples) and transboundary and global environmental aspects.

¹ World Bank Group Pollution Prevention and Abatement Handbook, September 1997.

² World Bank Group Pollution Prevention and Abatement Handbook, September 1997.

³ World Bank Group Pollution Prevention and Abatement Handbook, September 1997.

⁴ Projects that seek to environmentally enhance particular aspects of a larger project are not screened into Category E.

EA considers natural and social aspects in an integrated way.

By statute, OPIC is required to provide some degree of EA to every project considered for insurance or finance in determining whether to provide support for the project. This requirement extends to subprojects undertaken by OPIC-supported investment funds and on-lending facilities. (See the discussion of financial intermediaries, below.) OPIC cannot provide a final commitment to a project (i.e., issue an insurance contract, disburse a loan, or approve a transaction by a financial intermediary) until its environmental assessment is complete and a determination is made by OPIC that the environmental, health and safety impacts of the project are acceptable.

Different types of EAs are conducted by the applicant depending on the nature of the project. The actual work may be conducted by the applicant/ sponsor or by a third party, such as an environmental consultant. On the basis of its considerable experience reviewing such materials, OPIC can advise applicants regarding many aspects of EA preparation. OPIC can provide technical guidance to small businesses as well as first time applicants on the scope and resources available for preparing an assessment.

EAs and other environmental reports must be provided to OPIC as early as possible in the application process. This enables OPIC to identify environmental issues that may require additional attention before the EA can be considered complete. Collaboration between OPIC and other official and private lenders and insurers (which begins after OPIC receives consent from the applicant) in reviewing environmental information is in the interest of the applicant as it expedites the review process and avoids delays and needless duplication with the requirements of other lenders and insurers.

OPIC will make every effort to review the material thoroughly and efficiently taking public comment period requirements (see below, p. A-13) for Category A projects into account. In circumstances where OPIC confronts a particularly full project pipeline, OPIC may contract for outside expertise to enable it to complete the review process in a timely manner. Any consultant hired to assist in the review would be required to sign a confidentiality agreement to protect business sensitive information.

In all cases, the cost of preparing the original EA is borne by the applicant, sponsor or foreign enterprise. When

OPIC engages independent consultants to review all or part of the EA materials submitted by the investor, to undertake an original assessment of the project and/or to undertake a site visit as part of the environmental review process, it requires the applicant to reimburse the associated costs.

OPIC may require one or more of the following documents to satisfy a project's EA requirements:

Environmental Impact Assessment (EIA). An EIA is a comprehensive assessment of the diverse impacts of a project on the natural and human environment. It includes a detailed description of pre-existing conditions ("baseline assessment"), all project activities having a potential environmental impact (from pre-construction through decommissioning and site reclamation), and the net impacts of the project, taking into account alternative mitigative measures. It also considers the relationship of the project to the natural and human environment in the affected area and the cumulative impacts of those activities. The content and format for an EIA will vary depending on industry sector, the site and other project-specific factors. (A generic format for an EIA is provided in Appendix B). If requested by the client, OPIC will provide guidance with regard to the content of the EIA.

Environmental Management and Monitoring Plan (EMMP). An EMMP is designed to specify in detail the actions—both technical and managerial—that the applicant or sponsor will undertake in order to mitigate anticipated adverse impacts of the project on the environment, health and safety. It also describes the technology and methodology used to monitor the actual impacts of the projects on the environment and the standards and procedures to be used for adjusting mitigative measures as necessary to maintain impacts within an acceptable range. (A generic format for an EMMP is suggested in Appendix C). While ISO 14000 Environmental Management Systems implementation is not a substitute for a project-specific EMMP, a project sponsor's adherence to the ISO criteria can facilitate the process of developing an acceptable EMMP.

Major Hazard Assessment (MHA). An MHA is a specialized form of EA designed to identify and assess the risks of catastrophic events resulting from the operation of an industrial facility. For projects requiring an MHA, OPIC requires completion of the MHA, preferably as part of the EIA process, but no later than the commencement of project operations. The categories of facilities subject to an MHA as well as

the content and format of an MHA are outlined in the "World Bank Guidelines for the Identification, Analysis and Control of Major Hazard Installations in Developing Countries," a copy of which is available from OPIC.

Initial Environmental Audit (IEAU). If the investment involves the acquisition of a pre-existing facility or a site on which industrial activity previously occurred, the project may also be subject to an IEAU. An IEAU is designed to identify pre-existing adverse environmental, health or safety conditions that could affect future impacts from the facility or site. (A generic format for an IEAU is suggested in Appendix D.) ISO Environmental Auditing criteria are a useful adjunct to, although not a substitute for, performance-based auditing that is required to meet OPIC IEAU requirements.

Environmental Remediation Plan (ENR). The project may involve the remediation of environmentally adverse conditions at a site. In this case the applicant will be required to provide OPIC with an ENR, similar in format to an EMMP, and designed to address the issues raised in the audit.

An EMMP, IEAU or ENR may be included as part of an EIA. Other documents prepared to satisfy the requirements of other lenders may be submitted to OPIC so long as the documentation addresses the substantive issues needed for OPIC to complete its review of the project.

Environmental Impact Statement (EIS). By statute and Executive Order (EO) 12114 (See Appendix A), OPIC is required to prepare, and to take fully into account, an EIS for any project "significantly affecting the environment of the global commons outside the jurisdiction of any nation (e.g., the oceans or Antarctica)." Given the discrete nature of projects assisted by OPIC, it is considered unlikely that any single project assisted by OPIC would meet the test of "significant impact" on the global commons to warrant an EIS. However, the cumulative impacts of several large projects could conceivably have an impact on extraterritorial waters or the atmosphere sufficient to trigger the requirement.

As prescribed by EO 12114, such an EIS should be concise and no longer than necessary to permit an informed consideration of the environmental effects of the proposed project and the reasonable alternatives. It should include the following sections: (1) Purpose and need for the proposed project; (2) a sufficient description of the environment of the global commons affected by the proposed action; (3) an

analysis, in comparative form, of the environmental consequences on the global commons of the proposed action; and (4) reasonable alternative means of structuring the project.

In lieu of preparing a new EIS, the Executive Order permits OPIC to rely on one of the following: a pre-existing EIS for the same project or a project involving similar environmental issues; a generic EIS covering a number of similar projects; or an EIS obtained by other agencies.

Public Consultation and Disclosure

The environmental assessment process has become an increasingly public and transparent process among environmental regulatory agencies in the United States and in some, although not all, foreign countries. Likewise, multilateral development agencies that provide assistance to governments and other public sector clients have also made their activities more transparent to the public in both donor and host countries.

OPIC recognizes the added value that interested and well-informed members of the public can bring to the environmental assessment process undertaken by its clients as well as by OPIC itself. Host country as well as international non-governmental organizations (NGOs) often have access to information and perceptions about potential environmental impacts and resulting social, economic and cultural impacts that need to be carefully considered as early as possible in the assessment process. As a result, OPIC provides the public with a full opportunity to comment on all Category A projects before making a final commitment to such projects. A final commitment takes the form of a contract or loan agreement for an insurance or finance project respectively.

At the same time, certain aspects of the plans and proposals of private sector investors may contain sensitive business information. While OPIC is subject to the disclosure requirements of the Freedom of Information Act, those requirements contain an exemption for business confidential information that is protected from disclosure under the Trade Secrets Act.⁶

Because OPIC's goal is to provide the public with a level of comfort about its environmental process, applicants for OPIC assistance for Category A insurance and finance projects are

required to submit Environmental Impact Assessments or Initial Environmental Audits (to be distinguished from the independent third-party compliance audit) in a form that can be shared with the public. In an effort to save copying time and expenses, OPIC encourages applicants to provide the EIA on a "read only" computer disc.

Applicants must sign a waiver agreeing to public release of their EIA or IEAU. Because EIAs and IEAUs are the property of the applicant, OPIC cannot release these documents if the applicant does not consent. However, if an applicant does not agree to EIA or IEAU release, OPIC will be unable to proceed with further consideration of the application.

In submitting project-specific information to OPIC, including audits, management and remediation plans as well as monitoring reports, applicants must specify which information has been or will be made public in any format, including in the host country. Any additional information that is identified as a public document will be treated as such by OPIC in response to a specific request for such information. Business confidential information will be accorded confidential treatment to the full extent permitted by law.

World Wide Web Posting. The first step in OPIC's public consultation and disclosure process is posting a notice of OPIC's potential support for a Category A project on the World Wide Web. When OPIC's Environmental Unit receives an environmental clearance request in connection with an insurance or finance application for a Category A project or subproject, OPIC will list the nature of the project and its location (but not the name of the applicant or sponsor, e.g. "Gas-Fired Power Plant, Turkey") on OPIC's Home Page on the World Wide Web ([HTTP://WWW.OPIC.GOV](http://WWW.OPIC.GOV)). No business confidential information will be disclosed. This list will be updated at least monthly, and any comments received will be considered in OPIC's processing of the application. Additional information about projects may be provided to OPIC at any time throughout the term of the project.

Comment Period. As a second step in the public consultation and disclosure process, OPIC will provide the public with a full opportunity to comment on all Category A projects before making a final commitment to such projects. OPIC will consider all public comments received and take them into account in its environmental assessment and decision-making process. Should additional information be required

based on comments received, OPIC will pass these requests to the applicant. The comment period varies depending on the type of support an investor seeks:

Project Finance & Political Risk Insurance. Before making a final decision to support a Category A project with political risk insurance, OPIC will disclose the applicant's EIA or IEAU to the public for a comment period of 60 days. OPIC will indicate on its World Wide Web site and on a list server⁷ when OPIC receives a publicly releasable copy of the EIA or IEAU, thus commencing the 60 day comment period. OPIC also encourages the sponsor to release the EIA or IEAU in the host country whenever feasible. A 60 day comment period is consistent with the comment periods applied by multilateral institutions that issue project finance and political risk insurance.

Financial Intermediaries (FIs). For FI investments: (A) OPIC will post the nature of the investment and country where it is located on OPIC's World Wide Web site and on a list server as soon as a request for approval of a Category A investment is received. FI investments are identified by an asterisk (*) unless only one fund is active in a given country or the identity of the fund is self-evident by the nature of the project. (B) OPIC will indicate when the EIA or IEAU for investments has been received by OPIC on the World Wide Web site. OPIC recognizes that the competitive nature of investment fund portfolio activity may require more restrictive treatment of fund EIAs, etc. than is the case for conventional investments.

Host Country Notification. In addition to public consultation, when OPIC supports an environmentally sensitive project, OPIC notifies appropriate host country government officials of all applicable environmental, health and safety standards applicable to the project (See Appendix H).

Annual OPIC Report. OPIC will report annually to Congress and the public regarding its implementation of and compliance with internal, national and international environmental policies, laws, treaties and agreements to which its programs are subject. No confidential business information will be disclosed in these reports.

Environmental Standards

In determining whether a project will pose an unreasonable or major environmental, health or safety hazard,

⁷A list server is a mechanism for automatically updating OPIC users of new Category A projects via the internet.

⁶Certain requests for information may have to be obtained through Freedom of Information Act (FOIA) requests. For more information about OPIC's FOIA process visit OPIC's web page: [HTTP://WWW.OPIC.GOV/SUBDOCS/CONTACT/FOIA.HTM](http://WWW.OPIC.GOV/SUBDOCS/CONTACT/FOIA.HTM)

or will result in significant degradation of national parks or similar protected areas, Congress advised OPIC to "rely primarily upon guidelines and standards adopted by international organizations such as the World Bank * * * and nongovernmental organizations with expertise in this area." (House Report 99-285, September 23, 1985, page 5.)

1997 World Bank Group Pollution Prevention and Abatement Handbook. In an effort to strengthen its standards, OPIC will rely on the most current version of the World Bank standards for the majority of its projects. The most current version was issued by the World Bank Group in September of 1997 for the majority of industrial categories.

The 1997 Handbook received extensive review by several governments (including U.S. federal environmental agencies), branches of the United Nations, non-governmental organizations, industry associations and individual companies.⁸

Use of international standards is consistent with the current practice of the IFC, MIGA and other organizations involved in international investment. For particular industries not included in the 1997 draft, OPIC will consider compliance with the 1994 draft guidelines acceptable. As the Bank continues to update its guidelines, OPIC will substitute more current versions of particular guidelines on a case-by-case basis by industry. (See Appendix G.)

Where there are gaps in World Bank standards on a given environmental or natural resource issue, OPIC incorporates U.S. federal standards, World Health Organization standards, and standards set by other international authorities in its environmental assessment and decision making process. In addition, OPIC has adopted particular standards with respect to Ecotourism and Forestry.

Host Country Standards. All projects must comply with host country

environmental regulations. Therefore, whenever possible, applicants must provide OPIC with summaries or copies of applicable host country regulations as part of their EIS or EIA (for Category A projects) or as information provided in support of their application (for Category B projects). Government permits and certifications of compliance are necessary in this regard, although not always sufficient to establish compliance.

Cumulative and Associated Impact Assessment. In considering project applications, OPIC takes into account in its decision-making process the overall environmental effects of which its involvement is part. The agency will avoid support where OPIC involvement in a project results in cumulative or associated impacts that violate OPIC standards. In the environmental assessment process, the term "cumulative impacts" means recognition of the total environmental impact of pre-existing projects, the proposed project, and imminent future projects.⁹ Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time. Assessing associated impacts recognizes that certain other industrial processes are directly and indirectly linked with the project being assessed and their environmental impacts must be incorporated into the environmental assessment.¹⁰

Other Applicable Standards

In addition to the World Bank Group 1997 Pollution Prevention and Abatement Handbook, the Bank has issued policies on Natural Habitats, Involuntary Resettlement, Pest Management, Dams and International Waterways. OPIC uses these policies to the extent applicable to private sector investments.¹¹

Protected Area Standards

With respect to the identification of national parks and similar protected

areas, OPIC relies on World Bank guidelines and standards stated in Operational Policy (OP) 4.04 on "Natural Habitats" issued in September 1995. World Bank OP 4.04 defines "critical natural habitats" as "protected areas and areas officially proposed by governments as protected areas (e.g. reserves that meet the criteria of International Union for the Conservation of Nature [IUCN]¹² classifications) * * * as indicated in Guidelines for Protected Area Management Categories (Gland, Switzerland, and Cambridge, UK: IUCN/1994) and the United Nations List of National Parks and Protected Areas or by a similar list acceptable to the Bank, published by another competent organization."

United Nations List of National Parks and Protected Areas (UN List). The UN list was first issued in December 1962, and most recently in 1993. For purposes of the UN list, a protected area was defined as an "area of land and/or sea [no smaller than 1,000 hectares] especially dedicated to the protection and maintenance of biological diversity, and of natural and associated cultural resources, and managed through legal or other effective means." The UN list is compiled by the IUCN and the World Conservation Monitoring Centre (WCMC). Projects in or adversely impacting areas on the UN List are categorically prohibited. (See Appendix F.) Projects that are near national parks and protected areas have the potential to adversely impact such areas.

In 1994 the IUCN published its Guidelines for Protected Area Management, the purpose of which was to establish international standards for the definition, identification and management of protected areas. The relevant categories and primary management objectives of each are summarized below:

Category	Designation	General management objectives
Category 1a	Strict Nature Reserve	Managed mainly for science, preservation of species and genetic diversity.
Category 1b	Wilderness Area	Managed mainly for wilderness protection.

⁸ World Bank Group Pollution Prevention and Abatement Handbook, September 1997.

⁹ International Finance Corporation, "Environmental Analysis and Review of Projects," September 1993. World Bank OD 4.00-Annex A. In addition, regional environmental assessments are applied by the World Bank where a number of significant development activities with potentially cumulative impacts are planned for a reasonably localized area.

¹⁰ World Bank Operational Directive 4.00-Annex A: "Indirect impacts are induced consequences of the project which occur later or in another part of the environment." Direct effects are caused by the

action and occur at the same time and place. Indirect effects are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems.

¹¹ World Bank/IFC policies on Indigenous Peoples and Cultural Properties are forthcoming.

¹² The IUCN is a quasi-governmental organization established in 1948 and is comprised of governments (including the U.S., Japan, UK, Brazil,

Sweden, etc.), government agencies, and international and local non-governmental organizations. The U.S. Government is an active participant in the IUCN. Six U.S. Government agencies are members of the IUCN (State Department, Interior Department, Agriculture Department, Commerce Department, Environmental Protection Agency, and the U.S. Agency for International Development). The IUCN's Commission on National Parks and Protected Areas (CNPPA) is the leading international scientific and technical body concerned with the selection, establishment and management of national parks and other protected areas.

Category	Designation	General management objectives
Category II	National Park	Managed mainly for ecosystem protection and recreation.
Category III	Natural Monument	Managed mainly for conservation of specific natural features.
Category IV	Habitat/Species Management Area.	Managed mainly for conservation through management intervention.
Category V	Protected Landscape/Seascape	Managed mainly for landscape/seascape conservation and recreation.
Category VI	Managed Resource Protected Area.	Managed mainly for the sustainable use of natural ecosystems.

OPIC applies the IUCN's management category definitions to derive two general categories of protected areas:

(1) *Management Categories I-IV.* Strict Nature Reserves/Wilderness Areas, National Parks, Natural Monuments and Habitat/Species Management Areas. Projects in or impacting these sensitive locations are categorically prohibited unless determined to be Category E projects. (See Appendix F.)

(2) *Management Categories V-VI.* Protected Landscape/Seascapes, Managed Resource Protected Areas. Projects in or impacting these two areas, including any extractive projects, must be consistent with IUCN management objectives. For example, projects in Category V areas must be consistent with recreation and conservation objectives in those areas. Likewise, projects in Category VI areas must be consistent with sustainable use of natural ecosystem objectives in those areas.

Resettlement Standards

Projects that require large-scale (more than 5,000 persons) involuntary resettlement are categorically prohibited (See Appendix F). For any potential project involving the resettlement of 100 or more households, OPIC will assess the ability of the project sponsor to carry out an effective resettlement program consistent with IFC Operational Policy 4.12: Involuntary Resettlement and any subsequent policy revisions or updates from the IFC. Copies of the Involuntary Settlement Policy are available from OPIC.

Hydroelectric Dam Standards

OPIC does not support the construction of large dam projects that disrupt natural ecosystems or the livelihoods of local inhabitants (See Appendix F).

All other hydroelectric dam projects must, at a minimum, address the issues noted in U.S. Export-Import Bank's Guidelines for Hydropower and Water Resources Management (Dams & Reservoirs) as well as the World Bank/IUCN Checklist For Key Potential Environmental & Social Impacts Caused

By Large Dam Projects.¹³ Copies of the Ex-Im guidelines and the World Bank/IUCN checklist are available from OPIC.

Costs and benefits of large dams have been debated for many years. Proponents note that dams provide electric power, irrigation for agriculture, and water supply to developing areas. Critics claim that project sponsors, public and private, systematically downplay the adverse environmental, social and economic impacts of dams.¹⁴ Negative impacts associated with hydroelectric dams have included population decline in certain species, involuntary resettlement of indigenous people and reduced water quality.¹⁵ As a result, certain large dam projects are categorically prohibited by OPIC. (See Appendix F.)

World Commission on Dams. At a Workshop in Gland, Switzerland in April 1997 jointly hosted by the World Bank and IUCN, stakeholder representatives from governments, civil society organizations, international financial institutions, and the private sector agreed to establish a World Commission on Dams. An independent commission was established and has a two year mandate to review the development effectiveness of large dams and develop standards, criteria and guidelines to advise future decision making. Pending completion of the commission's report, EIAs prepared for hydroelectric dam projects should, at a minimum, address the issues noted above.

Forestry Standards/Certification

Infrastructure and extractive projects, including commercial timber harvesting, in primary tropical forests are categorically prohibited (See Appendix F).

Due to the difficulty of implementing consistent sustainability across a broad range of ecological conditions, all other OPIC-supported projects involving

extraction from natural forests, including all boreal/temperate forests and all secondary forests, must be and remain certified by an independent non-governmental organization. Such organizations must be accredited by an international accreditation body (such as the Forest Stewardship Council) that can hold the certifier accountable to a common set of principles and procedural protocols, including periodic review and re-accreditation. Accredited certifiers are required to adhere to an internationally agreed set of forest management performance standards which incorporate a comprehensive range of environmental and social criteria developed by a diverse group of interests, organizations and stakeholders. Any forest product labeling associated with a certified forest must be guaranteed by a separate certification that credibly connects the labeled product to its certified forest-of-origin.

Ecotourism Standards

All ecotourism projects should address the following issues: (1) A comprehensive plan to protect ecological integrity and enhance community participation. (2) Local community capacity building that provides necessary skills for ecotourism development, while ensuring that this development merges with traditional practices. (3) The primary revenue source of the project must be directly linked to the conservation effort. As a result, OPIC-supported ecotourism projects can be a profitable conservation and community development model.

Ecotourism is a means of enabling tourist dollars to flow into local communities in developing countries while simultaneously conserving ecosystems and wildlife through responsible travel that preserves cultures and natural environments.

Tourism in natural areas can generate significant adverse impacts beyond those normally associated with large-scale tourism in commercial areas. The World Bank Guideline on Tourism and Hotels is designed for tourism in a conventional setting and does not address the specialized impacts of tourism in natural ecosystems. OPIC-

¹³ World Bank Group/IUCN, Large Dams: Learning From the Past, Looking at the Future, Workshop Proceedings, Gland Switzerland, April 11-12, 1997.

¹⁴ World Bank Group/IUCN World Commission on Dams.

¹⁵ World Bank Group/IUCN World Commission on Dams, April 1997 Conference Report.

supported Ecotourism projects seek to balance profitability with ecological sustainability and respect for indigenous cultures.

Best Practices. OPIC does not attempt to prescribe to its potential users the choice of technologies or processes they must use to meet the applicable guidelines. However, standards of best practice developed by governments, industry and non-governmental organizations can be useful in providing guidance to OPIC and its users in assessing alternatives and their feasibility. For this purpose OPIC makes use of international best practice guidelines for sectors of particular importance to OPIC's environmental mandate.

Climate Change and Renewable Energy

In 1992 the U.S. signed the UN Framework Convention on Climate Change (FCCC) and committed the U.S. to "stabilization of greenhouse gas concentrations at a level that would prevent dangerous anthropogenic interference with the climate system." In December 1997, agreement was reached at Kyoto requiring mandatory limitations and reductions in greenhouse gases by developed countries. However, it is important to note that the U.S. Government recognizes that any effective international effort to reduce greenhouse gas emissions must include meaningful participation of developing countries.¹⁶ OPIC seeks to support this policy via the following mechanisms:

Joint Implementation. To encourage U.S. companies, particularly small business, to participate in efforts to reduce global greenhouse gas emissions, OPIC will provide customized pricing for small business projects intended to reduce such emissions, in particular those projects certified by the U.S. Initiative for Joint Implementation (the sharing of technology and resources, particularly transfers from Developed to Developing nations, to limit and reduce GHG emissions). OPIC will continually strive to make its portfolio more climate friendly by proactively seeking renewable energy projects and by seeking to harmonize its approach to climate change issues with that of other U.S. Government entities.

Climate Change Reporting. In an effort to support the management of global greenhouse gas emissions, OPIC tracks and reports, on an aggregate basis, the annual greenhouse gas emissions from its power sector projects. OPIC will

track and report, on an aggregate basis, the annual greenhouse gas emissions from other greenhouse gas emitting projects to the extent an appropriate framework is available. Aggregate tracking results will be available to the public and reported annually to Congress.

Conditionality

In many cases, determinations of eligibility rely on critical representations made by the client with respect to baseline environmental conditions, mitigative measures and net impacts of proposed projects. In addition to the EMMP or ENR submitted by the applicant, OPIC may require the application of additional mitigative measures in order to ensure that a project will not pose an unreasonable or major environmental, health or safety hazard. These critical representations and those undertakings agreed to by the applicant or sponsor may be included in OPIC project documentation as preconditions to contract execution, conditions of disbursement and/or ongoing covenants, depending on the type of agreement entered into between OPIC and the applicant. Where OPIC insures an institutional lender, contract conditions are incorporated into the loan documentation.

Environmental conditions and covenants are developed in close consultation with the client to minimize the cost to the project and to ensure that they are consistent with the host country's legal framework, objectively measurable and verifiable, and allow for sufficient flexibility to address issues if circumstances change. Upon approval and in response to public requests, OPIC documents its determination as to applicable substantive/technical standards and conditions in an EA Summary.

Monitoring and Compliance

OPIC's environmental assessment process is an ongoing one and continues through the full term of OPIC's relationship with the project sponsor.

Monitoring. OPIC reserves the right to monitor projects' compliance with environmental representations and undertakings throughout the term of its insurance or financing. Monitoring may take the form of self-reporting by the investor of summaries and, in specified cases, raw data obtained from monitoring a project's environmental performance (emissions, effluents or other waste discharges) as well as its environmental impacts (e.g., on ambient conditions and biological resources). OPIC requires investors to submit annual self-monitoring reports for

Category A projects. These annual reports must provide OPIC with regular testing results for any emission standards, effluent standards, ambient air limitations or water quality limitations that were represented by the investor. Monitoring may also take the form of third party evaluation, including compliance information developed by host government authorities, co-lenders and independent auditors.

OPIC routinely conducts on-site monitoring of projects, using OPIC staff and/or consultants, for environmental and environmentally-based social impacts as well as U.S. economic and host country development effects. OPIC endeavors to monitor all Category A projects on-site at least once during the first three years of project commitment, and more frequently depending on the environmental sensitivity of the project. Category B, D and E projects are also subject to monitoring on a random and selective basis.

Compliance Audits. OPIC requires project sponsors to conduct third-party independent audits for all Category A projects. These audits are designed to take place after an OPIC supported project begins construction or is operational.¹⁷ The purpose of these audits is to evaluate a project's compliance with all environmental and social conditions (and underlying representations) that are reflected in OPIC's environmental or related social requirements with respect to the project and to validate the methodology used for all self-monitoring reports. At least one independent third-party audit must be conducted generally within the first three years of all Category A projects and the sponsor must provide certification to OPIC that OPIC's contract conditions have been met. OPIC retains the right to review all compliance audits.

Category A projects will be required to conduct further certified independent audits if the investor fails to submit contractually required annual self-monitoring reports in a timely manner or if monitoring trips or other information indicates a need for further independent audits.

Business confidential information in these audits will be accorded confidential treatment to the full extent permitted by law.

Independent third-party compliance audits allow OPIC-supported projects to be evaluated in an objective and

¹⁷The independent third-party audit is distinct from the IEAU conducted during the application process for existing projects. It is further distinguished because the IEAU may be conducted by the sponsor, whereas the compliance audit is to be conducted by an independent third-party.

¹⁶Speech of President Clinton on July 24, 1997; Byrd-Hagel Resolution on Climate Change (S. Res. 98).

systematic manner based on defined criteria. Proper execution of an audit requires active cooperation of project owners and/or managers, good coordination of all interviews and sampling activities in order to reduce costs and a carefully documented inspection to support all findings and recommendations.¹⁸

Non-compliance, Remediation and Termination. Material misrepresentation or non-compliance with environmental undertakings may constitute an event of default under the terms of OPIC insurance contracts and loan agreements. Depending on the severity and reversibility of the environmental impact and the investor's responsibility and due diligence in attempting to prevent the default and in curing the problem, OPIC may treat the default as curable or incurable. In the case of a curable default, OPIC works with the investor to develop a feasible timetable for remediation. In the case of an incurable default, OPIC may require contract termination in the case of insurance, or acceleration of repayment or other available lenders' remedies, in the case of a loan. If an equity investment on the part of a financial intermediary (FI) is involved, divestiture by the FI may be required. Additionally, failure to meet contractually required reporting requirements can constitute a default. In all cases, OPIC seeks to work cooperatively with investors and lenders to arrive at an equitable resolution of the situation, taking into account the requirements of other lenders and insurers.

Investment Funds Policy

The investment funds are one type of OPIC-supported FI. OPIC provides financing to support a number of privately owned and managed direct investment funds that have the capability to provide equity capital to facilitate business formation and expansion. The investment funds are privately owned, privately managed, and make their own commercially based investment decisions. Typically, OPIC-supported investment funds invest in five to forty percent of the equity capital of each of their portfolio companies (although they may hold a majority position), and may hold equity interests in ten to twenty companies when fully invested. It has been OPIC's experience that the majority of Category A projects involve the expansion or acquisition of existing projects as opposed to "greenfield" projects.

All Category A investment fund projects are subject to a full Environmental Impact Assessment or Audit and resulting terms and conditions unique to the project. Additionally, where a fund proposes to invest in a company rather than a specific project, the fund must narrow the scope of the company's proposed use of the proceeds of the fund's investment to specific projects that can readily be assessed.

All non-Category A portfolio investments involving a fund commitment greater than \$5 million require OPIC screening and assessment in accordance with the procedures noted in this Handbook.

All non-Category A portfolio investments involving a fund commitment of \$5 million or less (a "Non-Sensitive Small Project" or "NSSP") can be invested in by the Fund prior to receiving formal environmental clearance subject to the following conditions:

- The fund must explicitly request that the proposal be reviewed under an expedited process.
- OPIC may ask follow-up questions for five business days following the date of initial submission of the subproject, in order to determine whether the proposed investment qualifies for expedited review.

- The fund must represent that it has taken commercially reasonable efforts to obtain and provide all relevant environmental information to OPIC and has no reason to believe that the project would pose an unreasonable or major environmental, health or safety hazard. Furthermore, the fund must represent that it will continue to obtain and disclose to OPIC any material supplemental environmental, health or safety information as received.

- Any follow-on investment in the project will be subject to OPIC review and clearance prior to the date of such further investment.

- At OPIC's discretion, further review of an NSSP may occur within a reasonable time period following the date of investment. Possible outcomes of this review are:

- i. Class I—The project is satisfactory and no further conditions are placed on the NSSP.

- ii. Class II—The project poses certain non-critical environmental, health or safety issues. A remediation plan must be developed and implemented. No further fund investment in the project will be authorized prior to development of the remediation plan.

- iii. Class III—The project poses unreasonable or major environmental, health or safety hazards. No further

investments in the project are authorized and divestment must occur.

Finally, following OPIC review, investments may be authorized for non-Category A investments involving a fund commitment greater than \$5 million (and for follow-on investments in Class I and II NSSP projects) that do not initially meet World Bank Guidelines, under the following terms and conditions:

- A detailed and time-sensitive remediation plan is developed;
- The remediation plan is incorporated into the fund's investment arrangements with the portfolio company in a manner that provides the fund with legally binding enforcement rights in the event of material non-compliance;
- At a minimum, the fund reports annually to OPIC regarding implementation of the remediation plan;
- OPIC will require the fund to implement its enforcement rights or divest its position in the event of material non-compliance with the approved remediation plan.

Appendix A—OPIC Statute (Environmental Provisions) and Executive Order 12114 (and Reprint of a 1979 FR Notice Implementing the EO)

All references are to the Foreign Assistance Act of 1961, as amended, most recently by the Jobs Through Exports Act of 1992.

Section 231 * * *. The Corporation, in determining whether to provide insurance, financing or reinsurance for a project, shall especially—

(3) Ensure that the project is consistent with the provisions of section 117, (as so redesignated by the Special Foreign Assistance Act of 1986), section 118, and section 119 of this Act relating to the environment and natural resources of, and tropical forests and endangered species in, developing countries, and consistent with the intent of regulations issued pursuant to sections 118 and 119 of this Act.

In carrying out its purpose, the Corporation, utilizing broad criteria, shall undertake—(n) to refuse to insure, reinsure, guarantee or finance any investment in connection with a project that the Corporation determines will pose an unreasonable or major environmental, health or safety hazard, or will result in the significant degradation of national parks or similar protected areas.

Section 237. General Provisions Relating to Insurance, Guaranty and Financing Programs

(m)(1) Before finally issuing insurance, reinsurance, guarantees, or financing under this title for any environmentally sensitive investment in connection with a project in a country, the Corporation shall notify appropriate government officials of that country of—

(A) all guidelines and other standards adopted by the International Bank for Reconstruction and Development and any other international organization relating to

¹⁸ World Bank Group Pollution Prevention and Abatement Handbook, September 1997.

the public health and safety or the environment which are applicable the project; and

(B) to the maximum extent practicable, any restriction under any law of the United States relating to public health or safety or the environment that would apply to the project if the project were undertaken in the United States.

The notification under the preceding sentence shall include a summary of the guidelines, standards and restrictions referred to in subparagraphs (A) and (B), and may include any environmental impact statement, assessment, review or study prepared with respect to the investment pursuant to section 239(g).

Section 239. General Provisions and Powers

(g) The requirements of section 117(c) of this Act relating to environmental impact statements and environmental assessments shall apply to any investment which the Corporation insures, reinsures, guarantees, or finances under this title in connection with a project in a country.

Environmental Assessment Procedures For Executive Order 12114

On January 4, 1979 the President issued Executive Order 12114 (44 FR 1957) entitled "Environmental Effects Abroad of Major Federal Actions". The Executive Order requires federal agencies taking action encompassed by the Order, and not exempted from it, to effectuate procedures to implement the Order. The Overseas Private Investment Corporation (OPIC) is implementing the Executive Order by the adoption of the following procedures to take effect on September 4, 1979.

Section 1. Purpose

As required by Executive Order 12114, issued January 4, 1979, which is incorporated herein by reference, the following procedures shall be used by OPIC to ensure that all significant environmental effects of its actions outside the United States are considered by OPIC in its review of proposed insurance and finance projects. These procedures shall supplement OPIC's existing environmental procedures and guidelines required by the Foreign Assistance Act as amended (the "Act"), as set forth in OPIC Board of Directors and the "OPIC Environmental Handbook."

Section 2. Definition

A. Application. The term "application" means a formal request to OPIC in the manner specified by OPIC for assistance under an OPIC program from an eligible private party interested in investing in a project in a foreign nation.

B. Environment. The term "environment" means the natural and physical environment and excludes social, economic, and other environments.

C. Global Commons. the term "global commons" means areas outside the exercise of any national jurisdiction.

D. Host Country. The term "host country" means the foreign country in which a project for which OPIC assistance is sought is or will be located.

E. Major Action. The term "major action" means a contractual commitment by OPIC to

provide assistance under an OPIC program involving at least \$ 1 million of insured investment, loan guaranties or direct loans. If the applicant therefor has or will have sufficient control over the design and/or operation of the project to mitigate environmental concerns raised by OPIC.

F. OPIC Programs. The term "OPIC programs" includes OPIC's insurance, direct loan and loan guaranty programs as authorized by the Act.

G. Significant Effects. 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 even though on balance the action is believed to result in beneficial effects on the environment.

Section 3. Applicability of Procedures

A. Scope. Except as provided in Subsections B, C, and D below, these procedures shall apply with respect to OPIC's review of each new application for assistance under an OPIC program, whether for new projects or expansions of existing projects, if a favorable decision on such application will result in a major action by OPIC.

B. Exemptions. If upon the initial review of an application the OPIC insurance or finance officer making such review determines that the project for which OPIC assistance is sought has no significant effects upon the environment outside the United States, these procedures shall not apply. If upon further review of the application, and prior to taking action, it is determined that the project may have a significant effect upon the environment, this exemption shall no longer apply. Also exempt from these procedures are actions falling within the categories listed in Section 2-5(ii) through (vii) of the Executive Order, as limited by Section 2-5(d). A concise administrative record will be prepared to document these determinations.

C. Categorical Exclusions. These procedures shall not apply to the review of an application for any project falling within the scope of any category of projects that are determined to involve no significant effects on the environment. OPIC's Investment Committee shall have the authority to establish such categorical exclusions.

D. Special Exemptions. These procedures shall not apply to the review of any application for which the General Counsel determines that an exemption is necessary as a result of emergency circumstances, situations involving exceptional foreign policy or national security sensitivity or other special circumstances (except as limited by Section 2-5(d) of the Executive Order). In utilizing any such special exemption, OPIC, through its designated Environmental Officer, shall consult as soon as feasible with the Department of State and the Council of Environmental Quality.

Section 4. Initial Determinations

A. With respect to any application for OPIC assistance falling within the scope of Section 3(A) above, the OPIC officer reviewing such application shall make the following determinations that shall be documented by a concise administrative record:

1. Whether the proposed project is likely to have a significant effect on the environment of the global commons;

2. Whether the proposed project is likely to have a significant effect on the environment of a foreign country other than the host country; and

3. Whether the proposed project is likely to have a significant effect on the environment of a foreign country because it would provide to that country;

(a) a product, or physical project producing a principal product or an emission or effluent, which is prohibited or strictly regulated by Federal law in the United States because its toxic effects on the environment create a serious public health risk, such as asbestos, vinyl chloride, acrylonitrile, isocyanates, polychlorinated biphenyls, mercury, beryllium, arsenic, cadmium, and benzene; or

(b) a physical project which in the United States is prohibited or strictly regulated by Federal law to protect the environment against radioactive substances.

4. Whether the proposed project is likely to have a significant effect on natural or ecological resources of global importance hereafter designated for protection by the President or in the case of such a resource protected by international agreement binding on the United States, by the Secretary of State.

B. The determination required in Subsection A above shall be based upon the information contained in the application, information reasonably available to OPIC and such additional information from the applicant as deemed necessary by the reviewing officer.

C. In the event that the reviewing officer makes a positive determination with respect to any of the categories specified in Subsection A above (i.e. that a significant effect is likely to result), and such determination is not reversed upon review by a supervisory officer or by the Investment Committee, the finance or insurance department, as the case may be, in consultation with OPIC's Environmental Officer, shall take the following actions, as appropriate, prior to acting on the application:

1. If the harmful effect is of the type described in Subsection A(1) above, an environmental impact statement shall be obtained in the manner specified in Section 5 below. Such an environmental impact statement shall consider only the effects described in Subsection A(1), regardless of whether the project would result in other kinds of environmental effects.

2. If the harmful effect is of the type described in Subsection A(2), A(3) or A(4) above, an environmental study or an environmental review shall be prepared in the manner specified in Section 6 below.

Section 5. Environmental Impact Statement

A. If a department within OPIC is required by Section 4(C)(1) to cause the preparation of an environmental impact statement for a particular project, it shall do so in accordance with Subsection B below. If an environmental impact statement for the proposed project, a project involving similar environmental issues or a generic statement

covering a host of similar projects already exists, no new environmental impact statement shall be required. When one or more other agencies are also involved in a particular project requiring an environmental impact statement OPIC may rely upon an environmental impact statement obtained by one or more of the other agencies.

B. Environmental impact statements shall be concise and no longer than necessary to permit an informed consideration of the environmental effects of the proposed project and the reasonable alternatives. The statement shall include a section on the consideration of the purpose of and need for the proposed project; a section that provides a succinct description of the environment of the global commons affected by the proposed action; and a section that analyzes, in comparative form, the environmental consequences on the global commons of the proposed action and of reasonable alternative means of structuring the project.

Section 6. Environmental Studies and Reviews

A. If a department is required under Section 4(C)(2) to produce an environmental study or review, it shall, in consultation with the Environmental Officer, determine whether an environmental study as described in Subsection B below which deals with the environmental aspects of the proposed project is available or will be undertaken elsewhere. If no relevant environmental study is or will be available, the OPIC department, in consultation with the Environmental Officer, shall undertake the preparation of an environmental review as described in Subsection C below with, as appropriate, the assistance of the applicant and of other federal agencies having jurisdiction by law or special expertise. If an environmental review for the proposed project or a project involving similar environmental issues or a generic review covering a class of similar projects already exists, no new environmental review shall be required hereunder. When one or more agencies are involved with OPIC on a particular project, a lead agency may be designated to prepare the environmental review.

B. An environmental study shall consist of a bilateral or multilateral study by the United States and one or more foreign nations or by an international body or organization in which the United States is a member or participant.

C. An environmental review shall consist of a concise analysis of important environmental issues relating to a proposed project, including identification of such issues and of the significant effects to the environment. The department involved in the preparation of an environmental review shall consider the following factors in deciding the scope, substance, and timing of review and the availability of the review to other agencies:

1. The need to avoid infringement or the appearance of infringement on the sovereign responsibilities and internal affairs of another government;
2. The availability of meaningful information on the environment of a foreign nation;

3. The need to protect confidential business information and trade secrets of the applicant;

4. The desirability of acting promptly upon applications under OPIC programs;

5. The desirability of the project in terms of its export promotion and developmental effects;

6. OPIC's ability to influence the design and/or implementation of the proposed project; and

7. The need to protect sensitive foreign affairs information and information received from another government with the understanding that it will be protected from disclosure.

Section 7. Decision

The required environmental documents developed in accordance with these Procedures shall accompany the application through the review process to enable officers responsible for approving an application and, if necessary, the Board of Directors, to be informed and to take account of the environmental consideration covered by such documents.

Section 8. Availability

Subject to the consideration of Section 6(C), environmental documents developed under these procedures shall be available to the Department of State, Council on Environmental Quality and other federal agencies and shall be included in the public information files for the pertinent applications. Foreign governments affected thereby may also be informed of such documents after coordinating with the Department of State regarding such communication with the foreign government.

Effective Date. These procedures became effective on September 4, 1979.

Dated: August 27, 1979.

J. Bruce Llewellyn,

President.

Appendix B—Recommended Content and Format for Environmental Impact Assessment Category A Projects

I. Executive Summary

- A. Concise project description
- B. Identification of project sponsors, operators and contractors
- C. Baseline environmental conditions
- D. Applicable environmental standards
- E. Proposed mitigation measures
- F. Net environmental impacts

II. Policy, Legal and Administrative Framework

- A. Applicable host country environmental and occupational safety and health laws and regulations
- B. Relevant international agreements
- C. Requirements of potential investors, lenders and insurers

III. Baseline Conditions in Area Potentially Affected by Project ("Project Area")

- A. Designation of project area perimeters
- B. Physical geography (climate, geology, topography)
- C. Natural events history (earthquakes, floods, fires, storms, volcanic eruptions, etc.)
- D. Biological environment
 1. Proximity to national parks and other protected areas

2. Identification of unique or sensitive natural habitats of internationally or locally recognized rare, threatened or endangered species

3. Renewable and non-renewable natural resources

E. Human environment

1. Distribution of residential and occupational population in project area

2. Description of previous, current and planned land use activities in or near project area

3. Habitation or use of project area by indigenous peoples

F. Environmental quality of project area

1. Ambient air conditions (including seasonal variations)
 - (a) Sulfur dioxide
 - (b) Particulates
 - (c) Nitrogen oxides
 - (d) Carbon monoxides
 - (e) Airborne toxics
2. Water supply, quality and end use (human consumption agriculture, plant and animal habitat)
 - (a) Marine waters including estuaries
 - (b) Surface waters (rivers, streams, lakes)
 - (c) Groundwater
3. Noise levels
4. Soil conditions including contamination from previous or current activities

G. Archaeological, historical or cultural resources

IV. Potential (Unmitigated) Environmental, Health and Safety Impacts

A. Sources and volumes of untreated airborne, liquid, and solid waste and potential impacts of unmitigated discharge on the environment

B. Potential impacts on natural and biological resources

C. Potential human impacts:

1. Positive: employment, services, economic opportunities
2. Negative: resettlement and economic displacement

D. Potential occupational health and safety hazards

E. Potential for major safety and health hazards beyond the workplace

V. Proposed Environmental Prevention and Mitigation Measures (including a thorough discussion of alternatives and justifications for measures selected)

A. Waste minimization measures

B. Waste treatment and disposal measures

C. Natural resource management (e.g. sustainable management of biological resources and protection of endangered species and their habitats)

D. Mitigation of human impacts: compensation, training, etc.

E. Occupational safety and health measures

F. Major hazard prevention and emergency response

VI. Projected Net Environmental Impacts (post-mitigation)

A. Physical impacts (e.g. topography, ground and surface water supply, soil conservation)

B. Biological impacts (flora, fauna and related habitat with particular attention to threatened and endangered species; natural resources, e.g. primary forests, coral reefs, mangroves, etc.)

C. Net discharges of airborne, liquid and solid wastes and resulting ambient

- impacts as compared to applicable host country, World Bank and other relevant regulatory standards and guidelines
 - D. Net exposures by workers to safety and health hazards
 - E. Net potential for major hazards
 - F. Consistency with applicable international agreements
- VII. Appendices
- A. Permits issued and pending from environmental authorities
 - B. Author information
 1. Names, affiliations and qualifications of project team
 2. Relationship of authors to project sponsors
 - C. Record of meetings held as part of EIA, including public hearings and consultations with government and non-governmental organizations
 - D. Reference bibliography
 - E. Technical data not included in text

Appendix C—Recommended Content and Format for Environmental Management and Monitoring Plan

- I. Applicable Regulatory Standards and Guidelines
 - A. Host country laws and regulations
 - B. Sponsor, investor, lender and insurance requirements
 - C. International agreements
- II. Environmental Management Measures
 - A. Potential impacts and corresponding preventive and mitigative measures
 - B. Equipment specifications for preventative and mitigative measures
 - C. Operational and maintenance procedures
- III. Organizational Responsibilities and Management Issues
 - A. Operations
 - B. Supervision
 - C. Internal enforcement
 - D. Monitoring
 - E. Remedial actions
- IV. Training Requirements
- V. Monitoring and reporting procedures
 - A. Perimeters to be monitored
 1. Airborne emissions and corresponding ambient air impacts
 2. Liquid effluents and corresponding ambient impacts on receiving water
 3. Physical impacts
 4. Natural resource and biological impacts
 5. Human impacts
 - (a) Standard of living of local inhabitants
 - (b) Impact on local economy
 - (c) Perceptions and attitudes of local inhabitants
 6. Workplace conditions
 - (a) Accident frequency and severity
 - (b) Worker exposures to hazardous substances
 7. Impacts on dedicated offsite infrastructure and facilities
 - B. Frequency of monitoring
 - C. Monitoring techniques and procedures
 1. Equipment and instrumentation
 2. Quality assurance/quality control (QA/QC procedures)
 3. Personnel and training requirements
 - D. Reporting procedures

1. Internal
 2. External (e.g. to local authorities)
- Appendix D—Recommended Content and Format for Initial Environmental Audit (IEAU)**
- I. Executive Summary
 - A. Environmental, safety and health areas of concern
 - B. Recommended mitigation measures/enhancement opportunities: priorities
 - C. Implementation schedule
 - II. Project Description
 - A. location
 - B. past operations history
 - C. current operations
 - III. Applicable regulations and guidelines
 - IV. Audit procedure (protocol)
 - A. historical research
 - B. records review
 - C. interviews
 - D. site inspections
 - E. sampling and analysis (quality assurance and control) procedures
 - V. Review of environmental management
 - A. environmental management structure
 - B. emergency, security and safety plans
 - C. company-community interaction program
 - D. handling of complaints and media coverage
 - VI. Environmental Impacts
 - A. air emissions
 - B. liquid effluents
 - C. solid (non-hazardous) waste treatment
 - D. hazardous materials and management
 - E. noise and vibration
 - F. groundwater and soil contamination
 - VII. Occupational Safety and Health
 - A. summary of accident reporting, recording and investigation
 - B. health and safety management safety procedures
 - D. medical monitoring program
 - E. air quality
 - F. noise level exposure
 - G. chemical/material handling
 - H. temperature exposure
 - I. personal protective equipment
 - J. emergency response capability
 - K. fire protection
 - L. training programs
 - VIII. Conclusions
 - IX. Mitigation Recommendations
 - A. Identify appropriate measures
 - B. Priorities
 - C. Implementation schedule
 - X. Environmental Enhancement Opportunities
 - A. energy and energy conservation
 - B. waste minimization
 - C. cleaner technology initiatives
 - D. training programs
 - XI. Annexes
 - A. names of those responsible for preparing audit
 - B. written material references used
 - C. records of consultations
 - D. other data

Appendix E—Category A: Projects Requiring Environmental Impact Assessment

Any projects supported by OPIC in this Category that subsequently change in nature

from the description provided in application materials, and will thereby cause material impacts to the environment, shall be required to submit additional EA documents to OPIC that must be acceptable to OPIC in its sole discretion.

- I. Industrial categories
 - A. Large-scale industrial plants
 - B. Industrial estates
 - C. Crude oil refineries
 - D. Large thermal power projects (200 megawatts or more)
 - E. Major installations for initial smelting of cast iron and steel and production of non-ferrous metals
 - F. Chemicals
 1. manufacture and transportation of pesticides
 2. manufacture and transportation of hazardous or toxic chemicals or other materials
 - G. All projects which pose potential serious occupational or health risks
 - H. Transportation infrastructure
 1. roadways
 2. railroads
 3. airports (runway length of 2,100 meters or more)
 4. large port and harbor developments
 5. inland waterways and ports that permit passage of vessels of over 1,350 tons
 - I. Major oil and gas developments
 - J. Oil and gas pipelines
 - K. Disposal of toxic or dangerous wastes
 1. incineration
 2. chemical treatment
 - L. Landfill
 - M. Construction or significant expansion of dams and reservoirs not otherwise prohibited
 - N. Pulp and paper manufacturing
 - O. Mining
 - P. Offshore hydrocarbon production
 - Q. Major storage of petroleum, petrochemical and chemical products
 - R. Forestry/large scale logging
 - S. Large scale wastewater treatment
 - T. Domestic solid waste processing facilities
 - U. Large-scale tourism development
 - V. Large-scale power transmission
 - W. Large-scale reclamation
 - X. Large-scale agriculture involving the intensification or development of previously undisturbed land
 - Y. All projects with potentially major impacts on people or serious socioeconomic concerns
 - Z. Projects, not categorically prohibited, but located in or sufficiently near sensitive locations of national or regional importance to have perceptible environmental impacts on:
 1. wetlands (not covered by the RAMSAR Convention).
 2. areas of archeological significance
 3. areas prone to erosion and/or desertification
 4. areas of importance to ethnic groups/indigenous peoples
 5. primary temperate/boreal forests

6. coral reefs
7. mangrove swamps
8. nationally-designated seashore areas
9. Managed resource protected areas, Protected Landscape/seascape (IUCN categories V and VI) as defined by IUCN's Guidelines for Protected Area Management Categories; additionally, these projects must meet IUCN's management objectives and follow the spirit of IUCN definitions.

Appendix F—Categorical Prohibitions

I. Infrastructure and extractive projects located in primary tropical forests (see Glossary). Extractive projects include oil, gas, mineral resources, steam/geothermal and surface resources such as timber.

II. Projects involving the construction of 'large dams' that significantly and irreversibly: (A) disrupt natural ecosystems upstream or downstream of the dam, or (B) alter natural hydrology, or (C) inundate large land areas, or (D) impact biodiversity, or (E) displace large numbers of inhabitants (5,000 persons or more) or (F) impact local inhabitants' ability to earn a livelihood.

III. Projects involving the commercial manufacturing of ozone-depleting substances or the production or use of persistent organic pollutants. Investors may obtain a list of these substances and chemicals from OPIC.

IV. Projects that require resettlement of 5,000 or more persons.

V. Projects in or impacting areas protected by the RAMSAR Convention (Designated wetlands of international importance).

VI. Projects in or impacting natural World Heritage Sites (Areas of significant ecological value that have been internationally recognized as necessary for strict protection by members of the World Heritage Convention).

VII. Projects in or impacting areas on the United Nations List of National Parks and Protected Areas.

VIII. Extraction or infrastructure projects in or impacting Strict Nature Reserves/Wilderness Areas, National Parks, Natural Monuments or Habitat/Species Management Areas as defined by the World Conservation Union's (IUCN) Guidelines for Protected Area Management Categories, with the exception of projects specifically intended to improve the environment and those meeting recognized environmentally appropriate ecotourism guidelines. Investors may obtain a copy of these guidelines from OPIC.

Appendix G—1997 World Bank Group: Pollution Prevention and Abatement Handbook

1. Aluminum Manufacturing
2. Base Metal and Iron Ore Mining
3. Breweries
4. Cement Manufacturing
5. Chlor-Alkali Plants
6. Coal Mining and Production
7. Coating Manufacturing (in preparation)
8. Coke Manufacturing
9. Construction Terminals (in preparation)
10. Copper Smelting
11. Dairy Industry
12. Detergent Manufacturing (in preparation)
13. Dye and Pigment Manufacturing
14. Electronics Manufacturing

15. Engine-Driven Power Plants
16. Foundries
17. Fruit and Vegetable Processing
18. Fish and Shellfish Industries (in preparation)
19. Forestry Operations (in preparation)
20. General Manufacturing
21. Geothermal Power Plants (in preparation)
22. Glass Manufacturing
23. Hazardous Waste Management (in preparation)
24. Heavy Machinery (in preparation)
25. Industrial Estates
26. Infrastructure (in preparation)
27. Iron and Steel Manufacturing
28. Lead and Zinc Smelting
29. Meat Processing and Rendering
30. Medical Waste Management (in preparation)
31. Metal Fabrication (in preparation)
32. Mini Steel Mills
33. Mixed Fertilizer Plants
34. Monitoring
35. Municipal Waste Management (in preparation)
36. Nickel Smelting and Refining
37. Nitrogenous Fertilizer Plants
38. Oil and Gas Development-Onshore
39. Oil and Gas Development-Offshore (in preparation)
40. Pesticides Formulation
41. Pesticides Manufacturing
42. Petrochemicals Manufacturing
43. Petroleum Refining
44. Pharmaceuticals Manufacturing
45. Phosphate Fertilizer Plants
46. Pipelines and Terminals (in preparation)
47. Plywood and Wood Products Industry (in preparation)
48. Precious Metal Industry (in preparation)
49. Printing
50. Pulp and Paper Mills
51. Rubber and Plastic Manufacturing (in preparation)
52. Small Boilers (in preparation)
53. Sugar Manufacturing
54. Tanning and Leather Finishing
55. Textiles
56. Thermal Power-Guidelines for New Plants
57. Thermal Power-Guidelines for Existing Plants
58. Tourism and Hospitality Development
59. Vegetable Oil Processing
60. Wood Preserving

Appendix H—Format for Host Government Notification Letter

[date]
Minister of State for Environment,
Republic of _____

Dear Mr./Ms. Minister: The Overseas Private Investment Corporation (OPIC) is proposing to issue financing and insurance for an investment in [name of host country] by a U.S. company. OPIC is an agency of the United States Government, with the mandate of facilitating economically productive and environmentally sound U.S. private investments in developing countries and emerging economies.

OPIC is required by U.S. law to notify appropriate host government authorities of investments under consideration for OPIC assistance, which have the potential to pose significant consequences for the

environment. The project that is the subject of this notification involves an investment by [name of applicant] in the construction and operation of [concise description of project].

The potential environmental hazards associated with [industry sector] includes [air, water, solid/hazardous waste, etc./].

Based on information provided to us by the investor, the project does not appear to pose significant hazards to the environment, public health, or safety resulting from the diverse impacts of [industry sector].

OPIC is also required to provide your government with information about standards and guidelines applicable to such investments that have been developed by international organizations or by federal environmental regulatory authorities of the United States. The relevant World Bank and U.S. Environmental Protection Agency (EPA) guidelines are attached for your information.

We understand, of course, that the project will be subject to the laws of [name of host country] with respect to the protection of the environment as well as occupational health and safety.

If you have any questions about OPIC's environmental assessment of this project, you may contact OPIC's Director of Environmental Affairs at the above address.

Sincerely yours,

[Name],

President and Chief Executive Officer.

Enclosures

APPENDIX I—GLOSSARY

Environmental Assessment (EA)—analytical tool used to anticipate potential impacts of particular activities on the natural environment and on humans dependent on that environment

Initial Environmental Audit (I+EAU)—assessment of environmental and related human impacts of pre-existing or ongoing activities

Environmental Impact Assessment (EIA)—comprehensive analytical effort designed to anticipate environmental impacts of major projects having the potential to have significant, diverse and irreversible impacts on the natural environment and on humans dependent on that environment

Environmental Impact Statement (EIS)—comprehensive analytical effort designed to anticipate environmental impacts of major federal actions affecting the global commons outside of the jurisdiction of any nation

Environmental Management and Monitoring Plan (EMMP)—systematic program designed to prevent, mitigate and monitor anticipated environmental and related human impacts of prospective and ongoing activities

Environmental Remediation Plan (ENR)—systematic program designed to reverse adverse environmental impacts of previous activities at a site

European Bank for Reconstruction and Development (EBRD)—multilateral development bank established in 1990 to assist in the economic, social and political development of Central and Eastern Europe and the New Independent States of the former Soviet Union. Other members include the European Community and the United States.

Export-Import Bank of the United States (Exim)—independent U.S. government agency that helps finance the overseas sales of U.S. goods and services

Financial Intermediary (FI)—investment funds, bank or other financial institution that lends directly to projects or investment funds guaranteed or insured by OPIC that invest in projects (“subprojects”) subject to OPIC approval on policy grounds.

Foreign Assistance Act (FAA)—Foreign Assistance Act of the United States

International Finance Corporation (IFC)—affiliate of the World Bank group that makes loans to and investments in private sector projects in developing countries and emerging markets

ISO 14000—basic elements of an effective environmental management system as developed by the Technical Committee of the International Organization for Standardization (ISO) to provide organizations worldwide with a common approach to environmental management.

Major Hazard Assessment (MHA)—analytical tool used for identifying, analyzing and controlling potential major hazards to

human health and safety resulting from storage and processing of toxic and hazardous substances

Natural Forests—An area in which the cover has evolved naturally so as to provide significant economic and/or ecological benefits, or one that is sufficiently advanced in regeneration and recovery from disturbance as to be judged in near-natural condition. Forests that are not the result of man-made plantations, tree farms or similar operations. All primary and secondary forests are considered natural forests.

Primary Forests—Relatively intact forest that has been essentially unmodified by human activity for the past sixty to eighty years; an ecosystem characterized by an abundance of mature trees. Human impacts in such forests have been limited to low levels of artisanal hunting, fishing and harvesting of forest products, and, in some cases, to low density, migratory shifting agriculture.¹⁹

¹⁹Tropical dry forest is deciduous to semi-evergreen during the dry season, has a canopy with few epiphytes, and ranges from 2 to 40 meters in

World Bank (WB)—International Bank for Reconstruction and Development.

(Authority: 22 U.S.C. § 2191(k)(2), as amended)

James R. Offutt,

Assistant General Counsel for Administrative Affairs.

[FR Doc. 98-4802 Filed 2-24-98; 8:45 am]

BILLING CODE 3201-01-U

height in its undisturbed state. In the rainy season it receives 500 to 3500 millimeters of precipitation, and the rain-free dry season is 4 to 8 months long. Tropical moist forests is generally defined as forest in areas that receive not less than 100mm of rain in any month for two out of three years and have an annual mean temperature of 24 degrees Celsius or higher. Also included in this category, however, are some forests (especially in Africa) where dry periods are longer but high cloud cover causes reduced evapotranspiration. Rene Dubos Center for Human Environment's Environmental Encyclopedia; IFC OP 4.36. "Forestry."