FOIA Number: 2013-0365-F

FOIA MARKER

This is not a textual record. This is used as an administrative marker by the William J. Clinton Presidential Library Staff.

Collection/Record Group: Clinton Presidential Records

Subgroup/Office of Origin: Counsel Office

Series/Staff Member: Shelli Peterson

Subseries:

OA/ID Number: 21947

FolderID:

Folder Title:
Mexico City [1]

Stack:	Row:	Section:	Shelf:	Position:
S	115	4	9	2

Shelly

threshold
987

Double waiver

upon execution, $20 mill transfer to Child Survival subcap which is contained w/in $20 mill

- between 2500 - 4000 recipents
- that get $ from dept. services

cap of $17.5 mill

2.45 mill

$15 mill cap for those who cant/won't certify
20 mill transfer

PopCon. - US NGO

get 10 mill - dont perform or lobby

X

$ 1 mill

Y

Z

We loose $20 mill off top

and must limit $

to perfoming/lobbying

to $15 mill

J. Dennis Hastert
Fourteenth District
Illinois

(202) 225-0600

Office of the Speaker
United States House of Representatives
Washington, DC 20515

FAX COVER LETTER

ATTENTION: Shelly Peterson

FROM: Policy Office Staff

___	Ralph Hellman	___	Chris Scheve
✓	Bill Inglee	___	Tim Kurth
___	Amy Jensen	___	Katherine Kless
___	David Thompson	___	Christin Cummings
___	Bill Hughes	___	Jonathan Moore

DATE: 11/16/99

FAX NUMBER: 456-7024

TOTAL NUMBER OF PAGES (Including Cover): 2

Comments:

Shelly – Scott asked me to add the following to the "cap" and said he had talked to Steve about the issue. I added the report to the committees as a technical add since I realized hadn't specified who actually received the waiver in the Congress. Your state counsel should look at it, since I just want to use a standard formulation.

Bill

Mark Murray
225
9476

Bill
Fax 647
7096

Who do you get certs from?
if want from orgs like IPPF, which does
– things ~~from~~

toxif. issue comes w/ limitation
– prime must be treated for own actions, not for actions of sub.

Ask foreign NGO's to
fill out compliance doc
wont ask US NGO's

~~IPPF~~

(1) Pathfinder $10 mill budget
10 subgrants of $1 mill
get certs from all 10
1 says provide abortion
PF says we will fund $1 mill anyway. $1 mill goes to $15 cap, rest doesnt

~~IPPF~~

if 10th org doesnt take $, can be reprogram'd so its clean or can give 1/2

Was it covered in 1986?

only liable if fed funds flowthrough.

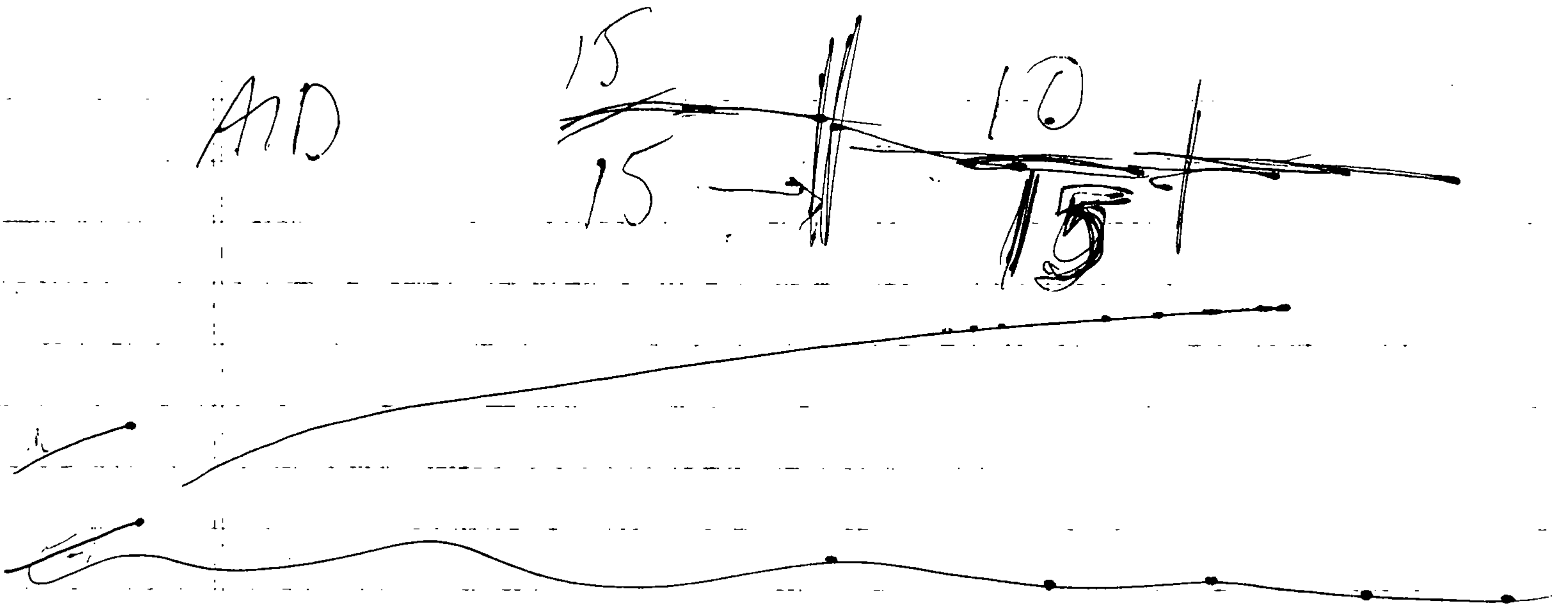
(2) Foreign Prime Grantee makes ~~sub~~grants to org to do lobbying.
Does PG total from US count against $15 mill? ~~yes~~

(3) Foreign PG gives to grantee for contraceptives. That grantee gets $ from Sweden for lobbying. Answer should be no.

In

no

AID



- 501 c (3) definition instead of c Smith language
- get rid of metering

<u>threshhold</u> vs. <u>definition</u>

Possible legislative Options

1. Sacrifice IPPF, use money for other family planning orgs

   Pros

   Administratively easy

   Addresses principle group right complains about.

   Cons

   May be politically hard to swallow

   Singles out one group with lots of support

2. Smith language with double waiver for performing and lobbying with lump sum reduction off budget if President issues waiver, but no reduction for individual grantees.

   Pros

   Administratively Easy

   Cons

   if lump sum exceeds ___, . . .

3. Smith language with double waiver for performing and lobbying with % reduction off all grantees if President issues waiver + transfer $ to child survival fund (Post Abortion Care, Preventing Cervical Cancer)

   Pros

   Administratively easy

   Cons

4.

cuts from all who certify they dont spend a threshhold amount then lobbying, their grant is reduced by X%, but goes back up chain to be redistributed

4. Smith language with double waiver and hits to those who perform or "lobby". (or spend substantial portion (%) of funds on lobbying or X$ on lobbying)
   - limit to those grantees and subgrantees who receive at least $____ in grants
   If meet that threshhold and cant certify that dont lobby or spend substantial portion of funds on lobbying, receive only 95% of 98 funding (or some other formula)

Pros if threshhold amount high enough, can use broad lobbying language (Smith proposal)

Cons
- if threshhold drops too low, need to substitute 501 (c)(3) type lobbying language
- $ goes back to 1st level of good actor for redistribution but only applies to bad actor.

5. Smith language with no (or low) threshhold but require certification from grantee only, not subgrantees

6. Flip waivers, fix so ~~all~~ no attribution
   no waiver for those performing, waive w/o attribution for lobbying.

7. Keep Smith language, add double waiver, group that lobbies takes MC, but have lobbying in 3rd section defined differently.

8. Stand-alone of no waiver for lobbying - with very narrow definition of lobbying

Other issues

1) sunset provision
2) remove metering requirement

3

Office of the Legal Adviser
Department of State
Washington, DC 20520-6310

FAX COVER SHEET

DATE: 3/12/98 12:30 p.m. (Round II)

TO: Bill Marshall

PHONE NUMBER: 456-6219

FAX NUMBER: 456-5055

FROM: Bill Lissinger

PHONE NUMBER: 647-5036

FAX NUMBER: 647-1037

SUBJECT: Pope Program

MESSAGE:
Bill here is the revised set of papers. Let me know if you have any additional comments. Bill

NUMBER OF PAGES: 17 **(PLUS COVERSHEET)**

Possible Legislative Options

The following suggests various options that might be considered in addition to Gilman-Pelosi and the various permutations previously developed.

1. Lobbying

"Lobbying" appears to be at the center of the controversy, with Smith and his supporters asserting that USG funds support international NGO's "lobbying" to change their local laws with respect to abortion. The issue might be resolved by reaching a compromise on the definition of "lobbying." If the scope of "lobbying" could be defined sufficiently narrowly, a compromise could be struck that accepted the Smith language with respect to such activities. Various possible compromise definitions would be as follows:

- Narrow Definition: Limit Lobbying to the "Buttonholing" Paradigm;
- Alternative Narrow Definition: Limit Lobbying to Grassroots Organizing around Specific Legislation but Allow "Buttonholing";
- Moderately Narrow Definition: Limit Lobbying to "Buttonholing" and Grassroots Organizing;
- Broad Definition that Prohibits Lobbying and Certain Forms of Advocacy.

Draft statutory language for each of these possible compromise approaches is contained in a separate paper entitled "Alternative Lobbying Language."

2. Disclosure of "Lobbying" Activity

Enact legislation patterned after the Lobbying Disclosure Act, 2 U.S.C. 1601, that would require "lobbying" activity be disclosed.

3. Phase-out "Lobbying" Activity

Enact legislation under which current grants would be conditioned on NGO's pledging to end "lobbying" by the end of a particular time frame, e.g., three years. During this time, impacted recipients could either cease such activities or spin them off to a 501(c)(4)-type organization. This approach could include penalties for organizations that continued to "lobby," including refunding past USG receipts, penalties and/or debarment. It might also include funding/assistance to facilitate transitioning such activities to other organizations.

4. Fiscal Incentives Applicable But Not Specific to "Lobbying"

Various compromises could be struck that would encourage, but not compel, NGO's to stop providing abortions or "lobbying" on the issue.

a. Dollar for Dollar Reduction in Funding

Funding could be reduced on a dollar for dollar basis for the provision of abortion services and/or for "lobbying" on the issue of abortion. One approach along these lines might be to enact legislation that mirrors section 307 of the Foreign Assistance Act of 1961, as amended. This provision requires funding to certain programs of International Organizations be reduced by the proportionate share that such programs would devote resources to particular pariah states, e.g., Burma, Iraq, North Korea.

A similar approach might be adopted with respect to NGO's that perform or "lobby" on abortion. AID would gather information from each recipient of USG funds on the proportionate amount of their budgets dedicated to such activities and reduce the USG contribution proportionately.

b. Incentive Plans

Financial incentives could be created to encourage organizations to reduce their level of activity with respect to the provision of abortion and/or "lobbying" on the issue. Under this approach, NGO's would receive a bonus in addition to their customary funding in the event they cease/reduce such activities.

This assumes an overall increase in appropriations. Alternatively, a lower base would be guaranteed to NGO's in order to stay within anticipated appropriations. Depending on how such a program were structured, the bonus might bring recipients up to or beyond existing funding.

5. Affirmative Steps to Prevent Abortion

Enact legislation that discourages abortion. This might be accomplished in any of the following ways:

a. Reverse the Language of Gilman-Pelosi

The optics of Gilman-Pelosi might be improved by reversing its order so that it would read: "or to organizations that utilize these funds to prevent abortion as a method of family planning and do not promote abortion as a method of family planning."[1] Similar changes would be made to the second part of Gilman-Pelosi (that modifies the lobbying ban) as well.

b. Reporting Requirements

Require recipients of USG funds to report on the steps they undertook to "prevent abortion as a method of family planning."

c. Require Counseling On the Issue of Abortion

Current law requires that NGO's providing sterilization services using USG funding ensure that the individual has voluntarily come to the treatment facility and has given an informed consent to the procedure. 48 C.F.R. § 752.7016. Informed consent is defined to include voluntary assent after being advised of:

> the surgical procedures to be followed, the attendant discomforts and risks, the benefits to be expected, the availability of alternative methods of family planning, the purpose of the operation and its irreversibility, and the fact that the consent can be withdrawn at any time prior to the operation.

Id. It does not appear that there are similar counseling requirements prior to the performance of abortion -- presumably because abortions are not paid for with USG funds

---

[1] As originally drafted, the first portion of Gilman-Pelosi reads "or to organizations that do not promote abortion as a method of family planning and that utilize these funds to prevent abortion as a method of family planning."

except in the limited circumstances of rape, incest or where the mother's life is in danger. One compromise might be to require that NGO's provide such counseling in advance of any abortions (even when using their own funds to carry out the procedure).

6. Enact Smith Restrictions with Double Waiver

Accede to the Smith language, preferably by appropriations rather than authorization law, but include a provision for a Presidential waiver on both providing abortion as well as "lobbying" on the issue ("a double waiver").

7. Enact Smith Restrictions with Single Waiver (for Lobbying Only)

Enact Smith language into law with waiver only for lobbying. Absent enactment of Gilman-Pelosi, this would make organizations that provide abortion services ineligible for USG funds.

8. Metering

Return to previous metering regimes.

9. Audit Programs

Establish by law or executive order a requirement for USAID to retain a well-known, independent accounting firm to conduct an in-depth analysis of the issues raised in the on-going international population program debate, i.e. fungibility of USG funding.

10. Target Specific Organizations As Ineligible for Funding

Cut off organizations that seem to be at the center of the controversy, e.g., International Planned Parenthood Federation and/or UNFPA, in order to protect the rest of the program.

11. Voluntary Commitments by Organizations That They will Cease "Lobbying" Efforts

Seek a voluntary commitment from USG fund grantees that they will not engage in any lobbying activities.

Alternative Lobbying Language

The following suggests different ways to legislatively define the term "lobbying." In each case, two versions are suggested, one that modifies the previously proposed Smith language, and another which would be a free-standing provision, i.e., without Smith language. In a number of instances more than one statutory model was used. In each case, the bolded text represents new legislative language.

1. Narrow Definition Limit Lobbying to the "Buttonholing" Paradigm

The narrow definition for the term "lobbying" would be one which turns on contacts made with government officials to influence legislation. There are two statutory models that might prove useful. The first draws heavily on section 4911(d) of the Internal Revenue Code (IRC), 26 U.S.C. § 4911(d), which defines the term "influencing legislation" as it is used in IRC section 501(c)(3). The second model draws on the Lobbying Disclosure Act (LDA), 2 U.S.C. § 1601, et seq. Draft language using both models follows.

Either approach would permit NGO's to participate in democratic processes up to a point. They could participate in official debates on government policy as well as grass roots organizing. However, they could not "lobby" in the traditional sense of buttonholing government officials and advocating a particular viewpoint.

Overall, the IRC model is the more elegant of the two. However, it focuses only on legislation. By contrast, the LDA focuses on both legislation and executive branch policy making.

a. Using the Internal Revenue Code Model

- **With Smith Language**

  2) LOBBYING ACTIVITIES. -(A) Notwithstanding section 614 of this Act or any other provision of law, no funds appropriated for population planning activities or other population assistance may be made available for any foreign private,

nongovernmental, or multilateral organization until the organization certifies that it will not, during the period for which the funds are made available, violate the laws of any foreign country concerning the circumstances under which abortion is permitted, regulated, or prohibited, or engage in any **attempt to influence any legislation through communication with any member or employee of a legislative body, or with any government official or employee who may participate in the formulation of the legislation.**

1. For purposes of this section, the term "influence any legislation", with respect to an organization does not include --

a. making available the results of academic or scientific analysis, study, or research;

b. providing of technical advice or assistance (where such advice would otherwise constitute the influencing of legislation) to a governmental body or subdivision thereof in response to a written request by such body or subdivision, as the case may be;

c. appearances before, or communications to, any legislative body with respect to a possible decision of such body which might affect the existence of the organization, its powers and duties;

d. any communication with a government official or employee, other than --

(i) a communication with a member or employee of a legislative body (where such communication would otherwise constitute the influencing of legislation), or

(ii) a communication the principal purpose of which is to influence legislation.[1]

- **Without Smith Language**

Notwithstanding section 614 of this Act or any other provision of law, no funds appropriated for population planning activities or other population assistance may be made available for any foreign private, nongovernmental, or multilateral organization if the organization engages in any attempt to influence any legislation through communication with any member or employee of a legislative body, or with any government official or employee who may participate in the formulation of the legislation.

[Subpart 1 noted above would follow identically in this version]

b. **Using Legislative Disclosure Act Model**

- **With Smith Language**

2) LOBBYING ACTIVITIES. -(A) Notwithstanding section 614 of this Act or any other provision of law, no funds appropriated for population planning activities or other population assistance may be made available for any foreign private, nongovernmental, or multilateral organization until the organization certifies that it will not, during the period for which the funds are made available, violate the laws of any foreign country concerning the circumstances under which abortion is permitted, regulated, or prohibited, or engage in any **lobbying contact with regard to the formulation, modification or adoption of legislation or any regulation, executive order, program, policy or position of a foreign**

---

1 Bold language replaces: "activity or effort to alter the laws or government policies of any foreign country concerning the circumstances under which abortion is permitted, regulated, or prohibited."

government regarding the circumstances under which abortion is permitted, regulated, or prohibited.

1. For purposes of the preceding provision, lobbying contact means any oral or written communication with any official of a foreign government.

2. The term lobbying contact does not include a communication that is --

i. made in a speech, article, publication or other material that is distributed and made available to the public, or through radio, television, cable television or other medium of mass communication;

ii. a request for a meeting, a request for the status of an action, or any other similar administrative request if the request does not include an attempt to influence a government official;

iii. testimony given before legislative hearing or submitted for inclusion in the public record of a legislative hearing;

iv. information provided in writing in response to an oral or written request by a government official for specific information;

v. required by subpoena, civil investigative demand or otherwise compelled by statute, regulation, or other action of the legislature or an administrative agency;

vi. made in response to a notice in a government publication soliciting communications from the public and directed to the agency official specifically designated in the notice to receive such communications;

vii. made to an official in an agency with regard to --

(I) a judicial proceeding or a criminal or civil law enforcement inquiry, investigation, or proceeding; or

(II) a filing or proceeding that the Government is specifically required by statute or regulation to maintain or conduct on a confidential basis,

if that agency is charged with responsibility for such proceeding, inquiry, investigation, or filing;

viii. a written comment filed in the course of a public proceeding or any other communication that is made on the record in a public proceeding;

ix. a petition for agency action made in writing and required to be a matter of public record pursuant to established agency proceedings;

x. made on behalf of an individual with regard to that individual's benefits, employment, or other personal matters involving only that individual.[2]

- **Without Smith Language**

Notwithstanding section 614 of this Act or any other provision of law, no funds appropriated for population planning activities or other population assistance may be made available for any foreign private, nongovernmental, or multilateral organization if the organization engages in any lobbying contact with regard to the formulation,

---

[2] Bold language replaces: "activity or effort to alter the laws or government policies of any foreign country concerning the circumstances under which abortion is permitted, regulated, or prohibited."

modification or adoption of legislation or any regulation, executive order, program, policy or position of a foreign government regarding the circumstances under which abortion is permitted, regulated or prohibited.

[Subparts 1 and 2 noted above would follow identically in this version]

2. Alternative Narrow Definition: Define to Include Grassroots Organizing But Allow "Buttonholing"

Section 4911(d)(1) of the Internal Revenue Code (IRC), 26 U.S.C. § 4911(d)(1), identifies two distinct activities that constitute "influencing legislation" as that term is used in section 501(c)(3)of the IRC: a) efforts to influence specific legislation through grassroots organizing; and, b) efforts to influence legislation through communication with any member or employee of a legislative body. The options above focused on the second activity, influencing legislation through "buttonholing."

One variation would be to do the reverse -- define "lobbying" to include grassroots organizing but not buttonholing.[3]

- <u>**With Smith Language**</u>

> 2) LOBBYING ACTIVITIES. -(A) Notwithstanding section 614 of this Act or any other provision of law, no funds appropriated for population planning activities or other population assistance may be made available for any foreign private, nongovernmental, or multilateral organization until the organization certifies that it will not, during the period for which the funds are made available, violate the laws of any foreign country concerning the circumstances under which abortion is permitted, regulated, or prohibited, or engage in any **attempt to influence any legislation through an attempt to affect the opinions of the general public or any segment thereof.**
>
> 1. **For purposes of this section, the term "influence any legislation", with respect to an organization does not include --**

---

[3] Because the Lobbying Disclosure Act does not address grassroots organizing, it does not provide a suitable legislative model here. Accordingly, this approach draws exclusively from IRC Code § 4911(d)(1)(A).

a. making available the results of academic or scientific analysis, study, or research;

b. providing of technical advice or assistance (where such advice would otherwise constitute the influencing of legislation) to a governmental body or subdivision thereof in response to a written request by such body or subdivision, as the case may be;

c. appearances before, or communications to, any legislative body with respect to a possible decision of such body which might affect the existence of the organization, its powers and duties;

d. communications between the organization and its bonafide members with respect to legislation or proposed legislation of direct interest to the organization and such members, so long as such communication does not directly encourage such member to communicate with any member or employee of a legislative body, or with any government official or employee who may participate in the formulation of legislation in order to influence any legislation.[4]

- <u>**Without Smith Language**</u>

Notwithstanding section 614 of this Act or any other provision of law, no funds appropriated for population planning activities or other population assistance may be made available for any foreign private, nongovernmental, or multilateral organization if the organization engages in any attempt to influence any legislation through an

[4] Bold language replaces: "activity or effort to alter the laws or government policies of any foreign country concerning the circumstances under which abortion is permitted, regulated, or prohibited."

attempt to affect the opinions of the general public or any segment thereof.

[Subpart 1 noted above would follow identically in this version]

3. Moderately Narrow Definition: Limit Lobbying to "Buttonholing" and Grassroots Organizing

A somewhat broader definition of lobbying would follow the model contemplated by section 501(c)(3) the Internal Revenue Code ("IRC"). Under this model, lobbying would include not only the button-holing paradigm identified above but also grassroots efforts to promote particular legislation. Thus, it would prohibit grassroots organizing for *particular* legislation but not for a general position, such as, for example, that abortion should be "safe, legal and rare."

The words of the statute, by themselves, do not make this clear. One must instead look elsewhere in the IRC as well as to the gloss developed by the Internal Revenue Service and Courts in interpreting the statute. Reference in the legislative history to the section 501(c)(3) lineage is important. Language accomplishing this is provided below.

- <u>With Smith Language</u>

2) LOBBYING ACTIVITIES. -(A) Notwithstanding section 614 of this Act, or any other provision of law, no funds appropriated for population planning activities or other population assistance may be made available for any foreign private, nongovernmental, or multilateral organization until the organization certifies that it will not, during the period for which the funds are made available, violate the laws of any foreign country concerning the circumstances under which abortion is permitted, regulated, or prohibited, **and will not have any part of its activities involve carrying on propaganda, or otherwise attempting, to influence legislation with respect to abortion, or involves participating in, or intervening in (including the publishing or distributing or**

statements), of any political campaign with respect to abortion.[5]

Statement of Managers Revision

Activity or effort attempting to influence legislation with respect to abortion. The language is intended to be comparable to restrictions that exist on lobbying activity by tax exempt organizations under 26 U.S.C. § 501(c)(3). Reference should therefore be made to this provision as well as 26 U.S.C. § 4911(d)(1).

- <u>**Without Smith Language**</u>

Notwithstanding section 614 of this Act or any other provision of law, no funds appropriated for population planning activities or other population assistance may be made available for any foreign private, nongovernmental, or multilateral organization if any part of its activities involve carrying on propaganda, or otherwise attempting, to influence legislation with respect to abortion, or involves participating in, or intervening in (including the publishing or distributing or statements), any political campaign with respect to abortion.

Statement of Managers Revision

Same as above

[5] Bold language replaces: "or engage in any activity or effort to alter the laws or government policies of any foreign country concerning the circumstances under which abortion is permitted, regulated, or prohibited."

4. Broad Definition That Prohibits Overt Lobbying and Other Forms of Advocacy

One of the concerns posed by the Smith language is that its broad terminology might be construed to extend to activities that one would not ordinarily consider "lobbying." Prior statements made by Representative Smith and others suggest that they may intend their language to extend to such activities as attending a conference that touches on abortion. One approach might be to set out in the statute itself what activities are *not* considered "lobbying." The language below seeks to do this.

- **With Smith Language**

2) LOBBYING ACTIVITIES -(A) Notwithstanding section 614 of this Act or any other provision of law, no funds appropriated for population planning activities or other population assistance may be made available for any foreign private, nongovernmental, or multilateral organization until the organization certifies that it will not, during the period for which the funds are made available, violate the laws of any foreign country concerning the circumstances under which abortion is permitted, regulated, or prohibited, or engage in any activity or effort to alter the laws or governmental policies of any foreign country concerning the circumstances under which abortion is permitted, regulated, or prohibited. **Such activities do not include sponsoring or attending conferences or other educational programs relating to the topic of abortion, making available the results of academic or scientific analysis, study, or research on abortion, or providing technical advice or assistance to a governmental body or subdivision thereof in response to a written request by such body or subdivision on the issue.**

- **Without Smith Language**

(A) Notwithstanding section 614 of this Act or any other provision of law, no funds appropriated for population planning activities or other population assistance may be made available for any foreign private, nongovernmental, or multilateral organization if the organization engages in any activity or effort to alter the laws or governmental policies of any foreign country concerning the circumstances under which abortion is permitted, regulated, or prohibited. **Such activities do not include sponsoring or attending conferences or other educational programs relating to the topic of abortion, making available the results of academic or scientific analysis, study, or research on abortion, or providing technical advice or assistance to a governmental body or subdivision thereof in response to a written request by such body or subdivision on the issue.**

Options

Dept of State

1. Self-certification. Require organizations to certify that they will not promote abortion as a method of family planning and will utilize funds to prevent abortion as a method of family planning.

2. Presidential-certification. Require the President to make an affirmative finding that that the grantees' activities, in the aggregate, do not constitute efforts to alter or amend that law and/or government policies of a foreign country regarding the circumstances under which abortion is permitted, regulated, or prohibited.

4. Mandate language in funding agreements that would require that agreements will be terminated if a substantial part of the organization's activities involve attempting to carry on propaganda or otherwise attempt to influence legislation.

5. Require a dollar-for-dollar reduction of funding for foreign NGOs that use their private funds to lobby to alter abortion laws.

New Options

1. Sanctions --

a. termination of aid
b. refund
c. ineligibility to receive a grant for two years
d, fine

2. New language

Funding would be made available to organizations that:

a. do not promote abortion as a family planning method or alternative and that utilize these funds to prevent abortion as a family planning method or alternative.

b. do not promote or encourage abortion as a family planning method or alternative and that utilize these funds to prevent, and discourage, the use of abortion as a family planning method or alternative.

c. actively utilize these funds to prevent and discourage the use of abortion as a family planning method or alternative and that do not encourage or promote abortion as a family planning method or alternative. (clauses have been inverted to emphasize grantees' obligation to work to reduce abortions)

AMENDMENT TO H.R. ____, AS REPORTED (FOREIGN OPERATIONS APPROPRIATIONS, 2000) OFFERED BY MR. SMITH OF NEW JERSEY

At the end of the bill, insert after the last section (preceding the short title) the following:

LIMITATION ON FUNDS FOR FOREIGN ORGANIZATIONS THAT PERFORM OR PROMOTE ABORTION

SEC. ____. (a) Section 104 of the Foreign Assistance Act of 1961 (22 U.S.C. 2151b) is amended by adding at the end the following:

"(h) RESTRICTION ON ASSISTANCE TO FOREIGN ORGANIZATIONS THAT PERFORM OR ACTIVELY PROMOTE ABORTIONS.—

"(1) PERFORMANCE OF ABORTIONS.—(A) Notwithstanding section 614 of this Act or any other provision of law, no funds appropriated for population planning activities or other population assistance may be made available for any foreign private, nongovernmental, or multilateral organization until the organization certifies that it will not, during the period for which the funds are made available, perform abortions in any foreign country, except where the life of the mother would be endangered if the pregnancy were carried to term or in cases of forcible rape or incest.

"(B) Subparagraph (A) may not be construed to apply to the treatment of injuries or illnesses caused by legal or illegal abortions or to assistance provided directly to the government of a country.

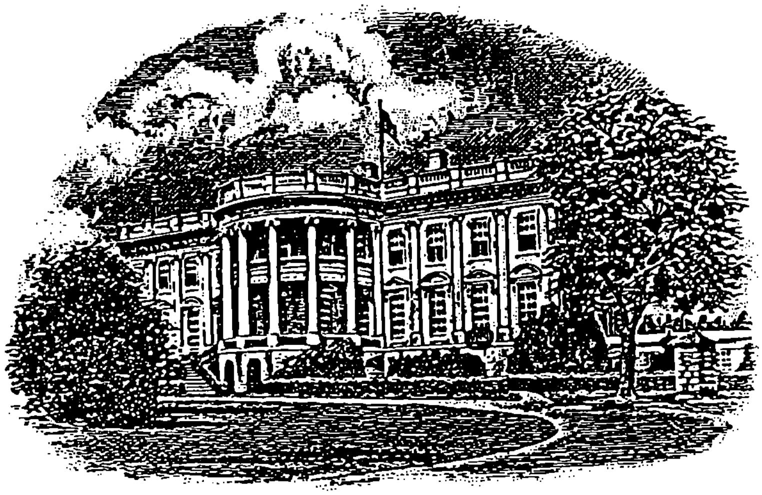
"(2) LOBBYING ACTIVITIES.—(A) Notwithstanding section 614 of this Act or any other provision of law, no funds appropriated for population planning activities or other population assistance may be made available for any foreign private, nongovernmental, or multilateral organization until the organization certifies that it will not, during the period for which the funds are made available, violate the laws of any foreign country concerning the circumstances under which abortion is permitted, regulated, or prohibited, or engage in any activity or effort to alter the laws or governmental policies of any foreign country concerning the circumstances under which abortion is permitted, regulated, or prohibited.

"(B) Subparagraph (A) shall not apply to activities in opposition to coercive abortion or involuntary sterilization.

"(3) APPLICATION TO FOREIGN ORGANIZATIONS.—The prohibitions of this subsection apply to funds made available to a foreign organization either directly or as a subcontractor or subgrantee. ~~and the certifications required by paragraphs (1) and (2) apply to activities in which the organization engages either directly or through a subcontractor or subgrantee.”.~~

(b) The President may waive the provisions of section 104(h)(1) of the Foreign Assistance Act of 1961 (relating to population assistance to foreign organizations that perform abortions in foreign countries), as added by subsection (a), for any fiscal year.

The White House



Office of the Counsel to the President
Facsimile Transmission

Date: 11/15

To: Bill

Facsimile Number: 225-5646 Total Pages: 3

From: Michelle Peterson

Phone: (202) 456-7804

Fax: (202) 456-7024

Note: As we discussed.

3a

through communication with any member or employee of a legislative body, or with any government official or employee who may participate in the formulation of the legislation.

(2) the normalization of relations between the "Federal Republic of Yugoslavia" (Serbia and Montenegro) and the United States requires, among other things, that President Milosevic and the leadership of Serbia—

(A) promote the building of democratic institutions, including strengthening the independent news media and respecting the rule of law;

(B) promote the respect for human rights throughout the "Federal Republic of Yugoslavia" (Serbia and Montenegro); and

(C) promote and encourage free, fair, and equal conditions for the democratic opposition in Serbia.

SEC. 1815. FUNDS MADE AVAILABLE UNDER CHAPTER 4 OF PART II OF THE FOREIGN ASSISTANCE ACT OF 1961.

Not less than $2,000,000 shall be made available under chapter 4 of part II of the Foreign Assistance Act of 1961 (22 U.S.C. 2346; relating to the economic support fund), for fiscal years 1998 and 1999 to carry out the programs and activities under the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 (22 U.S.C. 6021 et seq.) and the Cuban Democracy Act of 1992 (22 U.S.C. 6001 et seq.).

SEC. 1816. FOREIGN ORGANIZATIONS THAT PERFORM OR PROMOTE ABORTION; FORCED ABORTION IN THE PEOPLE'S REPUBLIC OF CHINA.

(a) Section 104 of the Foreign Assistance Act of 1961 is amended by adding at the end the following new subsection:

"(h) RESTRICTION ON ASSISTANCE TO FOREIGN ORGANIZATIONS THAT PERFORM OR ACTIVELY PROMOTE ABORTIONS.—

"(1) PERFORMANCE OF ABORTIONS.—

"(A) Notwithstanding section 614 of this Act or any other provision of law, no funds appropriated for population planning activities or other population assistance may be made available for any foreign private, nongovernmental, or multilateral organization until the organization certifies that it will not, during the period for which the funds are made available, perform abortions in any foreign country, except where the life of the mother would be endangered if the pregnancy were carried to term or in cases of forcible rape or incest.

"(B) Subparagraph (A) may not be construed to apply to the treatment of injuries or illnesses caused by legal or illegal abortions or to assistance provided directly to the government of a country.

"(2) LOBBYING ACTIVITIES.—(A) Notwithstanding section 614 of this Act or any other provision of law, no funds appropriated for population planning activities or other population assistance may be made available for any foreign private, nongovernmental, or multilateral organization until the organization certifies that it will not, during the period for which the funds are made available, violate the laws of any foreign country concerning the circumstances under which abortion is permitted, regulated, or prohibited, or engage in any ~~activity or effort to alter the laws or governmental policies of any foreign country~~ concerning the circumstances under which abortion is permitted, regulated, or prohibited.

attempt to influence any legislation

"(B) Subparagraph (A) shall not apply to activities in opposition to coercive abortion or involuntary sterilization.

"(3) APPLICATION TO FOREIGN ORGANIZATIONS.—The prohibitions of this subsection apply to funds made available to a foreign organization either directly or as a subcontractor or subgrantee, and the certifications required by paragraphs (1) and (2) apply to activities in which the organization engages either directly or through a subcontractor or subgrantee.".

(b) Section 301 of the Foreign Assistance Act of 1961 is amended by adding at the end the following new subsection:

"(i) LIMITATION RELATING TO FORCED ABORTIONS IN THE PEOPLE'S REPUBLIC OF CHINA.—Notwithstanding section 614 of this Act or any other provision of law, no funds may be made available for the United Nations Population Fund (UNFPA) in any fiscal year unless the President certifies that—

"(1) UNFPA has terminated all activities in the People's Republic of China, and the United States has received assurances that UNFPA will conduct no such activities during the fiscal year for which the funds are to be made available; or

"(2) during the 12 months preceding such certification there have been no abortions as the result of coercion associated with the family planning policies of the national government or other governmental entities within the People's Republic of China.

As used in this section, the term 'coercion' includes physical duress or abuse, destruction or confiscation of property, loss of means of livelihood, or severe psychological pressure.".

(c) The President may waive the provisions of section 104(h)(1) of the Foreign Assistance Act of 1961, as amended, pertaining to population assistance to foreign organizations that perform abortions in foreign countries, for any fiscal year: Provided, That if the President exercises the waiver provided by this subsection for any fiscal year, not to exceed $356,000,000 may be made available for population planning activities or other population assistance for such fiscal year: Provided further, That the limitation in the previous proviso includes all funds for programs and activities designed to control fertility or to reduce or delay childbirths or pregnancies, irrespective of the heading under which such funds are made available.

DIVISION C—UNITED NATIONS REFORM

TITLE XX—GENERAL PROVISIONS

SEC. 2001. SHORT TITLE.

This division may be cited as the "United Nations Reform Act of 1998".

SEC. 2002. DEFINITIONS.

In this division:

(1) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term "appropriate congressional committees" means the Committee

Kate P. Donovan
09/16/98 07:43:18 PM

Record Type: Record

To: See the distribution list at the bottom of this message

cc: See the distribution list at the bottom of this message
Subject: URGENT: FOREIGN OPS SAP

House Floor action is expected **tomorrow morning around 10am** (Thurs. 9/17) on the Foreign Operations Appropriations bill. We still need to come to closure on the veto language at the beginning of the SAP (3 options numbered). The rest of the letter is identical to the conferees letter that was released last week except for the International Family Planning language (Mexico City) and the KEDO language has been made stronger. Please provide your comments by **9:30am tomorrow** (sorry for the short notice). Thanks.

September __, 1998
(House Floor)

H.R. 4569 -- FOREIGN OPERATIONS, EXPORT FINANCING, AND RELATED PROGRAMS APPROPRIATIONS BILL, FY 1999
(Sponsor: Callahan (R), Alabama;)

This Statement of Administration Policy provides the Administration's views on H.R. 4569, the Foreign Operations, Export Financing, and Related Programs Appropriations Bill, FY 1999, as reported by the House Appropriations Committee. Your consideration of the Administration's views would be appreciated

1) **[The Administration appreciates efforts by the Committee to accommodate certain of the President's priorities within the 302(b) allocation. The bill, however, is unacceptable to the Administration for a number of reasons. First, the major portion of the request for the International Monetary Fund is not approved, putting needlessly at risk U.S. and global prosperity. Second, the allocation is simply insufficient to make necessary investments in a number of key programs, including a complete lack of funding for the Korean Peninsula Energy Development Organization (KEDO). Third, there are a number of objectionable provisions in the bill, such as the restrictions on international voluntary family planning programs (the "Mexico City" restrictions) and the limitation on the President's authority to transfer funds for KEDO. For these reasons, the President would veto the bill if it were presented to him in its current form.]**

2) **[The Administration appreciates efforts by the Committee to accommodate certain of the President's priorities within the 302(b) allocation. The bill, however, is unacceptable to the Administration for the reasons described in this letter.**

Therefore, the President would veto the bill if it were presented to him in its current form.]

3a) **[The Administration appreciates efforts by the Committee to accommodate certain of the President's priorities within the 302(b) allocation. The bill, however, is unacceptable to the Administration for a number of reasons. First, the major portion of the request for the International Monetary Fund is not approved, putting needlessly at risk US and global prosperity. Second, the allocation is simply insufficient to make the necessary investments in a number of key programs, including a complete lack of funding for the Korean Peninsula Energy Development Organization (KEDO). Third, there are number of objectionable provisions in the bill, such as the limitation on the President's authority to transfer funds for KEDO. For these reasons, if the bill were presented to the President in its current form, the President's senior advisors would recommend that he veto the bill.**

3b) **The Administration strongly opposes the inclusion by the Committee of the " Mexico City" restrictions on international voluntary family planning programs in this bill. As stated in past communications on this issue, should this language be included in the final bill presented to the President, the President would veto the bill.]**

This legislation is a critical element of America's national security budget. At the dawn of a new century, America faces unique challenges and unprecedented opportunities to strengthen our national security, enhance our global leadership, extend the reach of our democratic values, and deepen our own prosperity. The challenges we face are formidable. If this bill in its current form were to become law, however, it would erode our ability to promote effectively critical American interests at home and abroad. It would require us to walk away from problems that can and must be solved. The responsibility for safeguarding our national security and exercising U.S. leadership must be foremost when allocating scarce fiscal resources. We urge the Congress to provide the leadership needed to keep America safe, strong, and prosperous.

The only way to achieve the appropriate investment level for the programs funded through this bill is to offset discretionary spending by using savings in other areas. The President's FY 1999 Budget proposes levels of discretionary spending for FY 1999 that conform to the Bipartisan Budget Agreement by making savings through user fees and certain mandatory programs to help finance this spending. In the Transportation Equity Act, Congress -- on a broad, bipartisan basis -- took similar action in approving funding for surface transportation programs paid for with mandatory offsets. In addition, this year, as in the past, such mandatory offsets have been approved by the House and Senate in other appropriations bills. We want to work with the Congress on mutually-agreeable mandatory and other offsets that could be used to increase funding for high-priority discretionary programs, including those funded by this bill.

International Monetary Fund

While the Administration welcomes the Committee's efforts to provide funding for the International Monetary Fund's (IMF's) New Arrangements to Borrow (NAB), we are extremely concerned by the Committee's failure to include in its bill the requested appropriation for the $14.5 billion U.S. share of the IMF's critically needed quota increase. Since February of this year, the President has repeatedly called on Congress to approve the full amount of his $18 billion budget request for the IMF. To reject or delay this funding not only would undermine America's leadership in the world; it also would expose American workers, savers, farmers, and businesses to unacceptable economic risks.

The IMF's financial resources are nearing historic lows, necessitating the recent activation of the IMF's emergency credit lines, the General Arrangements to Borrow (GAB), for the first time in twenty years. Without the entire $18 billion in new funding, composed of the quota increase and the U.S. share of the New Arrangements to Borrow (NAB), the IMF -- and hence the United States and the world -- will remain vulnerable if new, escalating, or spreading systemic crises occur. To protect America's economic strength, Congress must act now to pass the full quota.

The Committee's bill proposes several conditions on IMF funding that, while directed at objectives we share, are unworkable in their current form and, therefore, would have the effect of delaying indefinitely the availability of these critical resources to the IMF. We urge the Congress to respond to these concerns as the bill moves through the process.

International Family Planning

The Administration strongly opposes the "Mexico City" restrictions that are included in the Committee bill, which would prohibit foreign non-governmental organizations from receiving U.S. family planning funds if the organization uses any of its own funding from non-U.S. Government sources for abortion-related services or advocacy. The Committee bill's "Mexico City" language is even more restrictive than the provision contained in the conference report on the Foreign Affairs Reform and Restructuring Act. The Administration continues to oppose these restrictions, which would deny funding to the most experienced and qualified family planning and maternal-child health care providers.

Korean Peninsula Energy Development Organization (KEDO)

The Administration strongly objects to the Committee action deleting U.S. funds for KEDO and including language prohibiting the President from exercising his authority to transfer funds from other sources for this purpose. The Agreed Framework reached between the United States and the Democratic Peoples Republic of Korea in 1994 remains the key tool with which we are able to engage with North Korea on a range of bilateral and multilateral issues, including missile tests. The Committee's actions would allow North Korea to blame the United States for not fulfilling our commitment to the Agreed Framework and, in essence, give the North an "out" to begin reprocessing fissile material currently monitored under international safeguards. Such an action would seriously destabilize security on the Korean peninsula, place U.S. troops in greater danger, and exacerbate the Korean financial crisis.

New Independent States

As recent events have indicated, the incomplete, peaceful transition of the New Independent States (NIS) to stable, market democracies is vital to the U.S. national security. The Congress has shared this view and provided considerable support for this program in the past. The current political/economic situation in Russia highlights how great the stakes are for the United States to continue to help Russia achieve this peaceful transition. The enormous economic potential of the Caspian Basin represents great opportunities to advance our mutual goals. Therefore, the cuts embodied in the Committee's funding level for USAID assistance programs to the NIS are especially unfortunate. These cuts would make it extremely difficult to push for market reforms and support democratic forces across the region. The Administration welcomes and strongly supports the Committee's action to repeal restrictions on U.S. assistance to Azerbaijan and would strongly oppose any efforts to overturn the Committee's action. These restrictions have been a disincentive for securing peace in the Caucasus and do not serve U.S. national interests.

Middle East Assistance

The Administration welcomes the efforts of the Committee to work with us in encouraging changes in traditional levels of assistance to countries in the Middle East. We believe that Israel's initiative to reduce Economic Support Fund (ESF) assistance provides an important basis on which to build future assistance programs that meet our needs in the Middle East and beyond. However, due to the very constrained funding levels for international affairs programs, the Administration has proposed an accelerated approach to the reduction of Israel's ESF. We would encourage the Committee to give strong consideration to such an approach as the bill proceeds through the process.

Economic Support Fund

The Administration is concerned with the overall funding level for the Economic Support Fund (ESF) account. At the Committee mark, the account would not nearly have sufficient resources to continue supporting economic and political stability in Latin America, and in other emerging democracies in Africa and Asia. We strongly encourage the Committee to support a higher funding level for the ESF account as the bill moves forward. In addition, the restrictions on assistance to Haiti need to be balanced with a national interest waiver to ensure that the President has sufficient flexibility to pursue our national interests.

Global Environment Facility

The Administration is concerned with the refusal of the Committee to fund the President's request for the Global Environment Facility (GEF), which is helping to reduce long-term environmental risks that will affect all Americans. The $300 million request for GEF (of which $192.5 million is arrears) is needed to assure that the GEF does not run out of resources in FY 1999. Concerns that funding the GEF would prejudge debate on the Kyoto Climate Protocol are misplaced: the new replenishment agreement is funded at the same level as the prior one, and the GEF will continue with precisely the same broad work program that it had prior to Kyoto. The GEF is among the best vehicles that the United States has to encourage developing countries to shoulder greater responsibility for protecting both the local and global environment. It is manifestly in our interests to clear our arrears and keep the GEF running, and the Administration strongly urges the Committee to restore funding for this critical program.

Nonproliferation, Anti-terrorism, Demining, and Related Programs (NADR)

The Administration is concerned with the $64 million, or 30 percent, cut to the $216 million request for NADR. This reduction would undermine the multi-prong effort that NADR supports to reduce the proliferation threat to U.S. national and global security. Lack of funding for the Comprehensive Test Ban Treaty (CTBT) Preparatory Commission would harm U.S. national security interests as it would eliminate planned improvements in our ability to monitor nuclear testing worldwide. The recent Indian and Pakistani tests are a stark reminder of the importance of this monitoring. As well, we would be forced to reduce support for NIS science centers, demining efforts, and other related activities.

Peacekeeping Operations

The Committee has reduced the $83 million request for Peacekeeping Operations (PKO) by 25 percent. PKO provides vital assistance and support for many important national security and foreign policy activities, including commitments in Bosnia and Haiti, conflicts in Africa, and potential trouble spots such as in the Balkans. This reduction would severely limit the President's ability to respond to these and other evolving events.

Trade and Investment Financing

The Administration appreciates the Committee's effort to increase substantially the funding for the Export-Import Bank and to support the Overseas Private Investment Corporation and the Trade and Development Agency (TDA). However, Export-Import Bank funding still falls short of the level needed to meet the expected demand of U.S. exporters in FY 1999. Support for TDA, at 17 percent below the President's request, is insufficient to allow the agency to remain engaged around the world, especially given its growing program in the Caspian region.

U.S. Agency for International Development (USAID)

The Administration is concerned with the $24 million cut in the request for USAID Operating Expenses. This reduction would not only make it impossible for USAID to carry out Presidential initiatives in Africa and Latin America, but also would interfere with the agency's ability to manage its ongoing programs effectively, including congressional priorities in areas such as infectious diseases and child survival, as well as to address management priorities. In particular, this reduction, combined with the House action striking the emergency fund in the Treasury and General Government Appropriation bill, would make it difficult for USAID to implement fully its Year 2000 conversion. Even if USAID were to begin closing missions and eliminating additional positions immediately, the fixed costs of doing so would prevent AID from achieving the savings necessary in FY 1999 to respond to this cut. For these reasons, we urge the Committee to restore funding for USAID Operating Expenses.

In light of the continuing needs created by both natural disasters and ongoing civil conflicts, we urge the Committee to provide a higher level of funding for international disaster assistance. The Committee mark would cripple our efforts to respond expeditiously and effectively to countries in transition from crisis caused by political and ethnic conflict and could undercut our ability to address man-made and natural disasters.

The Administration is concerned that the Committee has not funded the modest $6 million request for credit subsidy for the Urban Environment (UE) credit program, or provided transfer authority for USAID's Development Credit Authority (DCA). As the Congress and the Administration agreed in the FY 1998 appropriations legislation, USAID has taken substantial steps towards developing the capacity to manage both its existing and future credit portfolios. We urge the Committee to restore the transfer authority for the DCA and the subsidy request for the UE program. Failure to do so would limit the ability of USAID to use credit to promote development in urban areas and to encourage the development of needed private sector financial mechanisms.

The prohibition on the use of funds from the Child Survival and Disease Programs Fund for non-project assistance, which is specifically authorized in the Foreign Assistance Act, would weaken USAID's current leadership position with bilateral and multilateral donors to encourage and support policy reforms in sub-Saharan African countries.

Exchange Stabilization Fund

The Committee bill contains a provision that would limit the President's flexibility to utilize the Exchange Stabilization Fund as necessary to protect America's economic and security interests. For this reason, and because the Exchange Stabilization Fund is not germane to the purposes of this appropriations bill, the Administration opposes this provision.

Treasury International Affairs Technical Assistance Program

The Administration is disappointed that the Committee has not funded the $5 million request for this program, which could significantly enhance the transition to stronger private sector-led growth and more efficient, transparent, and better supervised financial institutions in emerging economies, including reforming countries in Africa and financial crisis countries in Asia. Given the large potential benefits and modest cost of this program, which provides technical assistance in tax policy, development of domestic capital markets, and privatization of state enterprises, we urge the Committee to fund the request.

International Organizations and Programs (IO&P)

The Committee bill reduces the request for IO&P by $55 million and, unfortunately, eliminates funding for the U.N. Population Fund (UNFPA), which provides support for women in family planning matters in a number of countries not served by U.S. assistance programs. UNFPA does not fund abortions. The overall reduction in IO&P would limit U.S. ability to participate and support a number of international organizations.

Peace Corps

The Administration regrets that the bipartisan Peace Corps initiative to fund 10,000 volunteers by the year 2000 has not received the full request of $270 million from the Committee. However, we are heartened by report language stating that the Committee is prepared to approve a further increase should there be a reallocation of funds later in the appropriations process.

Community Adjustment and Investment Program (CAIP)

The Administration is concerned with the Committee's failure to fund the Community Adjustment and Investment Program, a program initially funded through the North American Development Bank, a multilateral development bank. The CAIP was established to help communities affected by adverse trade patterns associated with implementation of the North American Free Trade Agreement. To date, the program has assisted in more than 120 loans in 20 states, leveraging private sector financing of over $70 million. The $37 million requested would significantly bolster the CAIP's ability to continue this work, as well as to support technical assistance, grants, and micro-lending. The Administration urges the Committee to restore funding for this innovative program.

Year 2000 Conversion

In the FY 1999 Budget, the President requested more than $1 billion for Year 2000 (Y2K) computer conversion, including specific amounts in the requests for the agencies funded in this bill. In addition, the budget anticipated that additional requirements would emerge over the course of the year and included an allowance for emergencies and other unanticipated needs. On September 2nd, the President transmitted to the Congress a request for $3.25 billion in FY 1998 contingent emergency funding for Y2K computer conversion activities. This supplemental request would create a funding mechanism that is consistent with both the needs anticipated in the President's budget and the Senate's action creating a $3.25 billion contingent emergency reserve to provide the resources and the flexibility necessary to respond to critical unanticipated Y2K-related requirements. It is essential that this contingent emergency funding be enacted as quickly as possible, whether through the Treasury/General Government bill or another legislative measure moving through the process earlier, particularly in light of the decision of several Subcommittees, including the Subcommittee on Foreign Operations, not to fully fund the base requests of a number of agencies for Y2K conversion. We urge Congress to leave as much as possible of the reserve unallocated so that funds are available to address emerging needs.

Message Sent To:

Rahm I. Emanuel/WHO/EOP
John Podesta/WHO/EOP
Gene B. Sperling/OPD/EOP
Sally Katzen/OPD/EOP
Elena Kagan/OPD/EOP
Martha Foley/WHO/EOP
Ron Klain/OVP @ OVP
Joshua Gotbaum/OMB/EOP
Lisa M. Kountoupes/WHO/EOP
Kathleen A. McGinty/CEQ/EOP
Wesley P. Warren/CEQ/EOP
Kerri A. Jones/OSTP/EOP
Jeffrey M. Smith/OSTP/EOP
Todd Stern/WHO/EOP
G. E. DeSeve/OMB/EOP
RUDMAN_M @ A1@CD@VAXGTWY
Michelle Peterson/WHO/EOP

Message Copied To:

In other words, AID's regulations would impose a narrow definition of what it means to "promote abortion as a method of family planning."[2]

The problem with this approach:

This approach depends on the legal principle set out in Rust v. Sullivan[3] and other Supreme Court decisions that the Executive Branch is entitled to judicial deference when the terms of a statute are ambiguous. So long as the President's interpretation is a reasonable reading of the words chosen by Congress and does not conflict with clear legislative history, courts will defer. Here, the Administration would have to demonstrate that the words "promote abortion as a method of family planning" can reasonably be read to mean "promote abortion as a substitute for contraception."

As noted in footnote 2, there is a reasonable explanation for this interpretation. Although not free from doubt, a court would likely agree. Indeed in Rust itself, the Court found these specific words -- "abortion as a method of family planning" -- were susceptible to a differing interpretation and deferred to the Executive.

However, there is a risk -- estimated by various individuals at Justice from minimal to 30% -- that a Court would disagree and find AID's regulation arbitrary and capricious in light of the differing definition given to the phrase "abortion as a method of family planning" elsewhere in the statute. As noted, current US law prohibits the use of US funds for "the performance of abortions as a method of family planning."[4] In this context, the Administration uses a **broad definition** of the phrase so that US funds only pay for abortion in the event the mother's life is in jeopardy or the pregnancy is the result of rape or incest.

A court might conclude that Congress understood the phrase "abortion as a method of family planning" to mean one thing, not two, and that both historically and currently it gave the phrase the same broad definition, not the **narrow definition** that AID would create administratively in the context of how foreign nongovernmental organizations spend their own funds.

---

[2] There is a reasonable explanation for this narrow definition. Contraception, not abortion, is ordinarily the means promoted in planning the size of families. Organizations which do not "promote" the use of abortion in its policies as a substitute for contraception do not "promote abortion as a method of family planning" even if they recognize a woman's right to choose safe, legal abortion if the woman's family planning is not successful. As a result, AID's regulations would only target organizations that promote abortion in a highly unorthodox manner. In reality, this is a null set. No organizations that AID funds promote abortion as a substitute for contraception.

[3] 500 U.S. 173, 184-86 (1991).

[4] See, e.g., Foreign Operations Appropriations Act of 1998, §518.

* permanent law or not

- do org generally do both svcs & lobbying
- which countries over lobbying
- multilateral

Affirmative steps to prevent abortions
reports

Lobbying
anything
button hole/pr
buttonhole
pr part
disclosure

501(c)(3)
% of activities - no more than — for lobbying

3 yrs to move to (4)
refunds
penalties
debarment from gov contracts
transition money to make change
dollar for dollar reduction

Services flip waiver

Reduction of family planning $

Incentive plan if follow restrictions
variations on cutting base

Metering

Audit programs

Knocking individual grantees out

Double waiver

Require counseling (look at current regs/procedures

January 15, 1998

To: Bill Marshall

Fr: Janis Crum

Re: Various Definitions of Lobbying

The following definitions of lobbying are the result of a search of the United States Code. Code of Federal Regulations, and 1997-98 House and Senate Appropriations Bills. I have also attached some language which includes exceptions to direct and grassroots lobbying under the Internal Revenue Code.

I. Lobbying Disclosure Act, 2 U.S.C. 1601, et. seq.

"Lobbying Activities" means lobbying contacts and efforts in support of such contacts, including preparation and planning activities, research and other background work that is intended, at the time it is performed, for use in contacts, and coordination with the lobbying activities of others.

"Lobbying contact" means any oral or written communication (including an electronic communication) to a covered executive branch official that is made on behalf of a client with regard to

a) the formulation, modification, or adoption of Federal legislation (including legislative proposals);

b) the formulation, modification, or adoption of a Federal rule, regulation, executive order, or any other program, policy, or position of the United State government;

c) the administration or execution of a Federal program or policy (including the negotiation, award, or administration of a Federal contract, grant, loan, permit, or license);

d) the nomination or confirmation of a person for a position subject to confirmation by the Senate.

II. Standard Lobbying Prohibition Language From Various 1997 Appropriations Bills:

"None of the funds authorized by the amendments made by the act shall be available for any activity whose purpose is to influence legislation pending before the Congress, except that this subsection shall not prevent officers or employees of the United States or of its Departments or Agencies from communicating to members of Congress on the request of any member or to Congress, through the proper channels, requests for legislation or appropriations which they deem necessary for the efficient conduct of business." (See, e.g., HR 1271, May 1, 1997.)

Similar prohibitory language in S.10, the Violent and Repeat Juvenile Offender Act of 1997:

"No amount made available under this title to any public or private agency, organization, or institution or to any individual shall be used to pay for any personal service, advertisement, telegram, telephone communication, letter, printed or written matter, or other device intended or designed to influence a member of congress or any other federal, state or local elected official to favor or oppose any act, bill, resolution or other legislation, or any referendum, initiative, constitutional amendment, or any other procedure of congress, any state legislature, any local council or any similar governing body."

Lobbying with Appropriated Monies (18 U.S.C. 1913 (1997)): "No part of the money appropriated by any enactment of Congress shall, in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or witten matter, or other device, intended or designed to influence in any manner a Member of Congress, to favor or oppose, by vote or otherwise, any legislation or appropriation by Congress, whether before or after the introduction of any bill or resolution proposing such legislation or appropriation . . ."

III. Internal Revenue Code definitions: (See also attached definitions and exceptions)

Grassroots lobbying: "Any attempt to influence any legislation through an attempt to affect the opinions of the general public or any segment thereof." IRC sec. 4911(d)(1)(b). However, a communication does not constitute grassroots lobbying unless it includes a "call to action," i.e., by encouraging individuals to contact their legislators.

Legislation is defined as an "action with respect to Acts, bills, resolutions, or similar items by the Congress, any State legislature, any local council, or similar governing body, or by the public in a referendum, initiative, constitutional amendment, or similar procedure." IRC sec. 4911 (e)(2).

Exceptions to lobbying under this section:

1. Making available the results of nonpartisan analysis, study, or research;

2. Providing technical assistance to a governmental body (or committee thereof) in response to a written request from that body;

3. Appearances before, or communications to, a legislative body with respect to legislation affecting the existence of a charity, its powers and duties, tax exempt status, or the deduction of contributions to it;

4. Certain communications with a charity's members concerning legislation of interest to them, and

5. Comminications with executive branch officials and employees, unless the primary purpose is to influence legislation.

Non-deductible lobbying activities under the Internal Revenue Code (individuals and for-profit corporations):

Influencing legislation is defined as: "Any attempt to influence the general public, or segments thereof, with respect to elections, legislative matters or referendums; or any direct communication with a covered executive branch official in an attempt to influence his or her official actions or positions."

Covered executive branch officials are defined narrowly to include only the president, vice president, key White House officers, cabinet-level officials, and certain other high-level individuals.

March 5, 1998

To: Bill Marshall

Fr: Janis Crum

Re: Federal Lobbying Disclosure Act; Related lobbying provisions for nonprofits

---

Lobbying Disclosure Act, 2 U.S.C. §1601, et.seq.

The Lobbying Disclosure Act applies to individuals and entities who lobby "covered" executive branch officials (the President, Vice President, officers and employees of the Executive Branch) and Members of Congress, their employees, committee and caucus staff.

The statute allows nonprofit tax exempt entities to be governed by the definitions of lobbying and "grass roots lobbying" in 26 U.S.C. § 4911(d) (the U.S.Internal Revenue Code). See 2 U.S.C. § 1610 (a), (b). Thus, even if nonprofit organizations qualify as lobbyists defined below, they have the option of using the broader definition of lobbying under the tax code and filing pursuant to 26 U.S.C. § 4911. (See Internal Revenue Code definitions of grass lobbying below.)

A "lobbying contact" is defined as: Any oral or written communication (including an electronic communication) to a covered executive branch official or a covered legislative branch official that is made on behalf of a client with regard to:

- the formulation, modification, or adoption of Federal legislation (including legislative proposals) and Federal rules, including regulations, executive orders, or any other program, policy, or position of the United States government;
- the administration or execution of a Federal program or policy (including the negotiation, award, or administration of a Federal contract, grant, loan, permit, or license); or
- the nomination or confirmation of a person subject to Senate approval.

Exceptions: ***"Lobbying contact" does not include communications***:

- made by a public official acting in an official capacity;
- made by members of the press if acting in a news gathering capacity;
- made in a speech, article or other material if it is delivered to the public through radio, television or other mass media;

- made on behalf of a government of a foreign country or a foreign political party;
- requesting a meeting, the status of an action, so long as the request is not an attempt to influence a covered public official;
- made during testimony given before a congressional committee, subcommittee or task force or submitted for inclusion in the public record of a congressional hearing;
- made in response to a request for information by a covered public official;
- required by subpoena, civil investigation or otherwise compelled by law.

I. <u>Who Must Register</u>:

A. ***Individual lobbyists***: Any person "who is employed . . . by a client for financial or other compensation for services that include more than one lobbying contact." 2 U.S.C. § 1603(a). The registration threshold is met when an individual spends more than 20 percent of his or her time lobbying within a six month period. Individual lobbyists must register within 45 days of reaching the threshold.

B. ***Lobbyist Firms***: The registration threshold is met for lobbyist firms when the entity employs one or more lobbyists. If a lobbyist is employed by a lobbyist firm, only the firm is required to register and file disclosure reports on behalf of the individual lobbyist.

c) ***Exemptions***: If individuals or entities meet the following criteria, they are <u>not</u> subject to federal registration and disclosure requirements:

> 1) If a person's or entity's total income for matters relating to lobbying on behalf of a single client does not exceed $5,000; or
>
> 2) in the case of an organization employing lobbyists, the entity's total expenses for lobbying activities do not exceed $20,000.

II. <u>Content of Registration and Disclosure Statements</u>:

Registration statements must include:

A. Name, address, telephone number of the place of business of the registrant;

B. a general description of business activities, including the general issue areas in which the registrant expects to engage and specific issues that will be addressed during lobbying.

C. In cases where the lobbyist receives money from individuals or entities which "supervise, plan or control" the lobbyist's activities AND the individual or entity contributes at least $10,000 to the registrant in any six month period, the lobbyist must disclose the name, address and principle place of business of that individual or entity.

D. The above registration requirements also apply to lobbyists who deal with foreign entities that:

- Contribute more than $10,000 to the lobbyist or lobbyist firm or
- holds at least 20% equitable ownership in the lobbyist's client organization or
- directly or indirectly plans, controls, directs, finances or subsidizes the activities of the client; or
- is an affiliate of the client and has a direct interest in the outcome of the lobbying activity.

("Foreign entity" is not defined in the statute.)

Disclosure Statements

A. Semiannual statements are filed with the Secretary of the Senate and Clerk of the House of Representatives, and must include:

- Name of the client and the lobbyist;
- Specific issues that the lobbyist discussed, including bill numbers or specific executive branch actions;
- a list of Federal agencies contacted;
- a description of the interest of any foreign entity described in section D, including a list of specific issues;
- payments from clients for matters relating to lobbying and a good faith estimate of the total expenses that the lobbyist incurred in connection with lobbying activities.

Tax Exempt (Nonprofit) Organizations: Disclosure Requirements Pursuant to 26 U.S.C § 4911

Nonprofit tax exempt organizations are permitted to engage in a limited amount of lobbying activities (defined below) according to the amount of an organization's "exempt purpose expenditures." However, when tax exempt entities exceed this limit, any amount spent in excess of that limit is subject to a 25% tax. See 2 U.S.C. §4911.

Definition of "influencing legislation":

(A) "Any attempt to affect the opinions of the general public or any segment thereof, and

(B) any attempt to influence any legislation through communication with any member or employee of a legislative body, or with any government official or employee who may participate in the formulation of the legislation." 2 U.S.C. 4911 (d).

Exceptions: "Influencing legislation" does not include:

(A) making available nonpartisan analysis, study or research (i.e., polling);

(B) providing of technical advice or assistance to a governmental body or to a committee or other subdivision thereof in response to a written request by the governmental body;

(C) appearances before or communications to any legislative body with respect to a possible decision of such body which might affect the existence of the organization, its powers and duties, tax exempt status, or the deducation of contributions to the organization;

(D) communications between the organization and its bona fide members with respect to legislation or direct interest to the organization (i.e., notifying all members of votes made by public officials on legislation of interest to the organization's members);

(E) any communication with a government official or employee that is not an attempt to influence. Fix this

Definition of "legislation":

Includes action with respect to Acts, bills, resolutions, or similar items by the Congress, any state legislature, any local council, or by the public in a referedum, initiative, constitutional amendment, or similar procedure.

2 USCS @ 1602 (1997) printed in FULL format.

UNITED STATES CODE SERVICE

*** THIS SECTION IS CURRENT THROUGH 105-145, APPROVED 12/15/97 ***
*** WITH GAPS OF 85, 92, 101, 102, 106, 111-114, 119, 127 ***
*** 129, 134, 135, 137-139 & 142 ***

TITLE 2. THE CONGRESS
CHAPTER 26. DISCLOSURE OF LOBBYING ACTIVITIES

2 USCS @ 1602 (1997)

@ 1602. Definitions

As used in this Act:

(1) Agency. The term "agency" has the meaning given that term in section 551(1) of title 5, United States Code.

(2) Client. The term "client" means any person or entity that employs or retains another person for financial or other compensation to conduct lobbying activities on behalf of that person or entity. A person or entity whose employees act as lobbyists on its own behalf is both a client and an employer of such employees. In the case of a coalition or association that employs or retains other persons to conduct lobbying activities, the client is the coalition or association and not its individual members.

(3) Covered executive branch official. The term "covered executive branch official" means--

(A) the President;

(B) the Vice President;

(C) any officer or employee, or any other individual functioning in the capacity of such an officer or employee, in the Executive Office of the President;

(D) any officer or employee serving in a position in level I, II, III, IV, or V of the Executive Schedule, as designated by statute or Executive order;

(E) any member of the uniformed services whose pay grade is at or above O-7 under section 201 of title 37, United States Code; and

(F) any officer or employee serving in a position of a confidential, policy-determining, policy-making, or policy-advocating character described in section 7511(b)(2) of title 5, United States Code.

(4) Covered legislative branch official. The term "covered legislative branch official" means--

(A) a Member of Congress;

(B) an elected officer of either House of Congress;

(C) any employee of, or any other individual functioning in the capacity of an employee of--

(i) a Member of Congress;

(ii) a committee of either House of Congress;

(iii) the leadership staff of the House of Representatives or the leadership staff of the Senate;

(iv) a joint committee of Congress; and

(v) a working group or caucus organized to provide legislative services or other assistance to Members of Congress; and

(D) any other legislative branch employee serving in a position described under section 109(13) of the Ethics in Government Act of 1978 (5 U.S.C. App.).

(5) Employee. The term "employee" means any individual who is an officer, employee, partner, director, or proprietor of a person or entity, but does not include--

(A) independent contractors; or

(B) volunteers who receive no financial or other compensation from the person or entity for their services.

(6) Foreign entity. The term "foreign entity" means a foreign principal (as defined in section 1(b) of the Foreign Agents Registration Act of 1938 (22 U.S.C. 611(b)).

(7) Lobbying activities. The term "lobbying activities" means lobbying contacts and efforts in support of such contacts, including preparation and planning activities, research and other background work that is intended, at the time it is performed, for use in contacts, and coordination with the lobbying activities of others.

(8) Lobbying contact.

(A) Definition. The term "lobbying contact" means any oral or written communication (including an electronic communication) to a covered executive branch official or a covered legislative branch official that is made on behalf of a client with regard to--

(i) the formulation, modification, or adoption of Federal legislation (including legislative proposals);

(ii) the formulation, modification, or adoption of a Federal rule, regulation, Executive order, or any other program, policy, or position of the United States Government;

(iii) the administration or execution of a Federal program or policy (including the negotiation, award, or administration of a Federal contract, grant, loan, permit, or license); or

(iv) the nomination or confirmation of a person for a position subject to confirmation by the Senate.

(B) Exceptions. The term "lobbying contact" does not include a communication that is--

(i) made by a public official acting in the public official's official capacity;

(ii) made by a representative of a media organization if the purpose of the communication is gathering and disseminating news and information to the public;

(iii) made in a speech, article, publication or other material that is distributed and made available to the public, or through radio, television, cable television, or other medium of mass communication;

(iv) made on behalf of a government of a foreign country or a foreign political party and disclosed under the Foreign Agents Registration Act of 1938 (22 U.S.C. 611 et seq.);

(v) a request for a meeting, a request for the status of an action, or any other similar administrative request, if the request does not include an attempt to influence a covered executive branch official or a covered legislative branch official;

(vi) made in the course of participation in an advisory committee subject to the Federal Advisory Committee Act [5 USCS Appx.];

(vii) testimony given before a committee, subcommittee, or task force of the Congress, or submitted for inclusion in the public record of a hearing conducted by such committee, subcommittee, or task force;

(viii) information provided in writing in response to an oral or written request by a covered executive branch official or a covered legislative branch official for specific information;

(ix) required by subpoena, civil investigative demand, or otherwise compelled by statute, regulation, or other action of the Congress or an agency;

(x) made in response to a notice in the Federal Register, Commerce Business Daily, or other similar publication soliciting communications from the public and directed to the agency official specifically designated in the notice to receive such communications;

(xi) not possible to report without disclosing information, the unauthorized disclosure of which is prohibited by law;

(xii) made to an official in an agency with regard to--

(I) a judicial proceeding or a criminal or civil law enforcement inquiry, investigation, or proceeding; or relating to the regulatory responsibilities of such organization under that Act.

(9) Lobbying firm. The term "lobbying firm" means a person or entity that has 1 or more employees who are lobbyists on behalf of a client other than that person or entity. The term also includes a self-employed individual who is a lobbyist.

(10) Lobbyist. The term "lobbyist" means any individual who is employed or retained by a client for financial or other compensation for services that include more than one lobbying contact, other than an individual whose lobbying activities constitute less than 20 percent of the time engaged in the services provided by such individual to that client over a six month period.

(11) Media organization. The term "media organization" means a person or entity engaged in disseminating information to the general public through a newspaper, magazine, other publication, radio, television, cable television, or other medium of mass communication.

(12) Member of Congress. The term "Member of Congress" means a Senator or a Representative in, or Delegate or Resident Commissioner to, the Congress.

(13) Organization. The term "organization" means a person or entity other than an individual.

(14) Person or entity. The term "person or entity" means any individual, corporation, company, foundation, association, labor organization, firm, partnership, society, joint stock company, group of organizations, or State or local government.

(15) Public official. The term "public official" means any elected official, appointed official, or employee of--

(A) a Federal, State, or local unit of government in the United States other than--

(i) a college or university;

(ii) a government-sponsored enterprise (as defined in section 3(8) of the Congressional Budget and Impoundment Control Act of 1974 [2 USCS @ 622(8)]);

(iii) a public utility that provides gas, electricity, water, or communications;

(iv) a guaranty agency (as defined in section 435(j) of the Higher Education Act of 1965 (20 U.S.C. 1085(j))), including any affiliate of such an agency; or

(v) an agency of any State functioning as a student loan secondary market pursuant to section 435(d)(1)(F) of the Higher Education Act of 1965 (20 U.S.C. 1085(d)(1)(F));

(B) a Government corporation (as defined in section 9101 of title 31, United States Code);

(C) an organization of State or local elected or appointed officials other than officials of an entity described in clause (i), (ii), (iii), (iv), or (v) of subparagraph (A);

(D) an Indian tribe (as defined in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e));

(E) a national or State political party or any organizational unit thereof; or

(F) a national, regional, or local unit of any foreign government.

(16) State. The term "State" means each of the several States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

HISTORY: (Dec. 19, 1995, P.L. 104-65, @ 3, 109 Stat. 691.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

REFERENCES IN TEXT:

With respect to the "Executive Schedule", referred to in this section, see 5 USCS @@ 5311 et seq.

The "Securities Exchange Act", referred to in this section, is Act June 6, 1934, ch 404, 48 Stat. 881, which appears generally as 15 USCS @@ 77b et seq. For full classification of such Act, consult USCS Tables volumes.

The "Whistleblower Protection Act of 1989", referred to in this section, is Act April 10, 1989, P.L. 101-12, 103 Stat. 16. For full classification of this Act, consult USCS Tables volumes.

EFFECTIVE DATE OF SECTION:

This section became effective on Jan. 1, 1996, pursuant to Act Dec. 19, 1995, P.L. 104-65, @ 24(a), 109 Stat. 705, which appears as 2 USCS @ 1601 note.

NOTES:

RESEARCH GUIDE

FEDERAL PROCEDURE L ED:

10 Fed Proc L Ed, Declaratory Judgments @ 23:13.

AM JUR:

16 Am Jur 2d, Constitutional Law @ 349.
22A Am Jur 2d, Declaratory Judgments @ 48.
51 Am Jur 2d, Lobbying @ 9.

ANNOTATIONS:

The Supreme Court and the right of free speech and press. 2 L Ed 2d 1706.

INTERPRETIVE NOTES AND DECISIONS

Influencing of legislative processes by virtue of distribution of literature to members of public and legislature does not come within term lobbying, since lobbying is influencing of legislative processes by contact with legislators. United States v Rumely (1953) 345 US 41, 97 L Ed 770, 73 S Ct 543.

Conf. Call - no news on our front

OMB trying to figure out what can say on current

Rodney what good models for auditing etc

examples of firewalls, enf.

Duff

numbers overstating that might be affected

Reporting Scheme -

where might provide key 2-step

info gathering followed by something else

contract w/ CPA firm

(educ, hospitals)

certain charities can elect under 501(h) to use arth. test instead of substantial

~~#~~ limitations - as alt. to "substantial"

all lobbying limited to 20% of 1st 500,000

plus 15% of next 500,000

plus 10% of third 500,000

plus 5% of additional

to max. allowable $1 mill.

grassroots lobbying also limited 25% of overall permissible amount above

1998 EXPENDITURES : PPD

Country	Project	Project Title	Earmark Description	Associated Agency	Disbursed	Objective
Bangladesh	3880094	NIPHP	PATHFINDER INT-RSD PARTNERSHI	Pathfinder International	$4,083,299	POP
Bangladesh	3880094	NIPHP	PATHFINDER INT-RSD PARTENERSH	Pathfinder International	$1,369,422	CHS
Bangladesh	3880094	NIPHP	ICDDRB-NEW CA FOR IRP DESIGNE	Int'l Ctr Diar'l Dis Res/Bang	$2,003,049	CHS
Bangladesh	3880094	NIPHP	ICDDRB-NEW CA FOR IRP DESIGNE	Int'l Ctr Diar'l Dis Res/Bang	$1,583,299	POP
Bangladesh	3880094	NIPHP	SMC - RP DESIGNED BY SMC	Social Marketing Company	$2,083,299	POP
Bangladesh	3880094	NIPHP	PARTNERSHIP FOR CHC-BASICS	BASICS-G	$1,347,063	CHS
Bangladesh	3880094	NIPHP	SMC - RP DESIGNED BY SMC	Social Marketing Company	$1,052,415	CHS
Bangladesh	3880094	NIPHP	AVSC INT-RP DESIGNED BY QIP	Access to Volu Surgical Con.-G	$1,671,440	POP
Bangladesh	3880094	NIPHP	JSI & RTI - USD PARTNERSHIP	JSI-Research & Trng Inst.-G	$4,083,299	POP
Bolivia	5110568	Reproductive Health	INT'L PLAN PARENTHOOD M/70026	Centro de Invest. Ed. y Serv.	$1,250,000	POP
Egypt	2630242	Health Mother/Health Child	LOCAL COST	Ministry of Health & Populatio	$1,067,521	CHS
Egypt	2630170	Cost Recovery Health	INCRS. AS AMD. # 03	U.S. Agency for Int'l Dev.	$1,257,290	OTH
Egypt	2630170	Cost Recovery Health	INCR. FUNDS AS AMD. # 03	Maximus, Inc.	$1,109,950	OTH
Egypt	2630236	Secondary Cities Development	CONSTRUCTION ABB SUSA	U.S. Agency for Int'l Dev.	$1,248,946	MUL
Egypt	2630140	Schistosomiasis Research	SCHISTOMIASIS AWARD CONTRACT	Medical Services Corp., Intl.	$1,573,851	MCH
Egypt	2630140	Schistosomiasis Research	CO/MSCI AMND. TO PIO/T#88083	Medical Services Corp., Intl.	$1,078,101	CHS
Egypt	2630140	Schistosomiasis Research	CO/MSCI AMND. TO PIO/T#88083	Medical Services Corp., Intl.	$2,156,202	OTH
Egypt	2630140	Schistosomiasis Research	INCREM.FUNDS CO#9081 MSCI	Medical Services Corp., Intl.	$1,206,140	OTH
Egypt	2630140	Schistosomiasis Research	CO/W MEDICAL SERVICE CORP.	Medical Services Corp., Intl.	$1,608,896	OTH
Egypt	2630227	Population/Family Planning III	(AVSC) AM # 3	AVSC Private Sector	$1,362,769	POP
Egypt	2630227	Population/Family Planning III	BUY-IN AMEND#3	U.S. Agency for Int'l Dev.	$2,877,226	POP
Egypt	2630227	Population/Family Planning III	PIL AMEND#6	Ministry of Health	$1,684,808	POP
Egypt	2630140	Schistosomiasis Research	INCREMENTAL FUNDING TO MSCI	Medical Services Corp., Intl.	$2,219,336	OTH
Egypt	2630140	Schistosomiasis Research	INCREMENTAL FUNDING TO MSCI	Medical Services Corp., Intl.	$1,109,669	MCH
Egypt	2630140	Schistosomiasis Research	INCREMENTAL FUNDING TO MSCI	Medical Services Corp., Intl.	$1,109,669	CHS
Egypt	2630140	Schistosomiasis Research	INCREMT.FUNDS CO/W MSCI	Medical Services Corp., Intl.	$2,100,000	OTH
Egypt	2630140	Schistosomiasis Research	INCREMT.FUNDS CO/W MSCI	Medical Services Corp., Intl.	$1,050,000	MCH
Egypt	2630227	Population/Family Planning III	MODIFY PATHFINDER JV-98-075	Pathfinder Fund	$1,418,200	POP
Egypt	2630227	Population/Family Planning III	CNTRCEPTVS TO MOH BY GSA AM3	Ministry of Health	$1,908,274	POP
Egypt	2630140	Schistosomiasis Research	INCREMT.FUNDS CO/W MSCI	Medical Services Corp., Intl.	$1,050,000	CHS
Egypt	2630140	Schistosomiasis Research	CO/MSCI AMND. TO PIO/T#88083	Medical Services Corp., Intl.	$1,078,101	MCH
Egypt	2630140	Schistosomiasis Research	SCHISTOMIASIS AWARD CONTRACT	Medical Services Corp., Intl.	$3,147,701	OTH
Egypt	2630140	Schistosomiasis Research	SCHISTOMIASIS AWARD CONTRACT	Medical Services Corp., Intl.	$1,573,851	CHS
Egypt	2630236	Secondary Cities Development	CONT ENG DES/CONST MANG	Camp Dresser McKee	$2,320,720	MUL
Egypt	2630236	Secondary Cities Development	INST SUPPOR	Chemonics-G	$3,076,020	MUL
Egypt	2630241	Alexandria Sewage II	CMC	Construction Management Contra	$1,308,376	CHS
India	3860527	Innovations in Family Planning	ACCESS - BENCHMARKS	State Innov. FP Serv. Agency	$1,300,000	POP

3n6

India	3860527	Innovations in Family Planning	MANAGEMENT-BENCHMARK#56-67	State Innov. FP Serv. Agency	$2,700,000	POP
India	3860527	Innovations in Family Planning	ACCESS - BENCHMARKS	State Innov. FP Serv. Agency	$3,600,000	POP
India	3860527	Innovations in Family Planning	ACCESS-BENCHMARK#71-73	State Innov. FP Serv. Agency	$1,200,000	POP
India	3860527	Innovations in Family Planning	QUALITY-BENCHMARK#68-70,74&75	State Innov. FP Serv. Agency	$1,600,000	POP
Philippines	4920480	Integrated FP & Maternal Hlth	4TH TRANCHE RELEASE	Department of Health	$1,610,000	POP
Philippines	4920480	Integrated FP & Maternal Hlth	4TH TRANCHE RELEASE	Department of Health	$1,890,700	POP
Philippines	4920473	AIDS Surveillance & Education	PATH/ADD'L.FNDS/EXPAND SOW	Prg Appropriate Tech in Hlth-F	$1,370,782	HIV

10.4

3.5

Kevin S. Moran/WHO/EOP
Jessica L. Gibson/WHO/EOP
Melissa G. Green/OPD/EOP
Michelle Crisci/WHO/EOP
Laura Emmett/WHO/EOP
Shannon Mason/OPD/EOP
Jonathan H. Adashek/WHO/EOP
Charles Konigsberg/OMB/EOP
Elizabeth Gore/OMB/EOP
Lisa Zweig/OMB/EOP
Charles R. Marr/OPD/EOP
Emil E. Parker/OPD/EOP
Judy Jablow/CEQ/EOP
Paul J. Weinstein Jr./OPD/EOP
Peter A. Weissman/OPD/EOP
Robert L. Nabors/OMB/EOP
Adrienne C. Erbach/OMB/EOP
Victoria A. Wachino/OMB/EOP
Rosemary Evans/OMB/EOP
FARRAR_J @ A1@CD@VAXGTWY
Julie M. Anderson/WHCCTF/EOP

8th Congressional District

San Francisco, California

Fax Transmission from The Washington Office of Congresswoman Nancy Pelosi

Phone #: 202/225-4965

Fax #: 202/225-8259

ATTENTION: Shelley

FROM: Cindy

DATE: 9/14

# of Pages: 3
(Including cover sheet)

Message/Instructions: § 579 —

Action Required:

USAID

U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT
Washington, D.C. 20523

FACSIMILE TRANSMITTAL COVER SHEET

DATE: 11/12/99

TO: Martha Farley

ATTENTION: ORGANIZATION:

FAX PHONE: (202) 456-2271 OFFICE PHONE:

FROM: Duff Gillepse

ORIGINATOR: ORGANIZATION: USAID PHN

FAX PHONE: OFFICE PHONE:

SUBJECT:

NUMBER OF PAGES (including this cover sheet:)

COMMENTS:

ATTACHMENT 3
STANDARD PROVISIONS

MANDATORY STANDARD PROVISIONS FOR U.S., NONGOVERNMENTAL RECIPIENTS

3.1. APPLICABILITY OF 22 CFR PART 226 (April 1998)

(a) All provisions of 22 CFR Part 226 and all Standard Provisions attached to this agreement are applicable to the recipient and to subrecipients which meet the definition of "Recipient" in Part 226, unless a section specifically excludes a subrecipient from coverage. The recipient shall assure that subrecipients have copies of all the attached standard provisions.

(b) For any subawards made with entities which fall outside of the definition of "Recipient" (such as Non-US organizations) the Recipient shall include the applicable Standard Provisions for Non-US Nongovernmental Grantees except for the "Accounting, Audit and Records" Standard Provision. Recipients are required to ensure compliance with subrecipient monitoring procedures in accordance with OMB Circular A-133 and shall insert an appropriate provision on accounting, audit and records.

3. 2. INELIGIBLE COUNTRIES (MAY 1986)

Unless otherwise approved by the USAID Agreement Officer, funds will only be expended for assistance to countries eligible for assistance under the Foreign Assistance Act of 1961, as amended, or under acts appropriating funds for foreign assistance.

3. 3. NONDISCRIMINATION (MAY 1986)

(This provision is applicable when work under the grant is performed in the U.S. or when employees are recruited in the U.S.)

No U.S. citizen or legal resident shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity funded by this award on the basis of race, color, national origin, age, handicap, or sex.

3.4. INVESTMENT PROMOTION (January 1994)

No funds or other support provided hereunder may be used in a project or activity reasonably likely to involve the relocation or expansion outside of the United States of an enterprise located in the United States if non-U.S. production in such relocation or expansion replaces some or all of the production of, and reduces the number of employees at, said enterprise in the United States.

No funds or other support provided hereunder may be used in a project or activity the purpose of which is the establishment or development in a foreign country of any export processing zone or designated area where the labor, environmental, tax, tariff, and safety laws of the country would not apply, without the prior written approval of USAID.

No funds or other support provided hereunder may be used in a project or activity which contributes to the violation of internationally recognized rights of workers in the recipient country, including those in any designated zone or area in that country.

This provision must be included in all subagreements.

3. 5. NONLIABILITY (NOVEMBER 1985)

USAID does not assume liability for any third party claims for damages arising out of this award.

3. 6. AMENDMENT (OCTOBER 1998)

The award may be amended by formal modifications to the basic award document or by means of an exchange of letters or forms between the Agreement Officer and an appropriate official of the recipient.

3. 7. NOTICES (OCTOBER 1998)

Any notice given by USAID or the recipient shall be sufficient only if in writing and delivered in person, mailed, or cabled as follows:

To the USAID Agreement Officer and Cognizant Technical Officer, at the address specified in the award.

To recipient, at recipient's address shown in the award or to such other address designated within the award

Notices shall be effective when delivered in accordance with this provision, or on the effective date of the notice, whichever is later.

3. 8. SUBAGREEMENTS (October 1998)

(This provision is applicable when subgrants or cooperative agreements are financed under the award.)

(a) Subawards shall be made only with responsible recipients who possess the potential ability to perform successfully under the terms and conditions of a proposed agreement. Consideration shall be given to such matters as integrity, record of past performance, financial and technical resources, or accessibility to other necessary resources. Awards shall not be made to firms or individuals whose name appears on the "Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs." USAID will provide the grantee with a copy of this list upon request.

(b) All subagreements shall at a minimum contain provisions to define a sound and complete agreement in addition to those that are specifically required by any other provisions in this award. Whenever a provision within this award is required to be inserted in a subagreement, the recipient shall insert a statement in the subagreement that in all instances where USAID is mentioned, the recipient's name will be substituted. If subagreements are being made to U.S. organizations, a suggested subaward format incorporating 22 CFR 226 and Standard Provisions will be provided.

3. 9. OMB APPROVAL UNDER THE PAPERWORK REDUCTION ACT (April 1998)

Information collection requirements imposed by this grant are covered by OMB approval number 0412-0510; the current expiration date is 11/30/2000. Identification of the Standard Provision containing the requirement and an estimate of the public reporting burden (including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information) are set forth below.

Standard Provision Burden Estimate by hours

Air Travel and Transportation - 1 (hour)
Ocean Shipment of Goods - .5
Patent Rights - .5
Publications - .5
Negotiated Indirect Cost Rates - 1
Predetermined and Provisional Voluntary Population Planning - .5
Protection of the Individual as a Research Subject - 1
22 CFR 226 Burden Estimate
22 CFR 226.40- .49
Procurement of Goods and Services - 1
22 CFR 226.30 - .36
Property Standards - 1.5

Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Procurement, Policy Division (M/OP/P) U.S. Agency for International Development, Washington, DC 20523-7801 and to the Office of Management and Budget, Paperwork Reduction Project (0412-0510), Washington, DC 20503.

3. 10. USAID ELIGIBILITY RULES FOR GOODS AND SERVICES (September 1998)

(This provision is applicable when the costs for goods or services will be paid for with USAID funds. This provision is not applicable if the recipient is providing for the goods or services with private funds as part of a cost-sharing requirement, or with Program Income generated under the award)

(a) Ineligible and Restricted Goods and Services: USAID's policies on ineligible and restricted goods and services are contained in ADS Chapter 312. (See ADS 312)

(1) Ineligible Goods and Services. Under no circumstances shall the recipient procure any of the following under this award:

(i) Military equipment,
(ii) Surveillance equipment,
(iii) Commodities and services for support of police or other law enforcement activities,
(iv) Abortion equipment and services,
(v) Luxury goods and gambling equipment, or
(vi) Weather modification equipment.

(2) Ineligible Suppliers. Funds provided under this award shall not be used to procure any goods or services furnished by any firm or individual whose

name appears on the "Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs." USAID will provide the recipient with this list upon request.

(3) Restricted Goods. The recipient shall not procure any of the following goods and services without the prior approval of the Agreement Officer:

(i) Agricultural commodities,
(ii) Motor vehicles,
(iii) Pharmaceuticals,
(iv) Pesticides,
(v) Used equipment,
(vi) U.S. Government-owned excess property, or
(vii) Fertilizer.

Prior approval will be deemed to have been met when:

(i) The item is of U.S. source/origin;

(ii) The item has been identified and incorporated in the program description or schedule of the award (initial or revisions), or amendments to the award; and

(iii) The costs related to the item are incorporated in the approved budget of the award.

Where the item has not been incorporated into the award as described above, a separate written authorization from the Agreement Officer must be provided before the item is procured.

(b) Source, Origin, and Nationality: The eligibility rules for goods and services based on source, origin, and nationality are divided into two categories. One applies when the total procurement element during the life of the award is over $250,000 and the other applies when the total procurement element during the life of the award is not over $250,000, or the award is funded under the Development Fund for Africa (DFA) regardless of the amount. The total procurement element includes procurement of all goods (e.g. equipment, materials, supplies) and services. Guidance on the eligibility of specific goods or services may be obtained from the Agreement Officer. USAID policies and definitions on source, origin and nationality are contained in 22 CFR 228, Rules on Source, Origin and Nationality for Commodities and Services Financed by the Agency for International Development, and ADS Chapter 310, Source, Origin, and Nationality, which are incorporated into this Award in their entirety. Copies will be provided upon request.

(1) For DFA funded awards or when the total procurement element during the life of the award is valued at $250,000 or less, the following rules apply:

(i) The authorized source for procurement of all goods and services to be reimbursed under the award is USAID Geographic Code 935, "Special Free World," and such goods and services must meet the source, origin and nationality requirements set forth in 22 CFR 228 in accordance with the following order of preference:

(A) The United States (USAID Geographic Code 000),
(B) The Cooperating Country,

(C) USAID Geographic Code 941, and
(D) USAID Geographic Code 935.

(ii) Application of Order of Preference: When the recipient procures goods and services from other than U.S. sources, under the order of preference in paragraph (b)(1)(i) above, the recipient shall document its files to justify each such instance. The documentation shall set forth the circumstances surrounding the procurement and shall be based on one or more of the following reasons, which will be set forth in the recipient's documentation:

(A) The procurement was of an emergency nature, which would not allow for the delay attendant to soliciting U.S. sources,

(B) The price differential for procurement from U.S. sources exceeded by 50% or more the delivered price from the non-U.S. source,

(C) Compelling local political considerations precluded consideration of U.S. sources,

(D) The goods or services were not available from U.S. sources, or

(E) Procurement of locally available goods and services, as opposed to procurement of U.S. goods and services, would best promote the objectives of the Foreign Assistance program under the award.

(2) When the total procurement element exceeds $250,000, (unless funded by DFA), the following applies: Except as may be specifically approved or directed in advance by the Agreement Officer, all goods and services financed with U.S. dollars, which will be reimbursed under this award must meet the source, (including origin) and nationality requirements set forth in 22 CFR 228 for the authorized geographic code specified in the schedule of this award. If none is specified, the authorized source is Code 000, the United States.

(c) Printed or Audio-Visual Teaching Materials: If the effective use of printed or audio-visual teaching materials depends upon their being in the local language and if such materials are intended for technical assistance projects or activities financed by USAID in whole or in part and if other funds including U.S.-owned or U.S.-controlled local currencies are not readily available to finance the procurement of such materials, local language versions may be procured from the following sources in order of preference:

(1) The United States (USAID Geographic Code 000),

(2) The Cooperating Country,

(3) "Selected Free World" countries (USAID Geographic Code 941),

(4) "Special Free World" countries (USAID Geographic Code 899).

(d) If USAID determines that the recipient has procured any of these specific restricted goods under this award without the prior written authorization of the Agreement Officer, and has received payment for such purposes, the Agreement Officer may require the recipient to refund the entire amount of the purchase.

(e) This provision will be included in all subagreements which include procurement of goods or services which total over $5,000.

MANDATORY STANDARD PROVISIONS
FOR U.S., NONGOVERNMENTAL RECIPIENTS
WHEN ACTIVITIES ARE UNDERTAKEN OUTSIDE THE U.S.

3. 11. REGULATIONS GOVERNING EMPLOYEES (JUNE 1993)

(The following applies to the recipient's employees who are not citizens of the cooperating country.)

(a) The recipient's employees shall maintain private status and may not rely on local U.S. Government offices or facilities for support while under this recipient.

(b) The sale of personal property or automobiles by recipient employees and their dependents in the foreign country to which they are assigned shall be subject to the same limitations and prohibitions which apply to direct-hire USAID personnel employed by the Mission including the rules contained in 22 CFR Part 136, except as this may conflict with host government regulations.

(c) Other than work to be performed under this award for which an employee is assigned by the recipient, no employee of the recipient shall engage directly or indirectly, either in the individual's own name or in the name or through an agency of another person, in any business, profession, or occupation in the foreign countries to which the individual is assigned, nor shall the individual make loans or investments to or in any business, profession, or occupation in the foreign countries to which the individual is assigned.

(d) The recipient's employees, while in a foreign country, are expected to show respect for its convention, customs, and institutions, to abide by its applicable laws and regulations, and not to interfere in its internal political affairs.

(e) In the event the conduct of any recipient employee is not in accordance with the preceding paragraphs, the recipient's chief of party shall consult with the USAID Mission Director and the employee involved, and shall recommend to the recipient a course of action with regard to such employee.

(f) The parties recognize the rights of the U.S. Ambassador to direct the removal from a country of any U.S. citizen or the discharge from this award of any third country national when, in the discretion of the Ambassador, the interests of the United States so require.

(g) If it is determined, under either (e) or (f) above, that the services of such employee shall be terminated, the recipient shall use its best efforts to cause the return of such employee to the United States, or point of origin, as appropriate.

3.12. CONVERSION OF UNITED STATES DOLLARS TO LOCAL CURRENCY (NOVEMBER 1985)

Upon arrival in the Cooperating Country, and from time to time as appropriate, the recipient's chief of party shall consult with the Mission Director who shall provide, in writing, the procedure the recipient and its employees shall follow in the conversion of United States dollars to local currency. This may include, but is not limited to, the conversion of currency through the cognizant United States Disbursing Officer or Mission Controller, as appropriate.

3.13. USE OF POUCH FACILITIES (AUGUST 1992)

(a) Use of diplomatic pouch is controlled by the Department of State. The Department of State has authorized the use of pouch facilities for USAID recipients and their employees as a general policy, as detailed in items (1) through (6) below. However, the final decision regarding use of pouch facilities rest with the Embassy or USAID Mission. In consideration of the use of pouch facilities, the recipient and its employees agree to indemnify and hold harmless, the Department of State and USAID for loss or damage occurring in pouch transmission:

(1) Recipients and their employees are authorized use of the pouch for transmission and receipt of up to a maximum of .9 kgs per shipment of correspondence and documents needed in the administration of assistance programs.

(2) U.S. citizen employees are authorized use of the pouch for personal mail up to a maximum of .45 kgs per shipment (but see (a)(3) below).

(3) Merchandise, parcels, magazines, or newspapers are not considered to be personal mail for purposes of this standard provision and are not authorized to be sent or received by pouch.

(4) Official and personal mail pursuant to a.1. and 2. above sent by pouch should be addressed as follows:

Name of individual or organization (followed by letter symbol "G")

City Name of post (USAID/______)
Agency for International Development
Washington, D.C. 20523-0001

(5) Mail sent via the diplomatic pouch may not be in violation of U.S. Postal laws and may not contain material ineligible for pouch transmission.

(6) Recipient personnel are not authorized use of military postal facilities (APO/FPO). This is an Adjutant General's decision based on existing laws and regulations governing military postal facilities and is being enforced worldwide.

(b) The recipient shall be responsible for advising its employees of this authorization, these guidelines, and limitations on use of pouch facilities.

(c) Specific additional guidance on grantee use of pouch facilities in accordance with this standard provision is available from the Post Communication Center at the Embassy or USAID Mission.

3. 14. INTERNATIONAL AIR TRAVEL AND TRANSPORTATION (JUNE 1999)

(This provision is applicable when costs for international travel or transportation will be paid for with USAID funds. This provision is not applicable if the recipient is providing for travel with private funds as part of a cost-sharing requirement, or with Program Income generated under the award.)

(a) PRIOR BUDGET APPROVAL

In accordance with OMB Cost Principles, direct charges for foreign travel costs are allowable only when each foreign trip has received prior budget approval. Such approval will be deemed to have been met when:

(1) the trip is identified. Identification is accomplished by providing the following information: the number of trips, the number of individuals per trip, and the destination country(s).

(2) the information noted at (a)(1) above is incorporated in: the proposal, the program description or schedule of the award, the implementation plan (initial or revisions), or amendments to the award; and

(3) the costs related to the travel are incorporated in the approved budget of the award.

The Agreement Officer may approve travel which has not been incorporated in writing as required by paragraph (a)(2). In such case, a copy of the Agreement Officer's approval must be included in the agreement file.

(b) NOTIFICATION

(1) As long as prior budget approval has been met in accordance with paragraph (a) above, a separate Notification will not be necessary unless:

(i) the primary purpose of the trip is to work with USAID Mission personnel, or

(ii) the recipient expects significant administrative or substantive programmatic support from the Mission.

Neither the USAID Mission nor the Embassy will require Country Clearance of employees or contractors of USAID Recipients.

(2) Where notification is required in accordance with paragraph (1)(i) or (ii) above, the recipient will observe the following standards:

(i) Send a written notice to the cognizant USAID Technical Office in the Mission. If the recipient's primary point of contact is a Technical Officer in USAID/W, the recipient may send the notice to that person. It will be the responsibility of the USAID/W Technical Officer to forward the notice to the field.

(ii) The notice should be sent as far in advance as possible, but at least 14 calendar days in advance of the proposed travel. This notice may be sent by fax or e-mail. The recipient should retain proof that notification was made.

(iii) The notification shall contain the following information: the award number, the cognizant Technical Officer, the traveler's name (if known), date of arrival, and the purpose of the trip.

(iv) The USAID Mission will respond only if travel has been denied. It will be the responsibility of the Technical Officer in the Mission to contact the recipient within 5 working days of having received the notice if the travel is denied. If the recipient has not received a response within the time frame, the recipient will be considered to have met these standards for notification, and may travel.

(v) If a subrecipient is required to issue a Notification, as per this section, the subrecipient may contact the USAID Technical Officer directly, or the prime may contact USAID on the subrecipient's behalf.

(c) SECURITY ISSUES

Recipients are encouraged to obtain the latest Department of State Travel Advisory Notices before travelling. These Notices are available to the general public and may be obtained directly from the State Department, or via Internet.

Where security is a concern in a specific region, recipients may choose to notify the US Embassy of their presence when they have entered the country. This may be especially important for long-term posting.

(d) USE OF U.S.-OWNED LOCAL CURRENCY

Travel to certain countries shall, at USAID's option, be funded from U.S.-owned local currency. When USAID intends to exercise this option, USAID will either issue a U.S.Government S.F. 1169, Transportation Request (GTR) which the grantee may exchange for tickets, or issue the tickets directly. Use of such U.S.-owned currencies will constitute a dollar charge to this grant.

(e) THE FLY AMERICA ACT

The Fly America Act (49 U.S.C. 40118) requires that all air travel and shipments under this award must be made on U.S. flag air carriers to the extent service by such carriers is available. The Administrator of General Services Administration (GSA) is authorized to issue regulations for purposes of implementation. Those regulations may be found at 41 CFR part 301, and are hereby incorporated by reference into this award.

(f) COST PRINCIPLES

The recipient will be reimbursed for travel and the reasonable cost of subsistence, post differentials and other allowances paid to employees in international travel status in accordance with the recipient's applicable cost principles and established policies and practices which are uniformly applied to federally financed and other activities of the grantee.

If the recipient does not have written established policies regarding travel costs, the standard for determining the reasonableness of reimbursement for overseas allowance will be the Standardized Regulations (Government Civilians, Foreign Areas), published by the U.S. Department of State, as from time to time amended. The most current subsistence, post differentials, and other allowances may be obtained from the Agreement Officer.

3. 15. OCEAN SHIPMENT OF GOODS (OCTOBER 1998)

(This provision is applicable when goods purchased with funds provided under this award are transported to cooperating countries on ocean vessels whether or not award funds are used for the transportation.)

(a) At least 50% of the gross tonnage of all goods purchased under this award and transported to the cooperating countries shall be made on privately owned U.S. flag commercial ocean vessels, to the extent such vessels are available at fair and reasonable rates.

(b) At least 50% of the gross freight revenue generated by shipments of goods purchased under this award and transported to the cooperating countries on dry cargo liners shall be paid to or for the benefit of privately owned U.S. flag commercial ocean vessels to the extent such vessels are available at fair and reasonable rates for such vessels.

(c) When U.S. flag vessels are not available, or their use would result in a significant delay, the recipient may request a determination of non-availability from the USAID, Transportation and Commodities Division, Office of Procurement, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20523, giving the basis for the request which will relieve the recipient of the requirement to use U.S. flag vessels for the amount of tonnage included in the determination. Shipments made on non-free world ocean vessels are not reimbursable under this award.

(d) The recipient shall send a copy of each ocean bill of lading, stating all of the carrier's charges including the basis for calculation such as weight or cubic measurement, covering a shipment under this agreement to:

U.S. Department of Transportation,
Maritime Administration, Division of National Cargo,
400 7th Street, S.W.,
Washington DC 20590,

and

U.S. Agency for International Development,
Office of Procurement, Transportation Division
1300 Pennsylvania Avenue, N.W.
Washington, DC 20523-7900

(e) Shipments by voluntary nonprofit relief agencies (i.e., PVOs) shall be governed by this standard provision and by USAID Regulation 2, "Overseas Shipments of Supplies by Voluntary Nonprofit Relief Agencies" (22 CFR 202).

(f) Shipments financed under this award must meet applicable eligibility requirements set out in 22 CFR 228.21.

(g) This provision will be included in all subagreements which will finance goods to be shipped on ocean vessels.

3.16. LOCAL PROCUREMENT (OCTOBER 1998)

(This provision is applicable when goods or services are procured under the award.)

(a) Financing local procurement involves the use of appropriated funds to finance the procurement of goods and services supplied by local businesses, dealers, or producers, with payment normally being in the currency of the cooperating country. Regardless of which source, origin, and nationality rules in paragraph (b) of the Provision entitled "USAID Eligibility Rules for Goods and Services" apply, these rules may be followed for local procurement. Rules on Ineligible and Restricted goods continue to apply.

(b) Locally financed procurements must be covered by source and nationality waivers as set forth in 22 CFR 228, Subpart F, except as provided for in the Standard Provision "USAID Eligibility Rules for Goods and Services," or when one of the following exceptions applies:

(1) Locally available commodities of U.S. origin, which are otherwise eligible for financing, if the value of the transaction is estimated not to exceed $100,000 exclusive of transportation costs.

(2) Commodities of geographic code 935 origin if the value of the transaction does not exceed the local currency equivalent of $5,000.

(3) Professional services contracts estimated not to exceed $250,000.

(4) Construction services contracts estimated not to exceed $5,000,000.

(5) Commodities and services available only in the local economy (no specific per transaction value applies to this category). This category includes the following items:

(i) Utilities including fuel for heating and cooking, waste disposal and trash collection;

(ii) Communications - telephone, telex, fax, postal and courier services;

(iii) Rental costs for housing and office space;

(iv) Petroleum, oils and lubricants for operating vehicles and equipment;

(v) Newspapers, periodicals and books published in the cooperating country;

(vi) Other commodities and services and related expenses that, by their nature or as a practical matter, can only be acquired, performed, or incurred in the cooperating country, e.g., vehicle maintenance, hotel accommodations, etc.

(c) The coverage on ineligible and restricted goods and services in the standard provision entitled, "USAID Eligibility Rules for Goods and Services," also apply to local procurement.

(d) This provision will be included in all subagreements where local procurement of goods or services will be financed with USAID funds.

3.17. NEGOTIATED INDIRECT COST RATES - PROVISIONAL (Nonprofit) (OCTOBER 1998)

(This provision is applicable to all recipients whose indirect cost rates under this award are on a provisional basis.)

(a) Provisional indirect cost rates shall be established for the recipient's accounting periods during the term of this award. Pending establishment of revised provisional or final rates, allowable indirect costs shall be reimbursed at the rates, on the bases, and for the periods shown in the Schedule of this award.

(b) The recipient, not later than nine months after the close of each of its accounting periods during the term of this award, shall submit to the Agreement Officer (M/OP/PS/OCC) proposed final indirect cost rates with supporting cost data. The proposed rates shall be based on the recipient's actual cost experience during that fiscal year. Negotiations of final indirect cost rates shall begin soon after receipt of the recipient's proposal.

(c) Allowability of costs and acceptability of cost allocation methods shall be determined in accordance with the applicable cost principles.

(d) The results of each negotiation shall be set forth in an indirect cost rate agreement signed by both parties. Such agreement is automatically incorporated into this award and shall specify (1) the agreed upon final rates, (2) the bases to which the rates apply, (3) the fiscal year for which the rates apply and (4) the items treated as direct costs. The agreement shall not change any monetary ceiling, award obligation, or specific cost allowance or disallowance provided for in this award.

(e) Pending establishment of final indirect cost rates for any fiscal year, the recipient shall be reimbursed either at negotiated provisional rates or at billing rates acceptable to the Agreement Officer (M/OP/PS/OCC), subject to appropriate adjustment when the final rates for the fiscal year are established. To prevent substantial overpayment or underpayment, the provisional or billing rates may be prospectively or retroactively revised by mutual agreement.

(f) Any failure by the parties to agree on any final rate(s) under this provision shall be considered a dispute within the meaning of the standard provision of the grant, entitled "Disputes".

3.18. PUBLICATIONS AND MEDIA RELEASES (JUNE 1999)

(This provision is applicable when publications are financed under the award.)
(a) USAID shall be prominently acknowledged in all publications, videos, or other information/media products funded or partially funded through this award, and the product shall state that the views expressed by the author(s) do not necessarily reflect those of USAID. Acknowledgments should identify the sponsoring USAID Office and Bureau or Mission as well as the U.S. Agency for International Development substantially as follows:

"This [publication, video or other information/media product (specify)] was made possible through support provided by the Office of ______________, Bureau for ______________, U.S. Agency for International Development, under the terms of Award No. __________. The opinions expressed herein are those of the author(s) and do not necessarily reflect the views of the U.S. Agency for International Development."

(b) Unless the recipient is instructed otherwise by the cognizant technical office, publications, videos, or other information/media products funded under this recipient and intended for general readership or other general use will be marked with the USAID logo and/or U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT appearing either at the top or at the bottom of the front cover or, if more suitable, on the first inside title page for printed products, and in equivalent appropriate location in videos or other information/media products. Logos and markings of co-sponsors or authorizing institutions should be similarly located and of similar size and appearance.

(c) The recipient shall provide the USAID Cognizant Technical Officer one copy of all published works developed under the award with lists of other written work produced under the award. In addition, the recipient shall submit one electronic or one hard copy of final documents (electronic copies are preferred) to PPC/CDIE/DIO at the following address:

USAID Development Experience Clearinghouse (DEC)
ATTN: Document Acquisitions
1611 Kent Street, Suite 200
Arlington, VA 22209-2111
Internet e-mail address: docsubmit@dec.cdie.org
Homepage: http://www.dec.org

Electronic documents may be submitted on 3.5" diskettes or as e-mail attachments, and should consist of only one electronic file that comprises the complete and final equivalent of the paper copy; otherwise, a hard copy should be sent. Acceptable software formats for electronic documents include Microsoft Word, WordPerfect, Microsoft Excel and Portable Document Format (PDF).

Each document submitted to PPC/CDIE/DIO should include the following information: 1) descriptive title; 2) author(s) name; 3) award number; 4) sponsoring USAID office; 5) date of publication; 6) software name and version (if electronic document is sent).

(d) In the event award funds are used to underwrite the cost of publishing, in lieu of the publisher assuming this cost as is the normal practice, any profits or royalties up to the amount of such cost shall be credited to the award unless the schedule of the award has identified the profits or royalties as program income.

(e) Except as otherwise provided in the terms and conditions of the award, the author or the recipient is free to copyright any books, publications, or other copyrightable materials developed in the course of or under this award, but USAID reserves a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use the work for Government purposes.

3.19. PARTICIPANT TRAINING (OCTOBER 1998)

(This provision is applicable when any participant training is financed under the award).

(a) Definitions: A participant is any non-U.S. individual being trained under this award outside of that individual's home country.

(b) Application of ADS Chapter 253: Participant training under this award shall comply with the policies established in ADS Chapter 253, Participant Training (including TrainNet requirements), except to the extent that specific exceptions to ADS 253 have been provided in this award with the concurrence of the Global Bureau's Center for Human Capacity Development. (See ADS 253) (ADS 253 may be obtained by submitting a request to the Agreement Officer.)

(c) Orientation: In addition to the mandatory requirements in ADS 253, recipients are strongly encouraged to provide, in collaboration with the Mission training officer, predeparture orientation and orientation in Washington at the Washington International Center. The latter orientation program also provides the opportunity to arrange for home hospitality in Washington and elsewhere in the U.S. through liaison with the National Council for International Visitors (NCIV). If the Washington orientation is determined not to be feasible, home hospitality can be arranged in most U.S. cities if a request for such is directed to the Agreement Officer, who will transmit the request to NCIV through R&O/IT.

3.20. VOLUNTARY POPULATION ACTIVITIES (March 1999)

(This provision is applicable to all awards involving any aspect of voluntary population activities.)

(a) Voluntary Participation and Family Planning Methods

(1) The recipient agrees to take any steps necessary to ensure that funds made available under this award will not be used to coerce any individual to practice methods of family planning inconsistent with such individual's moral, philosophical, or religious beliefs. Further, the recipient agrees to conduct its activities in a manner which safeguards the rights, health and welfare of all individuals who take part in the program.

(2) Activities which provide family planning services or information to individuals, financed in whole or in part under this award, shall provide a broad range of family planning methods and services available in the country in which the activity is conducted or shall provide information to such individuals regarding where such methods and services may be obtained.

(b) Requirements for Voluntary Family Planning Projects

(1) A family planning project must comply with the requirements of this paragraph.

(2) A project is a discrete activity through which a governmental or nongovernmental organization provides family planning services to people and for which Development Assistance funds, or goods or services financed with such

funds, are provided under this award, except funds solely for the participation of personnel in short-term, widely attended training conferences or programs.

(3) Service providers and referral agents in the project shall not implement or be subject to quotas or other numerical targets of total number of births, number of family planning acceptors, or acceptors of a particular method of family planning. Quantitative estimates or indicators of the number of births, acceptors, and acceptors of a particular method that are used for the purpose of budgeting, planning, or reporting with respect to the project are not quotas or targets under this paragraph, unless service providers or referral agents in the project are required to achieve the estimates or indicators.

(4) The project shall not include the payment of incentives, bribes, gratuities or financial rewards to (i) any individual in exchange for becoming a family planning acceptor or (ii) any personnel performing functions under the project for achieving a numerical quota or target of total number of births, number of family planning acceptors, or acceptors of a particular method of contraception.. This restriction applies to salaries or payments paid or made to personnel performing functions under the project if the amount of the salary or payment increases or decreases based on a predetermined number of births, number of family planning acceptors, or number of acceptors of a particular method of contraception that the personnel affect or achieve.

(5) No person shall be denied any right or benefit, including the right of access to participate in any program of general welfare or health care, based on the person's decision not to accept family planning services offered by the project.

(6) The project shall provide family planning acceptors comprehensible information about the health benefits and risks of the method chosen, including those conditions that might render the use of the method inadvisable and those adverse side effects known to be consequent to the use of the method. This requirement may be satisfied by providing information in accordance with the medical practices and standards and health conditions in the country where the project is conducted through counseling, brochures, posters, or package inserts.

(7) The project shall ensure that experimental contraceptive drugs and devices and medical procedures are provided only in the context of a scientific study in which participants are advised of potential risks and benefits.

(8) With respect to projects for which USAID provides, or finances the contribution of, contraceptive commodities or technical services and for which there is no subaward or contract under paragraph (e) of this clause, the organization implementing a project for which such assistance is provided shall agree that the project will comply with the requirements of this paragraph while using such commodities or receiving such services.

(9) (i) The recipient shall notify USAID when it learns about an alleged violation in a project of the requirements of subparagraphs (3), (4), (5) or (7) of this paragraph; (ii) the recipient shall investigate and take appropriate corrective action, if necessary, when it learns about an alleged violation in a project of subparagraph (6) of this paragraph and shall notify USAID about violations in a project affecting a number of people over a period of time that indicate there is a systemic problem in the project. (iii) The recipient shall provide USAID such additional information about violations as USAID may request.

(c) Additional Requirements For Voluntary Sterilization Programs

(1) None of the funds made available under this award shall be used to pay for the performance of involuntary sterilization as a method of family planning or to coerce or provide any financial incentive to any individual to practice sterilization.

(2) The recipient shall ensure that any surgical sterilization procedures supported in whole or in part by funds from this award are performed only after the individual has voluntarily appeared at the treatment facility and has given informed consent to the sterilization procedure. Informed consent means the voluntary, knowing assent from the individual after being advised of the surgical procedures to be followed, the attendant discomforts and risks, the benefits to be expected, the availability of alternative methods of family planning, the purpose of the operation and its irreversibility, and the option to withdraw consent anytime prior to the operation. An individual's consent is considered voluntary if it is based upon the exercise of free choice and is not obtained by any special inducement or any element of force, fraud, deceit, duress, or other forms of coercion or misrepresentation.

(3) Further, the recipient shall document the patient's informed consent by (i) a written consent document in a language the patient understands and speaks, which explains the basic elements of informed consent, as set out above, and which is signed by the individual and by the attending physician or by the authorized assistant of the attending physician; or (ii) when a patient is unable to read adequately, a written certification by the attending physician or by the authorized assistant of the attending physician that the basic elements of informed consent above were orally presented to the patient and that the patient thereafter consented to the performance of the operation. The receipt of this oral explanation shall be acknowledged by the patient's mark on the certification and by the signature or mark of a witness who shall speak the same language as the patient.

(4) The recipient must retain copies of informed consent forms and certification documents for each voluntary sterilization procedure for a period of three years after performance of the sterilization procedure.

(d) Abortion restrictions

(1) No funds made available under this award shall be used to finance, support, or be attributed to the following activities: (i) procurement or distribution of equipment intended to be used for the purpose of inducing abortions as a method of family planning; (ii) special fees or incentives to women to coerce or motivate women to have abortions; (iii) payments to persons to perform abortions or to solicit women to undergo abortions; (iv) information, education, training, or communication programs that seek to promote abortion as a method of family planning; and (v) lobbying for abortion.

(2) No funds made available under this award will be used to pay for any biomedical research which relates, in whole or in part, to methods of, or in performance of, abortions or involuntary sterilizations as a means of family planning. Epidemiologic or descriptive research to assess the incidence, extent or consequences of abortions is not precluded.

(e) Requirement for Subawards

The recipient shall insert this provision in all subsequent subawards and contracts involving family planning or population activities which will be supported in whole or in part with funds under this award.

3.21. PROTECTION OF THE INDIVIDUAL AS A RESEARCH SUBJECT (OCTOBER 1998)

(This provision is applicable when human subjects are involved in research financed by the award.)

(a) Safeguarding the rights and welfare of human subjects involved in research supported by USAID is the responsibility of the organization to which support is awarded. USAID has adopted the Common Federal Policy for the Protection of Human Subjects, Part 225 of Title 22 of the Code of Federal Regulations (the "Policy"). Additional interpretation, procedures, and implementation guidance of the Policy are found in USAID General Notice entitled "Procedures for the Protection of Human Subjects in Research Supported by USAID", issued April 19, 1995, as from time to time amended. USAID's Cognizant Human Subjects Officer (CHSO) in USAID/W has oversight, guidance, and interpretation responsibility for the Policy.

(b) Recipient organizations must comply with USAID policy when humans are the subject of research, as defined in 22 CFR 225.102(d), funded by the grant and recipients MUST provide "assurance", as required by 22 CFR 225.103, that they follow and abide by the procedures in the Policy. See also Section 5 of the April 19, 1995, USAID General Notice which sets forth activities to which the Policy is applicable. The existence of a BONA FIDE, applicable assurance approved by the Department of Health and Human Services (HHS) such as the "multiple project assurance" (MPA) will satisfy this requirement. Alternatively, organizations can provide an acceptable written assurance to USAID as described in 22 CFR 225.103. SUCH ASSURANCES MUST BE DETERMINED BY THE CHSO TO BE ACCEPTABLE PRIOR TO ANY APPLICABLE RESEARCH BEING INITIATED OR CONDUCTED UNDER THE AWARD. In some limited instances outside the U.S., alternative systems for the protection of human subjects may be used provided they are deemed "at least equivalent" to those outlined in Part 225 (See 22 CFR 225.101[h]). Criteria and procedures for making this determination are described in the General Notice cited in the preceding paragraph.

(c) Since the welfare of the research subject is a matter of concern to USAID as well as to the organization, USAID staff consultants and advisory groups may independently review and inspect research and research processes and procedures involving human subjects, and based on such findings, the CHSO may prohibit research which presents unacceptable hazards or otherwise fails to comply with USAID procedures. Informed consent documents must include the stipulation that the subject's records may be subject to such review.

3.22. CARE OF LABORATORY ANIMALS (NOVEMBER 1985)

(This provision is applicable when laboratory animals are involved in research performed in the U.S. and financed by the award.)

(a) Before undertaking performance of any grant involving the use of laboratory animals, the recipient shall register with the Secretary of Agriculture of the United States in accordance with Section 6, Public Law 89-544, Laboratory Animal Welfare Act, August 24, 1966, as amended by Public Law 91-579, Animal Welfare Act of 1970, December 24, 1970. The recipient shall furnish evidence of such registration to the Agreement Officer.

(b) The recipient shall acquire animals used in research under this award only from dealers licensed by the Secretary of Agriculture, or from exempted sources in accordance with the Public Laws enumerated in (a) above.

(c) In the care of any live animals used or intended for use in the performance of this grant, the recipient shall adhere to the principles enunciated in the Guide for Care and Use of Laboratory Animals prepared by the Institute of Laboratory Animals Resources, National Academy of Sciences - National Research Council, and in the United States Department of Agriculture's (USDA) regulations and standards issued under the Public Laws enumerated in a. above. In case of conflict between standards, the higher standard shall be used. The recipient's reports on portions of the award in which animals were used shall contain a certificate stating that the animals were cared for in accordance with the principles enunciated in the Guide for Care and Use of Laboratory Animals prepared by the Institute of Laboratory Animal Resources, NAS-NRC, and/or in the regulations and standards as promulgated by the Agricultural Research Service, USDA, pursuant to the Laboratory Animal Welfare Act of 24 August 1966, as amended (P.L. 89-544 and P.L. 91-579). NOTE: The recipient may request registration of the recipient's facility and a current listing of licensed dealers from the Regional Office of the Animal and Plant Health Inspection Service (APHIS), USDA, for the region in which the recipient's research facility is located. The location of the appropriate APHIS Regional Office as well as information concerning this program may be obtained by contacting the Senior Staff Office, Animal Care Staff, USDA/APHIS, Federal Center Building, Hyattsville, Maryland 20782.

3.23. TITLE TO AND USE OF PROPERTY (RECIPIENT TITLE $50,000 AND UNDER) (OCTOBER 1998)

(This provision is applicable only when title to property is vested in the recipient and under $50,000 in equipment is expected to be procured with USAID funds. Equipment is defined as any tangible personal property having a useful life of more than one year and an acquisition cost of $5,000 or more per unit.)

(a) Title to all property financed under this award shall vest in the recipient.

(b) The recipient agrees to use and maintain the property for the purpose of the award and in accordance with the procedures established in this Provision.

(c) With respect to property having an acquired value of $5,000 or more, the recipient agrees to report such items to the Agreement Officer as they are acquired and to maintain a control system which will permit their ready identification and location.

(d) Within ninety calendar days after the end of the award, the recipient will provide a list to the Agreement Officer and the Cognizant Technical Officer of each item that has current fair market value of $5,000 or more with a detailed proposal of what the recipient intends to do with that property. If the Agreement Officer does not respond within 120 calendar days, the recipient may proceed with the disposition of the property. However, if the recipient uses the property for purposes other than those of the award or sells or leases the property, USAID shall be reimbursed of its share of the property unless the Agreement Officer authorizes USAID's share of the income from selling or leasing the property to be used as program income. This share is based upon the percentage of USAID's contribution to the recipient's program. If USAID paid

100% of the recipient's costs, then USAID would receive 100% of the selling cost less a nominal selling fee of $500 or 10%, whichever is less.

3.24. PUBLIC NOTICES (JUNE 1993)

(This provision is applicable when the cognizant Technical Officer or SO Team determines that the award is of public interest and requests that the provision be included in the award.)

It is USAID's policy to inform the public as fully as possible of its programs and activities. The recipient is encouraged to give public notice of the receipt of this award and, from time to time, to announce progress and accomplishments. Press releases or other public notices should include a statement substantially as follows:

"The U.S. Agency for International Development administers the U.S. foreign assistance program providing economic and humanitarian assistance in more than 80 countries worldwide."

The recipient may call on USAID's Office of External Affairs for advice regarding public notices. The recipient is requested to provide copies of notices or announcements to the cognizant technical officer and to USAID's Office of Legislative and Public Affairs as far in advance of release as possible.

3.25. RIGHTS IN DATA (AUGUST 1992)

(This provision is applicable whenever data will be produced under the award.)

(a) Definitions

"Data" means recorded information (including information relating to the research, testing, or development of any drug or device requiring approval for use in the United States), regardless of form or the media on which it may be recorded. In the aggregate these data may be in the form of reports, articles, manuals, or publications. The term includes technical data and computer software. The term does not include financial reports or other information incidental to award administration.

"Form, fit and function data" means data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability, as well as data identifying source, size, configuration, mating, and attachment characteristics, functional characteristics, and performance requirements but specifically excludes the source code, algorithm, process, formulae, and flow charts of the software.

"Limited rights" means the rights of the Government in limited rights data as set forth in the following Limited Rights Notice:

-- "These data are submitted with limited rights. These data may be reproduced and used by the Government with the limitation that they will not, without written permission of the recipient, be used for purposes of manufacture nor disclosed outside the Government.

-- "This Notice shall be marked on any reproduction of these data, in whole or in part."

"Limited rights data" means data (other than computer software) that embody trade secrets, or are commercial or financial and confidential or privileged, to the extent that such data pertain to items, components, or processes developed at private expense, including minor modifications thereof.

"Restricted computer software" means computer software developed at private expense and that is a trade secret; is commercial or financial and is confidential or privileged; or is published copyrighted computer software, including minor modifications of such computer software.

"Technical data" means data (other than computer software) which are of a scientific or technical nature.

"Unlimited rights" means the right of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly, in any manner and for any purpose, and to permit others to do so.

(b) Allocation of Rights

(1) Except as provided in paragraph (c) of this provision regarding copyright, the Federal Government shall have unlimited rights in --

(i) Data first produced in performance of this award;
(ii) Form, fit and function data delivered under this award;
(iii) Data delivered under this award (except for restricted computer software) that constitutes manuals or instructional and training material for installation, operation or routine maintenance and repair of items, components, or processes delivered or furnished for use under this award; and
(iv) All other data delivered under this award unless provided otherwise for limited rights data or restricted computer software in accordance with paragraph (d) of this provision.

(2) The recipient shall have the right to --

(i) Use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the recipient in the performance of this award;
(ii) Protect from unauthorized disclosure and use those data which are limited rights data or restricted computer software to the extent provided in paragraph (d) of this provision;
(iii) Substantiate use of, add or correct limited rights, restricted rights, or copyright notices;
(iv) Establish claim to copyright subsisting in data first produced in the performance of this award to the extent provided in subparagraph (c) of this provision.

(c) Copyright

(1) Data first produced in the performance of this Award.

The recipient may establish, without prior approval of USAID, claim to copyright subsisting in scientific and technical articles based on or containing data first produced in the performance of this award and published in academic, technical or professional journals, symposia proceedings or similar works. The prior express written permission of USAID is required to establish claim to copyright subsisting in all other data first produced in performance of this award. For computer software and other data the recipient awards to the Government, and others acting on its behalf, a paid-up nonexclusive, irrevocable worldwide license in such copyrighted data to reproduce, prepare derivative works and display publicly by or on behalf of the Government.

(2) Data not first produced in the performance of this Grant. The recipient shall not, without prior written permission of USAID incorporate in data delivered under this award any data not first produced in the performance under this award and which contains the copyright notice of 17 U.S.C. 401 or 402, unless the grantee identifies such data and awards to the Government, or acquires on its behalf, a license of the same scope as set forth above in paragraph (c).

(3) Removal of copyright notices. The Government agrees not to remove any copyright notices placed on data delivered under this award and to include such notice on all reproductions of such data.

(d) Protection of limited rights data and restricted computer software

When data other than that listed in subparagraph (b)(1)(i), (ii) and (iii) of this provision are specified to be delivered under this award and qualify as either limited rights data or restricted computer software, if the recipient desires to continue protection of such data, the recipient shall withhold such data and not furnish them to the Government under this award. As a condition to this withholding, the recipient shall identify the data being withheld and furnish form, fit, and function data in lieu thereof.

(e) Subagreements

The recipient has the responsibility to obtain from subgrantees and those who work in collaboration with the recipient in performance of this award all data and rights necessary to fulfill the recipient's obligations under this award. If a subrecipient or collaborator refuses to accept terms affording the Government such rights, the recipient shall promptly bring such refusal to the attention of USAID and not proceed without authorization from USAID.

(f) Relationship to patents

Nothing contained in this provision shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right granted to the Government.

3.26. PATENT RIGHTS (JUNE 1993)

(This provision is applicable whenever patentable processes or practices are financed by the award.)

(a) <u>Definitions</u>:

(1) Invention means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code.

(2) Subject invention means any invention of the recipient conceived or first actually reduced to practice in the performance of work under this agreement.

(3) Practical application means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

(4) Made when used in relation to any invention means the conception or first actual reduction to practice of such invention.

(5) Small business firm means a small business concern which meets the size standards for small business concerns involved in Government procurement and subcontracting at 13 CFR 121.3-8 and 13 CFR 121.3-12, respectively.

(6) Nonprofit organization means a university or other institution of higher education or an organization which is not organized for profit as described in the laws of the country in which it was organized.

(b) Allocation of Principal Rights: The recipient may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the recipient retains title, the Federal Government shall have a non-exclusive, non-transferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the U.S. the subject invention throughout the world.

(c) Invention Disclosure, Election of Title, and Filing of Patent Applications by Recipient:

(1) The recipient shall disclose each subject invention to USAID within two months after the inventor discloses it in writing to recipient personnel responsible for patent matters. The disclosure to USAID shall be in the form of a written report and shall identify the agreement under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to USAID the recipient shall promptly notify USAID of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the recipient.

(2) The recipient shall elect in writing whether or not to retain title to any such invention by notifying USAID within two years of disclosure to USAID. However, in any case where publication, on sale, or public use has initiated the one-year statutory period wherein valid patent protection can still be obtained in the United States, the period of election of title may be shortened by USAID to a date that is no more than 60 days prior to the end of the statutory period.