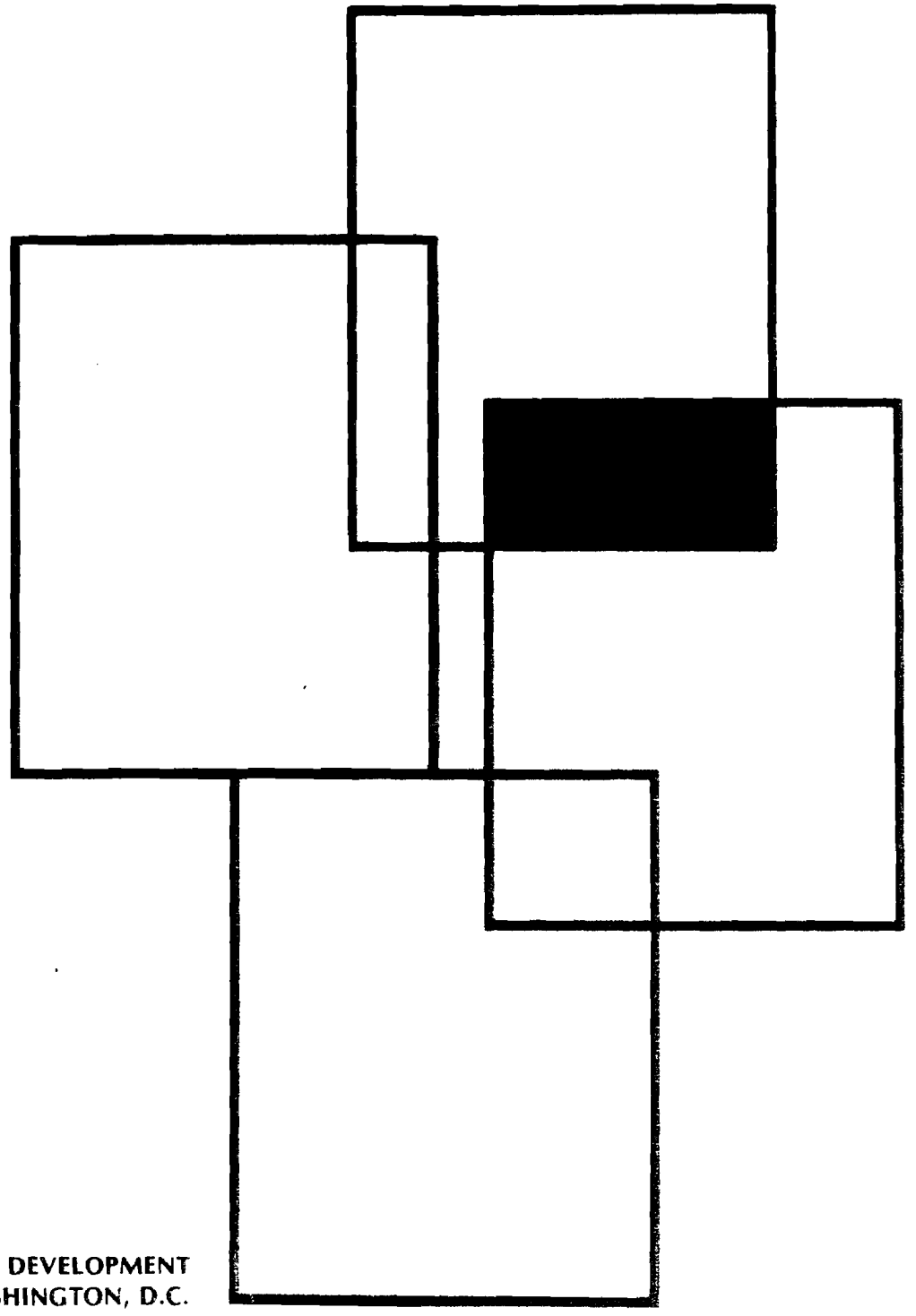
Grants



AGENCY for INTERNATIONAL DEVELOPMENT
WASHINGTON, D.C.

AGENCY FOR INTERNATIONAL DEVELOPMENT

HANDBOOK TRANSMITTAL MEMORANDUM	DATE September 29, 1992	TRANS. MEMO NO. 13:60

MATERIAL TRANSMITTED:

Handbook 13 - Grants

Chapter 4, Specific Support Grants, and Appendices 4A - 4C.

1. The rules and guidance on issuing and administering specific support grants in Chapter 4 are being amended .

a. Information on types of specific support grants and reference to the coverage on selection methods has been deleted as not being necessary in this chapter.

b. Coverage on eligible recipients has been added to clarify the types of entities to which AID may provide grants. Also included is a definition of nonprofit organizations.

c. Under required application documentation, the compliance certifications listing has been updated to include four additional certifications, and procurement and property policies are listed to be required when procurement will be significant.

d. A paragraph has been added to explain a new procedure by the Office of Procurement, Contract and Commodities Division, which may allow one approval of U.S. source pharmaceutical procurements by the grantee rather than case-by-case authorization.

e. Other editorial and office symbol changes have been made to the chapter.

2. Editorial changes have been made in Appendices 4A and 4B.

3. A number of substantive changes have been made in Appendix 4C Standard Provisions for U.S., Nongovernmental Grantees.

a. A new mandatory provision covers metric requirements. New optional provisions cover "OMB Approval Under the Paperwork Reduction Act," "Public Notice," and "Rights in Data."

b. Debarment and suspension coverage has been amended to reflect inclusion of the certification at the application stage.

c. Letter of Credit coverage has been revised to correspond with current coverage for contract payments.

d. In "Air Travel and Transportation," the requirement for approval of international travel has been amended. The provision requires the same notification by the grantee, but does not require written approval by the Project Officer. It will be the responsibility of the Project Officer or Mission to inform the grantee if proposed travel is not acceptable.

e. "Ocean Shipment of Goods" has been amended to incorporate the eligibility requirements for AID financing by reference to Chapter 7 of Handbook 1, Supp. B. Also added is a requirement to include in subagreements which would include ocean shipment of AID-financed goods.

f. The source and nationality rules in the provision "AID Eligibility Rules for Goods and Services" have been clarified and coverage on the Development Fund for Africa has been included. "Local Cost Financing" is amended to implement the new policy requirements to buy American. In both provisions a requirement has been added to include the provision in subagreements when applicable.

g. Subgrantee audit requirements have been specified in the "Subagreements" provision.

h. Requirements to acknowledge AID's support have been added to the "Publications" provision.

i. Specific requirements concerning participant training have been deleted; the requirements are incorporated in the provision by reference to Handbook 10.

4. Various editorial changes have been made in other provisions.

FILING INSTRUCTIONS:

1.

REMOVE PAGES:	REPLACEMENT PAGES:
TC-3 and TC-4 (TM 13:59)	TC-3 and TC-4
4-1 through 4-14 (TMs 13:37, 13:44, 13:52)	4-1 through 4-13
4A-1 and 4A-2 (TM 13:44)	4A-1 and 4A-2
4B-1 through 4B-3 (TM 13:44)	4B-1 through 4B-3
4C-1 through 4C-77 (TMs 13:43, 13:45, 13:50 13:56)	4C-1 through 4C-81

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Address questions about this Handbook to FA/PPE (703) 875-1534.

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CHECKLIST FOR HANDBOOK 13
AUTHOR OFFICE: FA/PPE

DATE	MATERIAL TRANSMITTED	TM NO.
1-15-74	Complete Handbook	13:1
1-22-76	NOTE regarding sex-biased language in handbooks	13:4
12-31-80	Appendix 6A to Chapter 6	13:16
7-1-82	Page 3 of the Index	13:26
7-1-83	Pages 6-1, 6-2, and 6-2a of Chapter 6	13:30
6-1-85	Pages 1I-1 of App.1I, of Ch. 1	13:38
Aug. '86	New Handbook Index	13:41
1-1-87	Pages 1F-1 thru 1F-3, of Ch. 1; Att. 2A of Ch. 2; pages 4D-7 thru 4D-30, pages 4D-33 thru 4D-77 of App. 4D, Ch. 4	13:42
10-20-87	Page 1J-1 of App. 1J, Ch.1 and pages 6-3 thru 6-5, 6B-1 thru 6B-9 of Ch. 6	13:44
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7-15-88	Chapter 5 in its entirety	13:48
Various	Pages 4D-31 and 4D-32 of App. 4D	13:50
Various	Reissuance in its entirety	13:54
Various	Pages 1-3 and 1-4 of Ch. 1;	13:55
9-14-90	App. 1L of Ch. 1	13:56
10-17-90	Pages 1-15 thru 1-20, 1-25 and 1-26, 1-31 and 1-32, and 1-45 and 1-46	13:57
5-18-91	Pages 4D-1 thru 4D-6a of App. 4D	13:58
10-18-91	Pages TC-1 thru TC-5 of the Table of Contents; pages 1-1 & 1-2, 1-5 thru 1-14, 1-21 thru 1-24, 1-27 thru 1-30, 1-33 thru 1-44, 1-47 thru 1-53, App. 1A, 1G, 1H, and 1K of Ch. 1, Chapter 3, and 5-1 thru 5-5, App. 5A and 5C of Chapter 5	13:59
9-29-92	Pages TC-3, TC-4, Chapter 4 and Appendices 4A, 4B, and 4C	13:60

AGENCY FOR INTERNATIONAL DEVELOPMENT

HANDBOOK TRANSMITTAL MEMORANDUM	DATE November 6, 1991	TRANS. MEMO NO. 13:59

MATERIAL TRANSMITTED:

Handbook 13 - Grants

Chapter 1 - Editorial changes have been made, including changes to the office names and symbols, updating reporting and recordkeeping requirements, moving coverage on nondiscrimination in Federally assisted programs to the new Chapter 3, and adding new "Financial Status Report" forms. FM's new policies on agency-issued letters of credit have been incorporated. Treasury will no longer be issuing LOCs.

A new Chapter 3 is issued covering the basic statutory and regulatory requirements affecting assistance instruments. Among other things the new chapter incorporates the drug-free workplace requirements and restrictions on lobbying.

Chapter 5 - Coverage has been added to indicate who can authorize deviations to PIO grants. The disputes provision has been deleted, and the payment provision for periodic advances has been revised to meet FM's requirement for quarterly submission of a "Financial Status Report" to liquidate advances. Other editorial changes have been made.

SUPERSEDES:

Pages TC-1 thru TC-5 of the Table of Contents; pages 1-1 and 1-2, 1-5 thru 1-14, 1-21 thru 1-24, 1-27 thru 1-30, 1-33, thru 1-44, 1-47 thru 1-54, App. 1A, 1G, 1H, and 1K of Chapter 1, Chapter 3 (Reserved), and 5-1 thru 5-5, App. 5A and 5C of Chapter 5. (TMs 13:5, 13:26, 13:42, 13:46, 13:48, 13:55, 13:56 and 13:57)

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6-18-87	Pages 4C-13 thru 4C-28, pages 4C-31 thru 4C-77 of Appendix 4C to Chapter 4	13:43
10-20-87	Page 1J-1 of App. 1J, Ch.1; 4A-1, 4A-2, 4B-1 thru 4B-3 of Ch. 4; and pages 6-3 thru 6-5, 6B-1 thru 6B-9 of Ch. 6	13:44
Various	Pages 4C-11 and 4C-12 of Appendix 4C	13:45
5-26-88	Chapter 2	13:47
7-15-88	Chapter 5 in its entirety	13:48
Various	Pages 4C-29, 4C-30 of App. 4C, pages 4D-31 and 4D-32 of App. 4D	13:50
Various	Pages 4-5 thru 4-14 of Chapter 4	13:52
Various	Reissuance in its entirety	13:54
Various	Pages 1-3 and 1-4 of Ch. 1;	13:55
9-14-90	App. 1L of Ch. 1; pages 4C-1 thru 4C-8a of App. 4C	13:56
5-18-91	Pages 4D-1 thru 4D-6a of App. 4D	13:58
10-18-91	Pages TC-1 thru TC-5 of the Table of Contents; pages 1-1 & 1-2, 1-5 thru 1-14, 1-21 thru 1-24, 1-27 thru 1-30, 1-33, thru 1-44, 1-47 thru 1-54, App. 1A, 1G, 1H, and 1K of Ch. 1, Chapter 3 (Reserved), and 5-1 thru 5-5, App. 5A and 5C of Chapter 5	13:59

AGENCY FOR INTERNATIONAL DEVELOPMENT

AID HANDBOOK TRANSMITTAL MEMORANDUM

TM 13:1
October 3, 1974

MATERIAL TRANSMITTED:

Handbook 13 - Grants

This Handbook is part of the new handbook series which the Agency has developed to replace the AID Manual Orders. PD-53 (M.O. 1000.7) is the only directive superseded by this Handbook.

This Handbook sets forth procedural and policy guidance for all major steps in the grant process, from the receipt of the grant proposal through selection, negotiation, award, and, finally, administration of the grant.

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AGENCY FOR INTERNATIONAL DEVELOPMENT

HANDBOOK 13

GRANTS

TM 13:1
October 15, 1974

N O T E

Throughout this Handbook, masculine pronouns are to be interpreted as including both men and women, unless the context specifically excludes this interpretation. Future revisions will take into account the AID directive (HB 18, Part I, 2E) of 12/30/75 on the avoidance of sex-biased language.

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CHAPTER 1

INTRODUCTION

1A. Purpose and Application

1. The purpose of this Handbook is to provide guidance for Agency personnel in the processing of grants and cooperative agreements. This Handbook applies to all AID grants and cooperative agreements issued by the Agency except for (a) grants to and cooperative agreements with foreign governments and foreign government agencies and (b) grants and cooperative agreements with U.S. schools, hospitals, and nonprofit institutions abroad under authority of Section 214 of the Foreign Assistance Act of 1961, as amended (hereinafter referred to as FAA) - the program for American Schools and Hospitals Abroad (ASHA). Policies and procedures applicable to Section 214 grants and cooperative agreements are determined by the Office of American Schools and Hospitals Abroad (FVA/ASHA).

2. This Handbook sets forth procedural and policy guidance for all major steps in the grant and cooperative agreement process from the receipt of the applications through selection, negotiation, award, and administration of the grant or cooperative agreement. When a policy or procedure is prescribed, use of any inconsistent policy or procedure shall constitute a deviation and shall be processed in accordance with paragraph 1E of this Handbook.

3. The assistance instruments covered by this Handbook are specific support grants, grants to public international organizations, and cooperative agreements.

4. Formats are provided for each type of instrument. The formats contain mandatory and optional provisions based on legal requirements and the nature of the program being funded. It is intended, through the use of these formats and through the guidance of this Handbook, to achieve standardization in policy relating to grants and cooperative agreements to the maximum possible extent.

1B. General Policy

1. Authority

a. AID is responsible for the administration of a number of programs specifically designed to provide assistance to institutions or organizations in the United States and abroad. The major assistance programs which are specifically provided for by statute are the program of assistance for research and educational institutions in the United States and international agricultural research centers under FAA Title XII, Section 297; the program for assistance to organizations dealing with voluntary population planning under FAA Section 104; and the program to assist the development assistance activities of U.S. private and voluntary organizations and cooperatives under FAA Section 123.

b. In addition to these programs specifically identified by statute, there are assistance type programs under other, more general authorities, including FAA Section 635(b).

2. AID's Assistance Policy

AID's assistance policy is based upon the Federal Grants and Cooperative Agreement Act of 1977 (PL 95-224)(31 USC 6301-8); OMB Final Guidance, "Implementation of Federal Grant and Cooperative Agreement Act of 1977" (43 F.R. 36860, August 18, 1978); FAA Section 635(b); and Chapter 25 of Handbook 1, Supplement B entitled "Procurement Policies - Integrated Statement of Procurement Policies for Commodities and Services. This policy is supplemented by the Office of Management and Budget Circular A-110 entitled "Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations - Uniform Administrative Standards." While OMB Circular A-110 is applicable to U.S. organizations and not to non-U.S. organizations, it is nonetheless applied to non-U.S. organizations as a matter of AID policy to the extent practicable. AID's assistance policy was initially stated in the Administrator's Policy Determination No. 53, dated June 27, 1973. The Policy Determination (which was cancelled upon implementation in this Handbook) was incorporated in paragraph 1B of this Handbook. AID's policy relating to cooperative agreements is set forth in Chapter 6 of this Handbook.

a. Use of Assistance Instruments

(1) Contracts represent the normal legal relationship for the acquisition of goods or services by AID. Their administration and use is regulated in some detail by the Federal and AID Acquisition

1B2a

Regulations. Assistance instruments should not be used as substitutes for contracts, thereby rendering inapplicable the carefully defined rules and procedures set forth in the Acquisition Regulations.

(2) Assistance instruments shall not be used to provide for the performance of projects over which AID plans to exercise a substantial degree of operational control. Nor shall assistance instruments be used to discharge responsibilities of the U.S. Government under international agreements because of AID's lack of ability as a grantor to enforce performance by a recipient.

(3) Assistance instruments may be used where specifically authorized by statute or where their use will enhance the purposes of the Foreign Assistance Act. In particular, assistance instruments may be used:

(a) To support or intensify the activities of independent organizations which contribute to the achievement of Foreign Assistance Act objectives; or

(b) To develop the independent capacity, integrity, and quality of the recipient as an entity whose function is for the economic or social betterment of underdeveloped countries.

(4) In either event the nature of the activity to be supported and the characteristics of the organization to be supported must justify the diminished level of managerial control which is to be retained by AID in assistance relationships.

(5) It is appropriate to use assistance instruments when emphasis is placed on promotion of the independent capacity, integrity and quality of the entity or the programs supported, rather than on specific work and the manner in which it is performed or the day-to-day activities of the entity as a part of the U.S. Government's foreign assistance program. Insofar as they distribute funds or services or goods, recipients do so as part of their own programs. If the AID purpose is to obtain goods or services to pursue an assistance program arranged by AID, then a contract, not an assistance instrument, is the appropriate form of document to formalize the arrangement.

b. Prudent Management

(1) Self-restraint in the imposition of program control by AID officials is an essential feature of assistance activities. If prudent management requires that AID retain a substantial degree of

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operational control over a program, then a contract and not an assistance instrument should be used.

(2) However, the fact that AID decides to make an assistance instrument does not relieve it of the obligation to exercise prudent management of public funds. Assistance instruments must include provisions which assure that AID retains proper fiscal control over assistance funds. Prudent management in the case of an assistance instrument normally requires:

(a) Provision of adequate information to the prospective recipient on AID assistance procedures;

(b) Ascertainment of technical and managerial competence and financial responsibility of prospective recipient;

(c) Reduction to writing of the purposes to be promoted by the assistance instrument and of all understandings between AID and the recipient;

(d) Maintenance of contact and liaison with the recipient, including receipt, review and analysis of at least annual substantive reports on operations and accomplishments;

(e) Establishment of any limitations on expenditure of AID's granted funds;

(f) Provision for adequate recordkeeping and financial reporting;

(g) Audit;

(h) Evaluation of program effectiveness;

(i) Provision for claiming and receipt of refunds equivalent to amounts, if any, misapplied, or spent in violation of the conditions by a recipient;

(j) Provision for termination.

(3) Care should, however, be taken to avoid the imposition of requirements for program approvals, reports and/or restrictions that go beyond the requirements of the applicable OMB Circulars, needs of prudent management, and that are inconsistent with reasonable program and management flexibility for the recipient.

1B2

c. Legal Constraints

Because of the variety of programs and legislative authorizations under which assistance instruments are made and administered, General Counsel advice should be sought on what is required for particular programs when assistance instruments are contemplated. Consideration should be given as to whether the mechanism to be employed is that of a contract or an assistance instrument. Additionally, the following legal requirements are of general applicability to the foreign assistance program and must be given consideration to determine whether they apply in each case:

(1) U.S. flag carrier preference;

(2) Equal opportunity (see AID Regulations 9, 17, and 18 which apply specifically to assistance instruments, also see paragraph 1W of this Handbook);

(3) Avoidance of benefit to officials;

(4) Source-origin requirements for procurement;

(5) Use of available U.S.-owned foreign currency;

(6) For capital assistance projects, prior completion of plans and cost estimates and AID approval of contracts and contractors;

(7) Restrictions against assistance to certain countries;

(8) Program description and legal commitment on the part of AID sufficient to support the obligation of funds;

(9) Compliance with applicable cost principles for determining reimbursability of costs;

(10) Maintenance of objective standards and avoidance of favoritism in the selection of contractors and subrecipients.

3. Grant and Cooperative Agreement Administration Functions

a. Normally, AID administers its assistance instruments through a project officer, who is concerned with evaluation and the substantive program and policy aspects of the grant or cooperative agreement, and a grant officer, who is concerned with the business and fiscal side. The

1B3a

assistance instrument is signed by the grant officer or another officer authorized to do so. Signature of a grant officer is required to revise the assistance instrument or agree to any binding promise or obligation by the Government. Other officers who play a significant role are those responsible for disbursement and audit, and for appropriation control.

b. The precise split of functions among AID offices and officers will vary among programs. The AID offices involved must take positive steps to assure that there is no confusion and misunderstanding on the part of any recipient about the responsibility and authority of the AID officials or offices with which the recipient and its personnel are to deal. AID officers must also see to it that unnecessary administrative burdens, delay, or red tape are not imposed on recipients. Appropriate offices should insure that Agency procedures and practices result in prompt disbursements to recipients, and timely response to recipient inquiries.

c. The project office is responsible for determining and describing, in the programming and implementing documents, the purpose of the transaction and the intended nature of the relationship. If there is a disagreement between the grant office and the project office on the final form of the transaction that implements the intended relationship - grant, cooperative agreement or contract, the final determination of instrument choice will rest with the Deputy Associate Administrator for Finance and Administration (DAA/FA) with concurrence of the General Counsel. The selection of recipients, in accordance with reasonable standards, is also generally the responsibility of the project office. The Office of Procurement, with advice from the Office of the Inspector General, will assist the project office by conducting preaward fiscal and management appraisals, as appropriate, and will explain to potential recipients what will be required of them in these regards. Processing of the necessary internal AID budget and authorization papers is the responsibility of the project office. The grant officer handles the formal preparation and clearance of the instrument and its execution and, except as otherwise provided in the instrument, formal notifications to the recipient, approvals, modifications, final negotiation of financial items, and maintenance of official files.

d. None of these functions can be performed in a vacuum. They overlap, and what is done by the project office has consequences for the matters within the grant officer's cognizance and vice versa. A close and cooperative working relationship must be maintained between them.

1C. Assistance Instrument Limitations

1. A grant or cooperative agreement is in the nature of a gift in support of an agreed upon purpose. As such, they may be used to support a nongovernmental organization whose activities are consistent with AID's own objectives and who requests financial assistance. Appropriate provisions may be attached to the instrument limiting the use of funds to stated objectives and imposing such other requirements to be met by the recipient as are deemed necessary for prudent management of public funds. While the recipient is not under an enforceable "contractual" obligation to perform, it is nonetheless expected to use its best efforts to achieve the purposes of the grant or cooperative agreement.

2. While grants and cooperative agreements are not subject to the acquisition regulations, they are subject to certain legal requirements and restrictions contained in the Foreign Assistance Act and other applicable statutes. One must not assume that an action not allowable under the Federal Acquisition Regulation governing contracts can be legitimatized by use of a grant or cooperative agreement.

3. Refer to Chapter 25, Handbook 1, Supplement B, for criteria for choice of instrument.

1D. Delegations of Authority

1. Section 635(b) of the Foreign Assistance Act of 1961, as amended, authorizes the President to make grants to and agreements with any individual, corporation, body of persons or international organization in furtherance of the purposes and within the limitation of the Act.

2. Executive Order 12163, as amended, delegated that authority to the AID Administrator who has redelegated that authority within AID under Delegation of Authority No. 149 to the Associate Administrator for Finance and Administration, (AA/FA). AA/FA has redelegated that authority to the Deputy Associate Administrator for Finance and Administration (DAA/FA) under Delegation of Authority No. 149.1. DAA/FA has redelegated the authority to execute grants and cooperative agreements to Mission Directors (including AID Principal Officers) and professional grant officers in AID/W and the field.

a. Delegation of Authority No. 149.1.1, which redelegates the authority of DAA/FA to execute grants and cooperative agreements to Mission Directors and AID Principal Officers, is included as Appendix 1J to this Chapter.

1D

b. Professional grants officers in AID/W and the field will receive their delegation from DAA/FA by means of a certificate issued to them personally. The certificate will indicate any limitations (monetary or otherwise) on the exercise of their personal authority.

c. If it is appropriate for a Mission Director, AID Principal Officer, or designated individual to execute a grant or cooperative agreement in excess of their delegated authority, they may request an "ad hoc" redelegation of authority from the Procurement Policy and Evaluation Staff (FA/PPE), AID/W.

d. Questions about these delegations should be referred to the Procurement Policy and Evaluation Staff FA/PPE, AID/W.

1E. Deviations

1. Requests for Deviations:

a. Deviations from the indicated mandatory provisions contained in the formats or actions inconsistent with the policy or procedure contained in this Handbook will be authorized only when essential to effect necessary performance under the grant or cooperative agreement or when special circumstances make such deviations clearly in the best interests of the Government.

b. Requests for authority to deviate from the policies, procedures or standard provisions contained in this Handbook shall be submitted via action memorandum to the appropriate approving official (see paragraph 1E3 below). Requests for deviations may be initiated by either the grant officer or by the technical officer through the grant officer.

c. Prior to submission of the action memorandum for signature, the responsible grant officer shall obtain either written or telegraphic comments from the Procurement Policy and Evaluation Staff, (FA/PPE). The request for FA/PPE comments shall contain as a minimum all of the information required under 1E2 below. FA/PPE shall normally have at least ten working days from date of receipt of request for comments to review the request and provide comments. If no comments are received after that date, the grant officer may proceed to submit the deviation request to the appropriate official for authorization. However, any

comments submitted by FA/PPE must be made a part of the deviation request. A copy of each authorized deviation must be furnished FA/PPE.

d. Prior to submission of any deviation request involving fees or cost principles, the grant officer shall obtain either written or telegraphic comments from the Overhead and Special Costs and Contract Closeout Branch, (FA/OP/PS/OCC).

2. Deviation Request Content

Each request for a deviation shall contain as a minimum:

a. Identification of the provision, policy, or procedure from which a deviation is sought;

b. A full description of the deviation and the circumstances in which it will be used;

c. A description of the intended effect of the deviation;

d. A statement as to whether the deviation has been requested previously, and, if so, circumstances of the previous request;

e. The name of the recipient and identification of the grant or cooperative agreement affected, including the dollar value; and

f. Detailed reasons supporting the request, including any pertinent background information which will contribute to a fuller understanding of the deviation sought.

3. Approval of Deviations

a. Deviations to all grants and cooperative agreements to U.S. organizations issued by FA/OP or issued by overseas field activities must be approved by the Director, Office of Procurement (FA/OP).

b. Any deviation to a grant or cooperative agreement to a U.S. organization which involves mandatory requirements in OMB Circular A-110 entitled "Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations" must be approved by the Director, Office of Management and Budget. The Deputy Associate Administrator for Finance and Administration (DAA/FA) is the Agency's coordinator for all OMB Circular A-110 matters and will be responsible for requesting OMB deviation exceptions in accordance with paragraph 7 of OMB Circular A-110.

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c. Deviations to non-U.S. organization grants and cooperative agreements issued overseas must be approved either by the Director, Office of Procurement or by Mission Directors or other officers in charge of overseas field activities ("Principal Officers") who have been delegated authority to execute grants and cooperative agreements with non-U.S. nongovernmental organizations.

d. For deviations to grants to Public International Organizations, see Chapter 5.

1F. Definitions: These definitions are applicable throughout this Handbook.

1. AID means the Agency for International Development.

2. Administrator means the Administrator or Deputy Administrator of the Agency for International Development.

3. Government means the Government of the United States.

4. Grant Officer means the person executing the grant or cooperative agreement on behalf of the United States Government, and any other government employee who is a properly designated Grant Officer. The term includes, except as otherwise provided in the grant, the authorized representative of a grant officer acting within the limits of the grant officer's authority.

5. Recipient means any foreign or domestic nongovernmental entity which receives a grant or agreement from AID.

6. Subrecipient means any foreign or domestic entity which receives a subagreement under an AID prime grant or agreement.

7. Agreement means an assistance type instrument such as a grant or cooperative agreement that is not subject to the FAR and the AIDAR.

8. PIO/T means Project Implementation Order/Technical Services.

9. Project office means the AID Scientific/Technical Office in AID/W or a Mission having primary program responsibility for the grant or cooperative agreement program.

10. Project Officer means the individual within the technical office who has responsibility for direct relationship with the recipient on program related matters.

11. OMB Circular A-110 means the Office of Management and Budget Circular No. A-110 entitled "Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations - Uniform

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Administrative Standards." OMB Circular A-110 has been implemented in Handbook 13 in Sections 1H through 1U.

12. Mission means the United States AID Mission to, or principal AID office, in the country in which a project takes place.

13. Local currency means the currency of the country in which activities under the grant or cooperative agreement take place.

14. Applicable Federal cost principles means

(1) Office of Management and Budget Circular No. A-21 for educational institutions,

(2) Office of Management and Budget Circular A-122 for all other private, nonprofit organizations, or

(3) Federal Acquisition Regulation (48 CFR 1) Subpart 31.2 and AID Acquisition Regulation (48 CFR 7), Subpart 731.2 for commercial organizations.

NOTE: All subawards (subgrants, subagreements, or subcontracts) are subject to the Federal cost principles applicable to the type of organization the subrecipient of subcontractor is.

15. CFR means the Code of Federal Regulations. The CFR's are published by the Office of the Federal Register and are sold by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

* 1G. REPORTING AND RECORDKEEPING REQUIREMENTS

1. The Paperwork Reduction Act (5 CFR 1320) requires that all reporting and recordkeeping requirements which impose identical collections of information on ten or more persons be approved by the Office of Management and Budget. The information collection requirements imposed by this Handbook (those not other wise covered by Standard Forms or other approved collections) are shown in Attachment 1K to this chapter and have been approved by OMB (OMB control number 0412-0510, expiration date 7/31/94. Public reporting burden for these collections of information is estimated as shown in Attachment 1K, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Procurement Policy and Evaluation Staff (FA/PPE), Agency for International

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Development, Washington, DC 20523; and to the Office of Management and Budget, Paperwork Reduction Project (0412-0510), Washington, DC 20503.

2. Any additional requirements that impact on ten or more entities must be fully justified and submitted to FA/AS/ISS by the initiating office for processing with OMB. For additional information on Financial Reporting and Technical Reporting, see sections 1M and 1N of this chapter. *

1H. Bonding and Insurance (Source: OMB Circular A-110, Attachment B)

1. Agreements Involving Construction

a. A recipient shall follow its own requirements relating to bid guarantees, performance bonds, and payment bonds unless the construction contract (held by the contractor under the prime agreement) exceeds $100,000.

b. For construction or facility improvement contracts (held by contractors under the prime agreement) that exceed $100,000, the recipient's bonding policy must provide for:

(1) A bid guarantee from each bidder equivalent to five percent of the bid price. The bid guarantee shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.

(2) A performance bond on the part of the contractor for 100 percent of the contract price. A performance bond is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(3) A payment bond on the part of the contractor for 100 percent of the contract price. A payment bond is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

c. The grant officer may (1) accept the recipients bonding policy provided a determination has been made FA/PPE that AID's interest is adequately protected; or (2) accept the recipient's bonding policy that has been approved by any other Federal sponsoring agency; provided, that the Federal sponsoring agency states in writing that the recipient's policy meets the minimum requirements set forth in 1H1b above.

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2. Fidelity Bonding

a. The grant officer may require adequate fidelity bonding where the recipient has no coverage and the bond is needed to protect the Government's interest.

b. Where such bonds are required, the bonds shall be obtained only from companies holding certificates of authority as acceptable sureties (see 31 CFR 223).

3. Insurance

a. No insurance requirements, including car insurance, shall be imposed by the grant officer other than those normally required by the recipient.

b. Recipients are not required to carry Defense Base Act or War Hazards Compensation Act coverage since they are not contractors within the meaning of the Acts. However, they may elect to do so for their own protection.

4. General: No other bonding and insurance requirements shall be imposed other than those normally required by the recipient. Grant officers shall coordinate bonding and insurance questions with MS/PPE.

1I. Retention and Custodial Requirements for Records (Source: OMB Circular A-110, Attachment C)

1. This paragraph sets forth record retention requirements for grants and agreements with recipients and subrecipients; no other records retention requirements shall be imposed.

2. Financial records, supporting documents, statistical records, and all other records pertinent to a grant or an agreement shall be retained for a period of 3 years, with the following exceptions:

a. If any litigation, claim or audit is started before the expiration of the 3-year period, the records shall be retained until all litigations, claims, or audit findings involving the records have been resolved.

b. Records for nonexpendable property acquired with Federal funds shall be retained for 3 years after its final disposition.

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c. When records are transferred to or maintained by AID, the 3-year retention requirements are not applicable to the recipient.

3. The retention period starts from the date of the submission of the final expenditure report or, for grants and agreements that are renewed annually, from the date of the submission of the annual financial status report.

4. Recipients may substitute microfilm copies in lieu of original records. Recipient requests for microfilm substitution shall be submitted to the grant officer, who shall obtain project office and Inspector General's office clearance of the request.

5. The grant office may request transfer of certain records to AID's custody from the recipient when the project office and the Inspector General's office determine that the records possess long-term retention value and the recipient no longer needs them for performance under the grant or agreement. If microfilming is approved, the recipient and/or subrecipient shall comply with the appropriate requirements of 41 CFR 101-11.5.

6. The AID Administrator and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any pertinent books, documents, papers, and records of the recipient and their subrecipients to make audits, examinations, excerpts and transcripts.

7. With respect to public access to recipient records that are pertinent to an AID grant or agreement, the public shall have access to such records on the same basis as they would to such Agency records under the Freedom of Information Act (5 U.S.C. 552). The recipient shall be guided by AID Regulation 12 (22 CFR 212). The recipient may submit questionable inquiries through the grant officer to the FA/OP Freedom of Information Officer for an opinion.

1J. Program Income (Source: OMB Circular A-110, Attachment D)

1. Program income represents gross income earned by the recipient from AID supported activities. Such earnings exclude interest earned on advances and include, but will not be limited to, income from service fees, sale of commodities, usage or rental fees, and royalties on patents and copyrights. The standards set forth in this paragraph apply to recipient accounting for program income under AID grants and cooperative agreements.

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2. Interest earned on advances of Agency funds shall be remitted to AID.

3. Proceeds from the sale of real and personal property either provided by AID or purchased in whole or in part with AID funds, shall be handled in accordance with paragraph 1T. of this Chapter.

4. Unless the grant or cooperative agreement provides otherwise, recipients shall have no obligation to AID with respect to royalties received as a result of copyrights or patents produced under the grant or agreement (see subparagraph 1T.8 of this Chapter).

5. All other program income earned during the project period shall be retained by the recipient and, in accordance with the grant or cooperative agreement, shall be:

a. Added to funds committed to the project by AID and the recipient and be used to further eligible program objectives;

b. Used to finance the non-AID share of the project when approved by AID; or

c. Deducted from the total project costs in determining the net costs on which the AID share of costs will be based.

1K. Costs Sharing and Matching (Source: OMB Circular A-110, Attachment E)

1. This paragraph sets forth criteria and procedures for the allowability of cash and in-kind contributions made by recipients or subrecipients, or third parties in satisfying AID cost-sharing and matching requirements. This paragraph also establishes criteria for the evaluation of in-kind contributions made by third parties.

2. The following definitions apply for the purpose of this paragraph:

a. Project costs. - Project costs are all allowable costs (as set forth in the applicable Federal cost principles) incurred by a recipient or subrecipient and the value of the in-kind contributions made by the recipient, subrecipient, or third parties in accomplishing the objectives of the grant or cooperative agreement during the project or program period.

b. Cost sharing and matching. - In general, cost sharing and matching represent that portion of project or program costs not borne by the Federal Government.

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c. Cash contributions. - Cash contributions represent the recipient's or subrecipient's cash outlay, including the outlay of money contributed to the recipient or subrecipient by non-Federal third parties.

d. In-kind contributions. - In-kind contributions represent the value of noncash contributions provided by the recipient, subrecipient, and non-Federal third parties. Only when authorized by Federal legislation, may property purchased with Federal funds be considered as the recipient's in-kind contributions. In-kind contributions may be in the form of charges for real property and nonexpendable personal property, and the value of goods and services directly benefiting and specifically identifiable to the project or program.

3. General guidelines for computing cost sharing or matching are as follows:

a. Cost sharing or matching may consist of:

(1) Charges incurred by the recipient or subrecipient as project costs. (Not all charges require cash outlays by the recipient or subrecipient during the project period; examples are depreciation and use charges for buildings and equipment.)

(2) Project costs financed with cash contributed or donated to the recipient or subrecipient by other non-Federal public agencies and institutions, and private organizations and individuals, and

(3) Project costs represented by services and real and personal property, or use thereof, donated by other non-Federal public agencies and institutions, and private organizations and individuals.

b. All contributions, both cash and in-kind, shall be accepted as part of the recipient's or subrecipient's cost sharing and matching when such contributions meet all of the following criteria:

(1) Are verifiable from the recipient's or subrecipient's records;

(2) Are not included as contributions for any other Federally assisted program;

(3) Are necessary and reasonable for proper and efficient accomplishment of project objectives;

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(4) Are types of charges that would be allowable under the applicable Federal cost principles;

(5) Are not paid by the Federal Government under another grant or agreement (unless the grant or agreement is authorized by Federal law to be used for cost sharing or matching);

(6) Are provided for in the approved budget when required by AID; and

(7) Conform to other provisions of this paragraph.

4. Values for recipient or subrecipient in-kind contributions will be established in accordance with the applicable Federal cost principles.

5. Specific procedures for the recipient or subrecipient in establishing the value of in-kind contributions from non-Federal third parties are set forth below:

a. Valuation of volunteer services. - Volunteer services may be furnished by professional and technical personnel, consultants, and other skilled and unskilled labor. Volunteer services may be counted as cost sharing or matching if the service is an integral and necessary part of an approved program.

(1) Rates for volunteer services. - Rates for volunteers should be consistent with those paid for similar work in the recipient's or subrecipient's organization. In those instances in which the required skills are not found in the recipient or subrecipient organization, rates should be consistent with those paid for similar work in the labor market in which the recipient or subrecipient competes for the kind of services involved.

(2) Volunteers employed by other organizations. - When an employer other than the recipient or subrecipient furnishes the services of an employee, these services shall be valued at the employee's regular rate of pay (exclusive of fringe benefits and overhead costs) provided these services are in the same skill for which the employee is normally paid.

b. Valuation of donated expendable personal property. Donated expendable personal property includes such items as expendable equipment, office supplies, laboratory supplies or workshop and classroom supplies. Value assessed to expendable personal property included in the cost or matching share should be reasonable and should not exceed the market value of the property at the time of the donation.

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c. Valuation of donated nonexpendable personal property, buildings, and land or use thereof.

(1) The method used for charging cost sharing or matching for donated nonexpendable personal property, buildings and land may differ according to the purpose of the grant or agreement as follows:

(a) If the purpose of the grant or agreement is to assist the recipient or subrecipient in the acquisition of equipment, buildings or land, the total value of the donated property may be claimed as cost sharing or matching.

(b) If the purpose of the grant or agreement is to support activities that require the use of equipment, buildings, or land depreciation or use charges for equipment and buildings may be made, the full value of equipment or other capital assets and fair rental charges for land may be allowed provided that AID has approved the charges.

(2) The value of donated property will be determined in accordance with the usual accounting policies of the recipient or subrecipient with the following qualifications:

* (a) Land and buildings. - The value of donated land and buildings may not exceed its fair market value, at the time of donation to the recipient or subrecipient as established by an independent appraiser; e.g., certified real property appraiser or GSA representatives, and certified by a responsible official of the recipient or subrecipient.

(b) Nonexpendable personal property. - The value of donated nonexpendable personal property shall not exceed the fair market value of equipment and property of the same age and condition at the time of donation.

(c) Use of space. - The value of donated space shall not exceed the fair rental value of comparable space as established by an independent appraisal of comparable space and facilities in a privately owned building in the same locality.

(d) Loaned equipment. - The value of loaned equipment shall not exceed its fair rental value.

6. The following requirements pertain to the recipient's or subrecipient's supporting records for in-kind contributions from non-Federal third parties. *

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a. Volunteer services must be documented and, to the extent feasible, supported by the same methods used by the recipient or subrecipient for its employees.

b. The basis for determining the valuation for personal services, material, equipment, buildings and land must be documented.

7. PVO Cost Sharing. See Handbook 3, Chapter 4, App. 4B. "Procedures for PVO's on Operational Program Grants" and the document entitled "Matching Grant Program Policies and Procedures" - dated May 21, 1982 (Author office: FVA/PVC).

1L. Standards for Financial Management Systems (Source: OMB Circular A-110, Attachment F)

1. This paragraph prescribes standards for financial management systems of recipients. The Office of the Inspector General shall make suggestions and assist recipients in establishing or improving financial management systems when such assistance is needed or requested. The Inspector General's Office shall, at the request of the grant officer, review the recipient's financial management system and advise the grant officer of its adequacy. The advice shall include recommendations for specific information.

2. Recipients' financial management systems shall provide for:

a. Accurate, current, and complete disclosure for each AID-sponsored program in accordance with the reporting requirements set forth in paragraph 1M of this Chapter. While AID requires reporting on an accrual basis, the recipient shall not be required to establish an accrual accounting system but shall develop such accrual data for its reports on the basis of an analysis of the documentation on hand.

b. Records that identify adequately the source and application of funds for AID-sponsored activities. These records shall contain information pertaining to Federal awards, authorizations, obligations, unobligated balances, assets, outlays, and income.

c. Effective control over and accountability for all funds, property, and other assets. Recipients shall adequately safeguard all such assets and shall ensure that they are used solely for authorized purposes.

d. Comparison of actual outlays with budget amounts for each grant or cooperative agreement. Financial information should be related to performance and unit-cost data whenever appropriate.

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e. Procedures to minimize the time elapsing between the transfer of funds from the U.S. Treasury and the disbursement by the recipient, whenever funds are advanced by the Federal Government. When advances are made by a Letter of Credit, the recipient shall make drawdowns as close as possible to the time of making disbursements.

f. Procedures for determining the reasonableness, allowability, and allocability of costs in accordance with the provisions of the applicable Federal cost principles and the terms of the grant or cooperative agreement.

g. Accounting records that are supported by documentation that at a minimum will identify, segregate, accumulate, and record all costs incurred under a grant or cooperative agreement and which fully disclose:

(1) the amount and disposition by the recipient of the proceeds of such assistance,

(2) the total cost of the program or undertaking in connection with which such assistance is given or used,

(3) the amount of that portion of the cost of the program or undertaking supplied by other sources, and

(4) such other records as will facilitate an effective audit.

h. A systematic method to ensure timely and appropriate resolution of audit findings and recommendations.

3. Primary recipients shall require subrecipients to adopt the standards in paragraph 2 above, except for the requirement in subparagraph 2e, regarding the use of the letters of credit and that part of subparagraph 2a, regarding reporting forms and frequencies prescribed in paragraph 1M.

4. Recipients and subrecipients shall conduct audits in accordance with the requirements of OMB Circular A-133, "Audits of Institutions of Higher Education and Other Nonprofit Institutions" which appears as Appendix 1L to this Chapter.

5. If AID has determined that a recipient's accounting system does not meet the standards for financial management contained in this paragraph, additional pertinent information to further monitor grants and agreements may be obtained upon written notice to the recipient until such time as the system is brought up to standard. See Paragraph 1M for reporting requirements.

1M. Financial Reporting Requirements (Source: OMB Circular A-110, Attachment G)

1. This paragraph prescribes uniform reporting procedures for recipients to: summarize expenditures made and AID funds unexpended for each award, report the status of AID cash advanced, request advances and reimbursement when the letter of credit method is not used; and promulgates standard forms incident thereto.

2. The following definitions apply for purposes of this paragraph:

a. Accrued expenditures. - Accrued expenditures are the charges incurred by the recipient during a given period requiring the provision of funds for:

(1) goods and other tangible property received;

(2) services performed by employees, contractors, subrecipients, and other payees, and

(3) other amounts becoming owed under programs for which no current services or performance is required.

b. Accrued income. - Accrued income is the sum of:

(1) earnings during a given period from (i) services performed by the recipient and (ii) goods and other tangible property delivered to purchasers and

(2) amounts becoming owed to the recipient for which no current services or performance is required by the recipient.

c. AID funds authorized. - AID funds authorized are the total amount of AID funds obligated by the Government for use by the recipient. This amount may include any authorized carry-over of unobligated funds from prior fiscal years when permitted by law or AID regulation.

d. In-kind contributions. - In-kind contributions are defined in paragraph 1K.

e. Obligations. - Obligations are the amounts of orders placed, contracts, cooperative agreements, and grants awarded, services received, and similar transactions during a given period that will require payment by the recipient during the same or a future period.

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f. Outlays. - Outlays or expenditures represent charges made to the program. They may be reported on a cash or accrual basis. For reports prepared on a cash basis, outlays are the sum of actual cash disbursements for direct charges for goods and services, the amount of indirect expense charged, the value of in-kind contributions applied, and the amount of cash advances and payments made to subrecipients. For reports prepared on an accrual basis, outlays are the sum of actual cash disbursements for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied, and the net increase (or decrease) in the amounts owed by the recipient for goods and other property received, for services performed by employees, contractors, subrecipients, and other payees and other amounts becoming owed under programs for which no current services or performance are required.

g. Program income. - Program income is defined in paragraph 1J of this Chapter. It may be reported on a cash or accrual basis, whichever is used for reporting outlays.

h. Unobligated balance. - The unobligated balance is the portion of the funds authorized by AID that has not been obligated by the recipient and is determined by deducting the cumulative obligations from the cumulative funds authorized.

i. Unliquidated obligations. - For reports prepared on a cash basis, unliquidated obligations represent the amount of obligations incurred by the recipient that has not been paid. For reports prepared on an accrued expenditure basis, they represent the amount of obligations incurred by the recipient for which an outlay has not been recorded.

3. Only the following forms are authorized for obtaining financial information from recipients.

a. Financial Status Report (Appendix 1A)

(1) Recipients are required to use the standardized Financial Status Report, SF 269, or SF 269A (Short Form) if specified in the grant, to report the status of funds for all nonconstruction programs.

(2) The report shall be on an accrual basis. If the recipient's accounting records are not normally kept on the accrual basis, the recipient shall not be required to convert its accounting system, but shall develop such accrual information through best estimates based on an analysis of the documentation on hand.

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(3) The report shall be required quarterly only. A final report shall be required at the completion of the grant or cooperative agreement.

(4) Recipients shall submit the Financial Status Report (original and no more than two copies) no later than 30 days after the end of each specified reporting period for quarterly, and 90 days for final reports. The specified report period, at the recipient's election, may be either its fiscal year, or the Government's fiscal year, or the yearly period commencing and ending on the last day of the month of the grant's anniversary.

b. Federal Cash Transactions Report (Appendix 1B and Appendix 1C)

(1) When funds are advanced to recipients through letters of credit or periodic Treasury checks, each recipient shall submit a Federal Cash Transactions Report and its continuation form (SF 272 and 272A). AID will use this report to monitor cash advanced to recipients and to obtain disbursement information for each grant or cooperative agreement from the recipient.

(2) The recipient shall forecast Federal cash requirements in the Remarks section of the report.

(3) Recipients shall report in the Remarks section the amount of cash advances in excess of three days' requirements in the hands of subrecipients and the amount of cash advances in excess of 30 days requirements in the hands of non-U.S. subrecipient. The recipient shall provide short narrative explanations of actions taken by the recipient to reduce the excess balances.

(4) Recipients shall submit not more than an original and one copy of the Federal Cash Transactions Report within 15 working days following the end of each quarter. A monthly report shall be submitted by those recipients receiving advances totaling $1 million or more per year.

(5) With FA/FM/CMP's written clearance the Grant Officer may waive the requirement for submission of the Report of Federal Cash Transactions when monthly advances do not exceed $10,000 per recipient, provided that such advances are monitored through other forms contained in this Chapter or if, in AID's opinion, the recipient's accounting controls are adequate to minimize excessive Federal advances.

4. Except as noted below, only the following forms will be authorized for requesting advances and reimbursements.

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a. Request for Advance or Reimbursement (Appendix 1D)

(1) The Request For Advance or Reimbursement, SF 270, shall be a standardized form for all nonconstruction programs when letter of credit or periodic Treasury check advance methods are not used.

(2) Recipients are authorized to submit requests for advances and reimbursement at least monthly when letters of credit and periodic Treasury check advances are not used. Recipients are not required to submit more than the original and two copies of the Request for Advance or Reimbursement.

b. Outlay Report and Request for Reimbursement for Construction Program (Appendix 1E)

(1) The Outlay Report and Request for Reimbursement for Construction Programs, SF 271, shall be the standardized form to be used for requesting reimbursement for construction programs.

(2) Recipients are authorized to submit requests for reimbursement at least monthly when letters of credit and periodic Treasury check advances are not used. The recipient shall not submit more than the original and two copies of the Outlay Report and Request for Reimbursement for Construction Programs.

5. If AID management needs additional information in using these five forms (Appendixes 1A-1E) or more frequent reports, the following shall be observed:

a. If additional information is needed to comply with legislative requirements, AID shall issue instructions to require recipients to submit such information under the "Remarks" section of the reports; i.e., Appendixes 1A - 1E. (See Paragraph 1G of this Handbook)

b. When necessary to meet specific program needs the grant officer shall submit the proposed reporting requirements to FA/PPE for processing to OMB as a deviation to OMB Circular A-110. Additionally, if the report impacts upon ten or more entities, the request will have to be submitted to OMB under the Paperwork Reduction Act. (See Paragraph 1G of this Handbook.)

c. If AID has determined that a recipient's accounting system does not meet the standards for financial management contained in paragraph 1L. of this Chapter, additional pertinent information to

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further monitor grants and cooperative agreements may be obtained upon written notice to the recipient until such time as the system is brought up to standard. A copy of these additional reporting requirements must be furnished to OMB.

6. AID reserves the option of shading out any line item on any OMB required financial management report that is unnecessary for decision-making purposes without the prior approval of OMB.

7. AID shall accept the identical information from recipients in machine-usable format or computer printouts in lieu of prescribed formats; i.e., Appendixes 1A - 1E.

8. AID reserves the right to provide computer outputs to recipients when it will expedite or contribute to the accuracy of reporting.

1N. Monitoring and Reporting Program Performance (Source: OMB Circular A -110, Attachment H)

1. This paragraph sets forth the procedures for monitoring and reporting program performance of recipients.

2. Recipients shall monitor the performance under grants and cooperative agreements and, where appropriate, ensure that time schedules are being met, projected work units by time periods are being accomplished, and other performance goals are being achieved. This review shall be made for each program, function, or activity of each grant or cooperative agreement as set forth in the award document.

3. Recipients shall submit a performance report (technical report) for each grant or cooperative agreement that briefly presents the following information for each program, function, or activity involved:

a. A comparison of actual accomplishments with the goals established for the period, the findings of the investigator, or both. If the output of programs can be readily quantified, such quantitative data should be related to cost data for computation of unit costs.

b. Reasons why established goals were not met.

c. Other pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

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4. Except as provided in a and b below, and in subparagraph 3a(1) of paragraph 1M. of this Chapter, recipients shall submit the performance or technical reports to AID and the Financial Status Reports covering the same period in the frequency established by paragraph 1M. of this Chapter and, where appropriate, a final technical or performance report after completion of the project on a date specified in the grant or cooperative agreement. The grant or cooperative agreement shall prescribe the frequency with which the performance reports will be submitted with the request for advance or reimbursement when that form is used in lieu of the Financial Status Report. Except as provided for in paragraph 5 below, performance reports shall not be required more frequently than quarterly or less frequently than annually. AID may waive the requirement for recipients to submit performance reports with the financial reports under the following circumstances:

a. When the recipient is required to submit a performance report with a continuation or renewal application.

b. When the AID project office determines that on-site technical inspections and certified completion data will be sufficient to evaluate construction projects.

c. When AID requests annual financial reports on a fiscal year basis but it is necessary to get annual progress reports on a calendar year basis.

5. Between the required performance reporting dates, events may occur that have significant impact upon the program. In such instances, the recipient shall inform AID as soon as the following types of conditions become known:

a. Problems, delays, or adverse conditions that will materially affect the ability to attain program objectives, prevent the meeting of time schedules and goals, or preclude the attainment of work units by established time periods. This disclosure shall be accompanied by a statement of the action taken, or contemplated, and any AID assistance needed to resolve the situation.

b. Favorable developments or events that enable time schedules to be met sooner than anticipated or more work units to be produced than originally projected.

6. If any performance review conducted by the recipient discloses the need for change in the budget estimates in accordance with the criteria established in paragraph 1P. of this Chapter, the recipient shall submit a request for budget revision.

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7. The AID Project Officer shall make site visits as frequently as practicable to:

a. Review program accomplishments and management control systems, and

b. Provide such technical assistance as may be required.

8. The AID Project Officer, through FA/AS/ISS/RM, shall submit proposed requirements which impact on ten or more entities, including formats, for recipient prepared technical and performance reports to the Office of Management and Budget for approval in accordance with the report clearance requirements of 5 CFR 1320 entitled "Controlling Paperwork Burdens on the Public." The grant officer shall verify OMB approval for recipient reporting requirements with FA/AS/ISS/RM prior to signing a grant or agreement, unless the project officer submitted a copy of such approval previously.

10. Payment Requirements (Source: OMB Circular A-110, Attachments A and I, Treasury Circulars 1075 and 1083 and Chapter 15, Handbook 1, Supplement B)

1. Federal policy endorses extending advances in reasonable amounts to nonprofit, educational, or research institutions for experimental, developmental or research work. AID extends this policy to all nonprofit organizations, including U.S. or international private voluntary organizations, domestic American, educational, and research institutions, and international research institutions. This policy assures that nonprofit organizations will not be forced to utilize their own working capital or earmarked funds to finance work carried out under agreements with AID.

2. The preferred methods of financing nonprofit recipients, in order of declining priority are: (a) letter of credit, (b) advance by Treasury check, and (c) reimbursement by Treasury check. These methods are described below in Sections 1.0.5, 1.0.6, and 1.0.7.

3. The following applies to advance methods of payment (cash and letters of credit):

a. Advances shall not be made to any nonprofit recipient or subrecipient that does not have an acceptable financial management system for controlling and accounting for such funds, i.e., meets the standards set forth in paragraph 1L. If the recipient or subrecipient does not have an acceptable system, only the reimbursement method shall be used.

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b. Consistent with the national goal of expanding the opportunities for minority business enterprises, recipients and subrecipients are encouraged to use minority banks (a bank that is owned at least 50 percent by minority group members) for depositing cash advances.

c. All cash advances to both recipients and subrecipients shall be deposited in banks (including minority banks) with Federal Deposit Insurance Corporation (FDIC) insurance coverage, and the balance of the advance that exceeds the FDIC coverage (i.e., currently $100,000/account) must be collaterally secured. (See 31 CFR 202.6)

d. The recipient and subrecipient will not be required to physically segregate cash depositories for funds provided by AID

e. Recipients and subrecipient shall maintain advances of funds from AID in interest bearing accounts and shall remit to AID, at least quarterly, the interest earned on such advances. Interest amounts up to $100 per year may be retained by the recipient and subrecipient for administrative expense.

f. No other standards for cash depositories, except those stated in 1.0.3 above, shall apply to cash advances to recipients and subrecipients.

4. When a mixed dollar and local currency advance is involved under an individual grant or cooperative agreement to a nonprofit organization, the following shall apply:

a. Only one instrument (<u>either</u> a letter of credit <u>or</u> an advance by Treasury check) will be used and only one payment office will provide the advance, <u>and</u>

b. If the foreign currency portion of the total advance under the grant or cooperative agreement is less than 50%, a letter of credit shall be used, or

c. If the foreign currency portion of the total advance under the grant or cooperative agreement is more than 50%, but more than one foreign currency country is involved, an advance by letter of credit shall be used.

d. If the foreign currency portion of the total advance under the grant or cooperative agreement is more than 50%, but only one foreign currency country is involved, an advance by Treasury check shall be used.

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5. Letter of Credit

a. An agency-issued Letter of Credit (LOC) is an instrument certified by an authorized official of AID that authorizes a recipient to draw funds from AID for immediate disbursement needs in accordance with the provisions of AID's Handbook 19. Its purpose is to permit advances to qualified organizations in such a way as to minimize the amount of withdrawals from AID in advance of specific operating needs while providing flexibility and independence in withdrawing cash.

b. The LOC method of financing is usually stipulated for financing advance payments where (1) the amount required for advance financing equals or exceeds $50,000 per year; (2) there will be a continuing relationship with the recipient for at least one year; (3) the recipient has the ability to maintain procedures that will minimize the time elapsing between the transfer of funds and their disbursement; (4) the recipient's financial management system meets Federal standards for fund control and accountability in accordance with paragraph 1L (see paragraph 1.0.4 for conditions relating to mixed dollar and foreign currency advances to nonprofit organizations). The LOC method of financing is not normally authorized for use with non-U.S. organizations organized, located, and operated outside the United States. This is primarily due to the requirement for a U.S. commercial account.

c. If the recipient is eligible to receive a letter of credit (see paragraph 1.0.3.a), the grant officer shall obtain FA/FM/CMP's oral clearance prior to inserting the appropriate standard provision in the grant or cooperative agreement. The grant officer shall then notify FA/FM/CMP via memorandum that the grant or cooperative agreement provides for payment by LOC. FA/FM/CMP will either establish a new LOC or amend any ongoing LOC. The LOC will be established in accordance with the rules and procedures in Handbook 19. While the grant or cooperative agreement authorizes the LOC, the LOC is a separate agreement between the recipient and FA/FM/CMP. The terms and conditions of the LOC are cited within the LOC instructions.

6. Periodic Advance by Treasury Check

a. A periodic advance by Treasury check is a payment made by a Treasury check to a recipient upon its request before outlays are made by the recipient, or through the use of predetermined payment schedules.

b. A periodic advance by Treasury check is used when an advance is justified but the conditions for a LOC cannot be met; however, the recipient's financial management system must meet the Federal standards for fund control and accountability in accordance with paragraph 1L of this Chapter, otherwise the reimbursement method is mandatory. The grantee must have the ability to minimize the time elapsing between the transfer of funds and disbursement thereof. Advances by Treasury check are generally to be no more than the recipient's cash requirements for a 30-day period measured from date of receipt until the advance is expended.

c. Advances by Treasury check are to be based upon an analysis of the working capital (e.g., cash) requirements of the recipient and made only in amounts necessary to meet immediate disbursement needs. AID expects that judgement will be applied by USAID controllers, grant officers, and others in determining the immediate disbursing needs of specific recipients.

d. Advances to non-U.S. organizations, whose operations under an individual grant or cooperative agreement are in more than one foreign country, shall be administered out of AID/W by FA/FM/CMP.

7. Reimbursement by Treasury Check. A reimbursement by Treasury check is a Treasury check paid to a recipient upon request for reimbursement from the recipient. The reimbursement by Treasury check method shall be the preferred method if the recipient does not meet the requirements specified in 1.0.3. Additionally, this method shall be used on any construction grant or cooperative agreement, or if the major portion of the program is accomplished through private market financing or Federal loans, and the Federal assistance constitutes a minor portion of the program. When the reimbursement method is used, AID shall make payment as close as possible to the 30th day after receipt of the billing, unless the billing is improper.

8. Unless otherwise required by law, AID shall not withhold payments for proper charges made by recipients at any time during the program period unless (a) a recipient has failed to comply with the program objectives, award conditions, or reporting requirements; or (b) the recipient is indebted to the Federal Government, and collection of the indebtedness will not impair accomplishment of the objectives of the program sponsored by the Federal Government. Under such conditions, AID may, upon reasonable notice, inform the recipient that payments will not be made for obligations incurred after a specified date until the conditions are corrected or the indebtedness to the Federal Government is liquidated.

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9. The waiver authorities for methods of payment are located in Handbook 1, Supplement B, Chapter 15C.

1P. Revision of Grant Budget (Source: OMB Circular A-110, Attachment J)

1. This paragraph, 1P., sets forth criteria and procedures to be followed in requiring recipients to report deviations from the grant budget and to request approvals for grant budget revisions.

2. The grant budget is the financial expression of the program as approved during the application and/or award process. It may include either the Federal and non-Federal share, or only the Federal share, depending upon AID requirements. It should be related to performance for program evaluation purposes whenever appropriate.

3. For nonconstruction awards, recipients shall immediately request approvals from AID when there is reason to believe that within the next 30 calendar days (see 1P.11) a revision will be necessary for the following reasons:

a. Changes in the scope or the objective of the program.

b. The need for additional AID funding.

c. The transfer of amounts budgeted for indirect costs to absorb increases in direct costs or vice versa.

d. The expenditures which require approval in accordance with the applicable Federal cost principles. For all nonprofit and educational institution, awards, approval requirements for items of expenditures may be imposed if they are consistent with those in the applicable Federal cost principles. No other requirements for specific items may be imposed unless a deviation has been approved by the Office of Management and Budget.

e. Recipients plan to transfer funds allotted for training allowances (direct payments to trainees) to other categories of expense.

4. None of the substantive programmatic work under a grant or cooperative agreement may be subcontracted or transferred without prior approval of AID. This provision does not apply to the purchase of supplies, material, equipment, or general support services.

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5. AID may also, at its option, restrict transfers of funds among direct cost categories for awards in which AID's share exceeds $100,000 when the cumulative amount of such transfers exceeds or is expected to exceed five percent of the total budget as last approved by AID. The same criteria shall apply to the cumulative amount of transfers among programs, functions, and activities when budgeted separately for an award, except that AID shall not permit a transfer that would cause any Federal appropriation, or part thereof, to be used for purposes other than those intended.

6. All other changes to nonconstruction budgets, except for the changes described in paragraph 8, below, do not require approval. This includes the use of recipient funds in furtherance of program objectives over and above the recipient minimum share included in the approved budget.

7. For construction awards, recipients shall request prior approvals promptly from AID for budget revisions wherever:

a. The revision results from changes in the scope or the objective of the program, and

b. The revision increases the budget amounts of AID funds needed to complete the program.

8. When an award provides support for both construction and nonconstruction work, AID requires the recipient to request prior approval from AID before making any fund or budget transfers between the two types of work supported.

9. For both construction and nonconstruction awards, recipients shall notify AID promptly whenever the amount of AID authorized funds is expected to exceed the needs of the recipient by more than $5,000 or five percent of the AID award, whichever is greater. This notification will not be required if applications for additional funding are submitted for continuing grants or cooperative agreements.

10. When requesting approval for budget revisions, recipients shall use the budget formats that were used in the application unless a letter request will suffice.

11. Within 30 calendar days from the date of receipt of the request for budget revisions, the AID grant officer shall review the request and notify the recipient whether the budget revisions have been approved.

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If the revision is still under consideration at the end of 30 calendar days, the AID grant officer shall inform the recipient in writing of the date when the recipient may expect the decision. The grant officer shall obtain the AID Project Officer's clearance on all such requests prior to communicating with the recipient.

1Q. Closeout Procedures (Source: OMB Circular A-110, Attachment K)

1. This paragraph prescribes uniform closeout procedures for AID grants and cooperative agreements with recipients.

2. The following definitions shall apply for the purpose of this paragraph.

a. Closeout. The closeout of a grant or cooperative agreement is the process by which AID determines that all applicable administrative actions and all required work of the grant or cooperative agreement have been completed by the recipient and AID.

b. Date of completion. The date of completion is the date on which all work under grants and cooperative agreements is completed or the date on the award document, or any supplement or amendment thereto, on which AID sponsorship ends.

c. Disallowed costs. Disallowed costs are those charges to a grant or cooperative agreement that AID or its representative determines to be unallowable, in accordance with the applicable Federal cost principles or other conditions contained in the grant or cooperative agreement.

3. AID closeout procedures include the following requirements:

a. Upon request, AID shall make prompt payments to a recipient for allowable reimbursable costs under the grant or cooperative agreement being closed out.

b. The recipient shall immediately refund any balance of unobligated (unencumbered) cash that AID has advanced or paid and that is not authorized to be retained by the recipient for use in other grants or cooperative agreements.

c. AID shall obtain from the recipient within 90 calendar days after the date of completion of the grant or cooperative agreement all financial, performance, and other reports required as the condition of

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the grant or cooperative agreement. AID may grant extensions when requested by the recipient.

d. When authorized by the grant or cooperative agreement, AID shall make a settlement for any upward or downward adjustments to AID's share of costs after these reports are received.

e. The recipient shall account for any property acquired with AID funds, or received from the Government in accordance with the provisions of paragraph 1T. of this Chapter.

f. In the event a final audit has not been performed prior to the closeout of the grant or cooperative agreement, AID shall retain the right to recover an appropriate amount after fully considering the recommendations on questioned costs resulting from the final audit.

1R. Suspension and Termination Procedures (Source: OMB Circular A-110, Attachment L and Executive Order 12549)

1. This paragraph prescribes uniform suspension and termination policies and procedures for AID grants and agreements with recipients.

2. The following definitions shall apply for the purpose of this paragraph:

a. Termination. - The termination of a grant or cooperative agreement means the cancellation of AID sponsorship, in whole or in part, under a grant or cooperative agreement at any time prior to the date of completion.

b. Suspension. - The suspension of a grant or cooperative agreement is an action by the AID grant officer that temporarily suspends AID sponsorship under the grant or cooperative agreement, pending corrective action by the recipient or pending a decision to terminate the grant or cooperative agreement by AID

3. AID shall not award assistance to applicants that are debarred or suspended, or are otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549.

4. AID's debarrment and suspension procedures are located in AID Regulation 8 (22 CFR 208). AID may, on reasonable notice to the recipient, suspend the grant or cooperative agreement, and withhold further payments, prohibit the recipient from incurring additional obligations

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of funds, pending corrective action by the recipient, or terminate in accordance with paragraphs 5 and 6. AID shall allow all necessary and proper costs that the recipient could not reasonably avoid during the period of suspension provided that they meet the provisions of the applicable Federal cost principles.

5. AID shall provide for the systematic settlement of terminated grants or cooperative agreements including the following:

a. Termination for cause: AID reserves the right to terminate any grant or cooperative agreement in whole or in part at any time before the date of completion, whenever it is determined that the recipient has failed to comply with the conditions of the grant or cooperative agreement. The AID grant officer shall promptly notify the recipient in writing of the determination and the reasons for the termination, together with the effective date. Payments made to recipients or recoveries by AID under grants or cooperative agreements terminated for cause shall be in accordance with the legal rights and liabilities of the parties.

b. Termination for convenience: AID or the recipient may terminate grants and cooperative agreements in whole or in part when both parties agree that the continuation of the program would not produce beneficial results commensurate with the further expenditure of funds. The two parties shall agree upon the termination conditions, including the effective date and, in the case of partial terminations, the portion to be terminated. The recipient shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. AID shall allow full credit to the recipient for AID's share of the noncancellable obligations, properly incurred by the recipient prior to termination.

c. Suspension: Termination for Changed Circumstances: If at any time AID determines (1) that disbursement by AID would be in violation of applicable law, or (2) that continuation of funding for a program should be suspended or terminated because such assistance is not in the national interest of the United States, then AID may, following notice to the recipient, suspend the grant or cooperative agreement and prohibit the recipient from incurring additional obligations chargeable to the grant or cooperative agreement other than necessary and proper costs in accordance with the terms of the grant or cooperative agreement during the period of suspension. Such determinations may be made by the Administrator or Deputy Administrator under either circumstance, or by the cognizant Assistant Administrator in a case where disbursement would

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violate applicable law. This authority may not be redelegated. If the situation causing the suspension continues to pertain for 60 days or more, then AID may terminate the grant or cooperative agreement on written notice to the recipient and cancel that portion of the grant or cooperative agreement which has not been disbursed or irrevocably committed to third parties.

d. Termination Procedures: Upon receipt of and in accordance with a termination notice as specified in either paragraph (a) or (b) above, the recipient shall take immediate action to minimize all expenditures and obligations financed by the grant or cooperative agreement, and shall cancel such unliquidated obligations whenever possible. Except as provided below, no further reimbursement shall be made after the effective date of termination, and the recipient shall within 30 calendar days after the effective date of such termination repay to the Government all unexpended portions of funds paid by the Government to the recipient which are not otherwise obligated by a legally binding transaction applicable to the grant or cooperative agreement. Should the funds paid by the Government to the recipient, prior to effective date of the termination of the grant or cooperative agreement, be insufficient to cover the recipient's obligations pursuant to a legally binding transaction, the recipient may submit to the Government within 90 calendar days after the effective date of such termination a written claim covering such obligations, and, subject to the limitations contained in the grant or cooperative agreement, the Grant Officer shall determine the amount or amounts to be paid by the Government to the recipient under such claim in accordance with the applicable Federal cost principles.

1S. Disputes

1. Any dispute under a grant or cooperative agreement shall be decided by the AID grant officer. The grant officer shall furnish the recipient a written copy of the decision.

2. Decisions of the grant officer shall be final unless, within thirty days of receipt of the decision of the grant officer, the recipient appeals the decision to the Deputy Associate Administrator for Finance and Administration. Appeals must be in writing and a copy should be furnished concurrently to the grant officer.

3. In order to facilitate review on the record by the Deputy Associate Administrator for Finance and Administration, the recipient shall be given an opportunity to be heard and to offer evidence in support of its appeal.

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4. A decision by the Deputy Associate Administrator for Finance and Administration shall be final.

1T. Property Management Standards (Source: OMB Circular A-110, Attachment N)

1. This paragraph prescribes uniform standards governing management of property furnished by the Federal Government or whose cost was charged to a program supported by a Federal grant or agreement. Recipients shall observe these standards under all AID grants and cooperative agreements. The recipient may use its own property management standards and procedures provided it observes the provisions of this paragraph. This paragraph also applies to subrecipients.

2. The following definitions apply for the purpose of this paragraph:

a. Real property. - Real property means land, including land improvements, structures, and appurtenances thereto, but excluding movable machinery and equipment.

b. Personal property. - Personal property of any kind except real property. It may be tangible -- having physical existence, or intangible -- having no physical existence, such as patents, inventions, and copyrights.

c. Nonexpendable personal property. - Nonexpendable personal property means tangible personal property having a useful life of more than two years and an acquisition cost of $500 or more per unit. A recipient may use its own definition of nonexpendable personal property provided that the definition would at least include all tangible personal property as defined above.

d. Expendable personal property. - Expendable personal property refers to all tangible personal property other than nonexpendable property.

e. Excess property. - Excess property means property under the control of any Federal agency that, as determined by the head thereof, is no longer required for its needs or the discharge of its responsibilities.

f. Acquisition cost of purchased nonexpendable personal property.

Acquisition cost of an item of purchased nonexpendable personal property means the net invoice unit price of the property

including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges such as the cost of installation, transportation, taxes, duty or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the recipient's regular accounting practices.

g. Exempt property. - Exempt property means tangible personal property acquired in whole or in part with Federal funds, and title to which is vested in the recipient without further obligation to the Federal Government except as provided in subparagraph 6a below. Such unconditional vesting of title will be pursuant to any Federal legislation that provides AID with adequate authority.

3. Real property. - The following requirements shall apply to recipient use and disposition of real property acquired partly or wholly under AID grants or cooperative agreements:

a. Title to real property shall vest in the recipient subject to the condition that the recipient shall use the real property for the authorized purpose of the program, as long as it is needed.

b. The recipient shall obtain approval by AID for the use of real property in other programs when the recipient determines that the property is no longer needed for the purpose of the original program. Use in other programs shall be limited to those under other Federally sponsored programs; i.e., grants or cooperative agreements, or programs that have purposes consistent with those authorized for support by AID.

c. When the real property is no longer needed as provided in a and b above, the recipient shall request disposition instructions from AID or its successor Federal sponsoring agency. AID or its successor Federal sponsoring agency shall observe the following rules in the disposition instructions:

(1) The recipient may be permitted to retain title after it compensates the Federal Government in an amount computed by applying the Federal percentage of participation in the cost of the original program to the fair market value of the property.

(2) The recipient may be directed to sell the property under guidelines provided by either AID or the successor Federal sponsoring agency and pay the Federal Government an amount computed by applying the Federal percentage of participation in the cost of the original program

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to the proceeds from sale (after deducting actual and reasonable selling and fix-up expenses, if any, from the sales proceeds). When the recipient is authorized or required to sell the property, proper sales procedures shall be established that provide for competition to the extent practicable and result in the highest possible return.

(3) The recipient may be directed to transfer title to the property to the Federal Government provided that in such cases the recipient shall be entitled to compensation computed by applying the recipient's percentage of participation in the cost of the program to the current fair market value of the property.

4. Federally owned nonexpendable personal property. - Title of Federally owned property remains vested in AID. Recipients shall submit annually an inventory listing of Federally owned property in their custody to the AID grant officer. Upon completion of the grant or cooperative agreement or when the property is no longer needed, the recipient shall report the property to AID for further Agency utilization. If AID has no further need for the property, it shall be declared excess and reported to the General Services Administration. Appropriate disposition instructions will be issued to the recipient after completion of AID's review.

5. Exempt property. - When statutory authority exists; e.g., 31 U.S.C. 6306, title to nonexpendable personal property acquired with program funds, shall be vested in the recipient upon acquisition unless it is determined that to do so is not in furtherance of the objectives of AID. When title is vested in the recipient, the recipient shall have no other obligation or accountability to the Federal Government for its use or disposition except as provided in 6a below.

6. Other nonexpendable property. - When other nonexpendable tangible personal property is acquired by a recipient with program funds, title shall not be taken by AID but shall vest in the recipient subject to the following conditions:

a. Right to transfer title. - For items of nonexpendable personal property having a unit acquisition cost of $1,000 or more, AID may reserve the right to transfer the title to the Federal Government or to a third party named by the Federal Government when such third party is otherwise eligible under existing statutes. Such reservation shall be subject to the following standards.

(1) The property shall be appropriately identified in the grant or cooperative agreement or otherwise made known to the recipient in writing.

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(2) AID shall issue disposition instructions within 120 calendar days after the end of the Federal support of the program for which it was acquired. If AID fails to issue disposition instructions within the 120-calendar-day period, the recipient shall apply the standards of subparagraphs 6b and 6c as appropriate.

(3) When AID exercises its right to take title, the personal property shall be subject to the provisions for Federally owned nonexpendable property discussed in paragraph 4, above.

(4) When title is transferred either to the Federal Government or to a third party the provisions of subparagraph 6c(2)(b) shall be followed.

b. Use of other tangible nonexpendable property for which the recipient has title.

(1) The recipient shall use the property in the program for which it was acquired as long as needed, whether or not the program continues to be supported by Federal funds. When no longer needed for the original program, the recipient shall use the property in connection with its other Federally sponsored activities, in the following order of priority:

(a) Activities sponsored by AID.

(b) Activities sponsored by other Federal agencies.

(2) Shared use. - During the time that nonexempt nonexpendable personal property is held for use on the program for which it was acquired, the recipient shall make it available for use on other programs if such other use will not interfere with the work on the program for which the property was originally acquired. First preference for such other use shall be given to other programs sponsored by AID; second preference shall be given to programs sponsored by other Federal agencies. If the property is owned by AID, use on other activities not sponsored by AID shall be permissible if authorized by the AID grant officer. User charges shall be considered for use on activities not sponsored by the Federal Government.

c. Disposition of other nonexpendable property. When the recipient no longer needs the property as provided in 6b above, the property may be used for other activities in accordance with the following standards:

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(1) Nonexpendable property with a unit acquisition cost of less than $1,000. The recipient may use the property for other activities without reimbursement to the Federal Government or sell the property and retain the proceeds.

(2) Nonexpendable personal property with a unit acquisition cost of $1,000 or more. The recipient may retain the property for other uses provided that compensation is made to AID or its successor. The amount of compensation shall be computed by applying the percentage of Federal participation in the cost of the original program to the current fair market value of the property. If the recipient has no need for the property and the property has further use value, the recipient shall request disposition instructions from AID or its successor.

(3) AID shall determine whether the property can be used to meet the Agency's requirements. If no requirement exists within AID, the availability of the property shall be reported to the General Services Administration by AID to determine whether a requirement for the property exist in other Federal agencies. AID shall issue instructions to the recipient not later than 120 days after the recipient's request and the following procedures shall govern:

(a) If so instructed or if disposition instructions are not issued within 120 calendar days after the recipient's request, the recipient shall sell the property and reimburse AID an amount computed by applying to the sales proceeds the percentage of Federal participation in the cost of the original project or program. However, the recipient shall be permitted to deduct and retain from the Federal share $100 or ten percent of the proceeds, whichever is greater, for the recipient's selling and handling expenses.

(b) If the recipient is instructed to ship the property elsewhere, the recipient shall be reimbursed by the benefiting Federal agency with an amount which is computed by applying the percentage of the recipient's participation in the cost of the original grant program to the current fair market value of the property, plus any reasonable shipping or interim storage costs incurred.

(c) If the recipient is instructed to otherwise dispose of the property, the recipient shall be reimbursed by AID for such costs incurred in its disposition.

7. Property management standards for nonexpendable property. The recipient's property management standards for nonexpendable personal property shall include the following procedural requirements:

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a. Property records shall be maintained accurately and shall include:

(1) A description of the property.

(2) Manufacturer's serial number, model number, Federal stock number, national stock number, or other identification number.

(3) Source of the property, including grant or cooperative agreement number.

(4) Whether title vests in the recipient or the Federal Government.

(5) Acquisition date (or date received, if the property was furnished by the Federal Government) and cost.

(6) Percentage (at the end of the budget year) of Federal participation in the cost of the program for which the property was acquired. (Not applicable to property furnished by the Federal Government.)

(7) Location, use, and condition of the property and the date the information was reported.

(8) Unit acquisition cost.

(9) Ultimate disposition data, including date of disposal and sales price or the method used to determine current fair market value where a recipient compensates AID or its successor for its share.

b. Property owned by the Federal Government must be marked to indicate Federal ownership.

c. A physical inventory of property shall be taken and the results reconciled with the property records at least once every two years. Any differences between quantities determined by the physical inspection and those shown in the accounting records shall be investigated to determine the causes of the difference. The recipient shall, in connection with the inventory, verify the existence, current utilization, and continued need for the property.

d. A control system shall be in effect to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss,

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damage, or theft of nonexpendable property shall be investigated and fully documented; if the property was owned by the Federal Government, the recipient shall promptly notify AID.

e. Adequate maintenance procedures shall be implemented to keep the property in good condition.

f. Where the recipient is authorized or required to sell the property, proper sales procedures shall be established that would provide for competition to the extent practicable and result in the highest possible return.

8. Expendable personal property: Title to expendable personal property shall vest in the recipient upon acquisition. If there is a residual inventory of such property exceeding $1,000 in total aggregate fair market value, upon termination or completion of the grant or cooperative agreement, and the property is not needed for any other Federally sponsored program, the recipient shall retain the property for use on non-Federally sponsored activities, or sell it, but must in either case, compensate the Federal Government for its share. The amount of compensation shall be computed in the same manner as nonexpendable personal property.

9. Intangible property.

a. Inventions and patents. If any program produces patentable items, patent rights, processes, or inventions, in the course of work sponsored by the Federal Government, such fact shall be promptly and fully reported to AID. Unless there is a prior agreement between the recipient and AID on disposition of such items, AID shall determine whether protection of the invention or discovery shall be sought. AID will also determine how the rights in the invention or discovery -- including rights under any patent issued thereon -- shall be allocated and administered in order to protect the public interest consistent with OMB Circular A-124 entitled "Patent; Small Business Firms and nonprofit organizations," effective April 1, 1984.

b. Copyrights. - Except as otherwise provided in the terms and condition of the grant or cooperative agreement, the author or the recipient is free to copyright any books, publications, or other copyrightable materials developed in the course of or under a Federal grant or cooperative agreement, but AID 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.

1U. Procurement Standards (Source: OMB Circular A-110, Attachment O, and FAA statutory limitations cited in Handbook 1, Supplement B)

1. This paragraph provides standards for use by recipients in establishing procedures for the procurement of supplies, equipment, construction and other services with Federal funds. These standards are furnished to ensure that such materials and services are obtained in an effective manner and in compliance with the provisions of applicable Federal law and executive orders.

2. The standards contained in this paragraph do not relieve the recipient of the contractual responsibilities arising under its contracts. The recipient is the responsible authority, without resourse to AID regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into, in support of an AID grant or cooperative agreement. This includes disputes, claims, protests of award, source evaluation, or other matters of a contractual nature. Matters concerning violation of law are to be referred to such local, State or Federal authority as may have proper jurisdiction.

3. Based upon the Federal Grants and Cooperative Agreement Act, contracts under grants are not supposed to be approved on a case-by-case basis. If the review of subagreements or contracts is desired, the appropriate instrument to be used is a cooperative agreement. If applicable, the schedule of the cooperative agreement should include the requirement for preaward review of the recipient's individual subagreements and/or contracts.

4. Procurement System Approval: AID reserves the right to review and approve all or part of the recipient's procurement system for contracts and subgrants. However, if the procurement element is either more than 50% of the agreement or worth over $250,000, a representative of the cognizant Regional Inspector General/Audit (RIG/A) shall be requested to perform an audit to determine if the prospective recipient's procurement system meets the standards set forth in paragraph 1U of this Handbook. Audit findings regarding grantee nonconformance to procurement standards shall be referred to the Overhead and Special Costs Branch (FA/OP/A/OCC) for resolution. However, if the procurement system has been approved by another Federal sponsoring agency, AID shall accept the system on receipt of a written certification from the other Federal sponsoring agency that the recipient's system complies with the requirements of OMB Circular No. A-110, Attachment O.

5. Recipients may use their own procurement policies and procedures. However, all recipients shall adhere to the standards set forth in subparagraphs 6, 7, and 8 below.

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6. Procurement Standards:

a. The recipient shall maintain a code or standards of conduct that shall govern the performance of its officers, employees, or agents engaged in the awarding and administration of contracts using Federal funds. No employee, officer, or agent shall participate in the selection, award, or administration of a contract in which Federal funds are used, where, to the individual's knowledge, the individual or the individual's immediate family, partners, or organization in which the individual or the individual's immediate family or partner has a financial interest or with whom the individual is negotiating or has any arrangement concerning prospective employment. The recipients' officers, employees, or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or potential contractors. Such standards shall provide for disciplinary actions to be applied for violations of such standards by the recipients' officers, employees, or agents.

b. All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. The recipient should be alert to organizational conflicts of interest or noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids, and/or requests for proposals should be excluded from competing for such procurements. Awards shall be made to the bidder/offeror whose bid/offer is responsive to the solicitation and is most advantageous to the recipient, price and other factors considered. Solicitations shall clearly set forth all requirements that the bidder/offeror must fulfill in order for the bid/offer to be evaluated by the recipient. Any and all bids/offers may be rejected when it is in the recipient's interest to do so.

c. All recipients shall establish procurement procedures that provide for, at a minimum, the following procedural requirements:

(1) Proposed procurement actions shall follow a procedure to assure the avoidance of purchasing unnecessary or duplicative items. Where appropriate, an analysis shall be made of lease and purchase alternatives to determine which would be the most economical, practical procurement.

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(2) Solicitations for goods and services shall be based upon a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such a description shall not, in competitive procurements, contain features that unduly restrict competition. Brand name or equal descriptions may be used as a means to define the performance or other salient requirements of a procurement and, when so used, the specific features of the named brand which must be met by bidders/offerors shall be clearly specified.

(3) Positive efforts shall be made by the recipients to utilize small business and minority-owned business sources of supplies and services. Such efforts should allow these sources the maximum feasible opportunity to compete for contracts utilizing Federal funds.

(4) The type of procuring instruments used; e.g., fixed-price contracts, cost-reimbursable contracts, purchase orders, incentive contracts, shall be determined by the recipient but must be appropriate for the particular procurement and for promoting the best interest of the program involved. The "cost-plus-a-percentage-of-cost" method of contracting shall not be used.

(5) Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources, and accessibility to other necessary resources.

(6) All proposed sole source contracts or where only one bid or proposal is received in which the aggregate expenditure is expected to exceed $10,000 shall be subject to prior approval of an officer of the recipient's top management.

(7) Some form of price or cost analysis should be made in connection with every procurement action. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indicia, together with discounts. Cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability and allowability.

(8) Procurement records and files for purchases in excess of $10,000 shall include the following:

(a) Basis for contractor selection;

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(b) Justification for lack of competition when competitive bids or offers are not obtained;

(c) Basis for award cost or price.

(9) A system for contract administration shall be maintained to ensure contractor conformance with the terms, conditions, and specifications of the contract, and to ensure adequate and timely followup of all purchases.

7. The recipient shall include, in addition to provisions to define a sound and complete agreement, the following provisions in all its contracts under AID grant or cooperative agreements. These provisions shall also be applied to subcontracts under prime contracts.

a. All contracts and subgrants in excess of $2,000 for construction or repair to be performed in the United States awarded by recipients and subrecipients shall include a provision for compliance with the Copeland "Anti-Kick Back" Act (18 U.S.C. 874) as supplemented in Department of Labor Regulations (29 CFR Part 3). This Act provides that each contractor or subgrantee shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which the individual is otherwise entitled. The recipient shall report all suspected or reported violations to AID.

b. When required by the Federal program legislation, all construction contracts of more than $2,000, awarded by the recipients and subrecipients to be performed in the United States shall include a provision for compliance with Davis-Bacon Act (40 U.S.C. 276a to a-7) as supplemented by Department of Labor Regulations (29 CFR Part 5). Under this Act, contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a week. The recipient shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The recipient shall report all suspected or reported violations to AID.

c. Where applicable, all contracts awarded by recipients and subrecipients in excess of $2,000 for construction contracts to be performed in the United States and its territories and in excess of

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$2,500 for other contracts that involve the employment of mechanics or laborers, shall include a provision for compliance with sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor Regulations (29 CFR Part 5). Under section 103 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work day of 8 hours and a standard work week of 40 hours. Work in excess of the standard work day or work week is permissible provided that the worker is compensated at a rate of not less than 1 1/2 times the basic rate of pay for all hours worked in excess of 8 hours in any calendar day or 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions that are unsanitary, hazardous, or dangerous to the worker's health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor. These requirements do not apply to the purchases of supplies of materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

d. Contracts in excess of $10,000 shall contain contractual provisions or conditions that will allow for administrative, contractual, or legal remedies in instances in which contractors violate or breach contract terms, and provide for such remedial actions as may be appropriate.

e. All contracts in excess of $10,000 shall contain suitable provisions for termination by the recipient including the manner by which termination will be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

f. All contracts awarded by recipients and subrecipients to be performed in the United States having a value of more than $10,000, shall contain a provision requiring compliance with Executive Order 11246 entitled "Equal Employment Opportunity," as amended, as supplemented in Department of Labor Regulations (41 CFR Part 60).

g. All negotiated contracts in excess of $10,000 awarded by recipients and subrecipients shall include a provision to the effect that the recipient, AID, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to

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any books, documents, papers, and records of the contractor or subgrantee that are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts, and transcriptions.

h. In all contracts for construction or facility improvement awarded for more than $100,000, recipients shall observe the bonding requirements provided in paragraph 1H of this Chapter.

i. Contracts and subgrants in excess of $100,000 to be performed in the United States shall contain a provision that requires the contractor to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clear Air Act of 1970 (42 U.S.C. 7401) and the Federal Water Pollution Control Act (40 CFR 15) as amended. Violations shall be reported to AID and the Regional Office of the Environmental Protection Agency.

j. Contracts or subgrants, the principal purpose of which is to create, develop, or improve products, processes, or methods; or for exploration into fields that directly concern public health, safety, or welfare; or contracts or subgrants in the field of science or technology in which there has been little significant experience outside of work funded by Federal assistance, shall contain a notice to the effect that matters regarding rights to inventions and materials generated under the contract or subgrant are subject to the regulations issued by AID and the recipient. The contractor or subgrantee shall be advised as to the source of additional information regarding these matters (see 1T8 of this Chapter).

k. Contracts, but not subgrants, which require performance outside the United States shall contain a provision requiring Workmen's Compensation Insurance (42 U.S.C. 1651, et seq.). As a general rule, Department of Labor waivers will be obtained for persons employed outside the United States who are not United States citizens or residents provided adequate protection will be given such persons. The recipient should refer questions on this subject to the grant officer, who will coordinate the matter with FA/PPE.

l. Contracts and subgrants, which involve any aspect of voluntary population planning activities, shall contain a provision on Abortion-Related Activities and Voluntary Sterilizations in accordance with Sec. 104 of the Foreign Assistance Act of 1961, as amended.

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8. Geographic Source Requirements

a. The geographic source policies which apply to grantee procurement of goods and services, including waiver information, are set forth in Chapter 16B of Supplement B, Handbook 1.

b. The AID project officer is responsible for ascertaining the need for and obtaining any necessary geographic source waivers for the grantee's program during the review of the grantee's application and prior to AID's entering into a grant or cooperative agreement. This approach will reduce the administrative burden on the recipient and allow it maximum flexibility for procurement decisions during the performance period.

c. Set forth below is a listing of the important geographic source requirements the project officer should be aware of:

Category	*Paragraph Reference, Handbook 1, Supplement B
Agricultural commodities	4C1a & 4C1d
Motor vehicles	4C2a & 4C2d
Pharmaceuticals	4C3a & 4C3d
Pesticides	4C4a & 4C4d
Rubber Compounding Chemicals and Plasticizers	4C5a & 4C5d
Used Equipment	4C6a & 4C6d
U.S. Government-Owned Excess Property	4C7a & 4C7d
Fertilizer	4C8a & 4C8d
Military Equipment	4D1a & 4D1d
Surveillance Equipment	4D2a & 4D2d
Commodities and Services for Support of Police and Other Law Enforcement Activities	4D3a & 4D3d
Abortion Equipment and Services	4D4a & 4D4d
Luxury Goods and Gambling Equipment	4D5a & 4D5d
Weather Modification Equipment	4D6a & 4D6d

*The "a" paragraph sets forth the policy and the "d" paragraph sets forth the waiver requirements.

IV. File Documentation

1. The official file is maintained by the grant office. It should be initially compiled prior to execution and contain at a minimum the following documentation:

a. Approved Project Paper (PP), if applicable;

b. Approved PIO/T;

c. Documentation for recipient selection as required by Chapter 2 of this Handbook.

d. Documentation obtained from recipient for preaward survey;

e. Preaward survey team evaluation report, if appropriate;

f. Memorandum of negotiation which will contain as a minimum the following:

(1) Discussion of rationale for choice of instrument,

(2) A brief description of the purpose of the grant or cooperative agreement, the amount, a cost breakdown, and the duration of the grant or cooperative agreement,

(3) Places, dates, and attendance at all meetings, agenda and decisions made,

(4) Rationale for choice of standard provisions,

(5) Discussion of budget - justification of all cost elements,

(6) Discussion of any unusual features of the agreement, and

(7) Discussions of the recipient's management responsibility, policies, organization, financial aspects, etc. Rationale for determination of responsibility. The discussion shall include a statement that AID's Consolidated List of Debarred, Suspended, and Ineligible Awardees has been reviewed and the recipient's name was not included on the list.

g. Assurance of Compliance;

h. Technical office clearance;

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i. Office of General Counsel clearance, if required.

j. FA/FM/CMP's clearance on advance methods of payment.

k. Handbook 13 deviation authorization (if any);

l. Waivers (if any), e.g., source/origin;

m. Reporting, evaluation, and review schedule.

2. The project office and the grant office, subsequent to the execution of the agreement, shall keep each other informed by sending a copy of each piece of correspondence it prepares or receives from the recipient.

1W. Fees and Supplemental Cost Principles

1. Fees: AID's policy is not to award fees under assistance instruments.

2. OMB Circular A-122, Cost Principles for Nonprofit Organizations.

a. Pending the establishment of Government-wide principles in Attachment B of OMB Circular A-122, AID will treat bid and proposal costs as follows:

(1) Bid and proposal costs.

(a) Bid and proposal costs are the costs of preparing bids, proposals, and applications for potential activities such as Government and non-Government grants, contracts and cooperative agreements, including the development of scientific, cost, and other data needed to support such bids, proposals, and applications. Except as provided in (2) below, bid and proposal costs of the current accounting period of both successful and unsuccessful bids and proposals normally should be treated as indirect costs for allocation to all current activities, and no bid and proposal costs of past accounting periods will be allocable to the current period. However, if the organization's established practice is to treat bid and proposal costs by some other method, the results obtained may be accepted only if found to be reasonable and equitable.

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(b) Bid and proposal costs incurred by the organization to obtain unrestricted funds are to be treated as fund raising and allocated an appropriate share of indirect costs under the conditions described in paragraph B.3 of Attachment A to OMB Circular A-122.

b. Independent research and development costs. Pending establishment of Government-wide principles in Attachment B of OMB Circular A-122, AID will apply the cost principles at FAR 31.205-18 for independent research and development costs.

c. Attachment C of OMB Circular A-122 sets forth organizations that have received authorization from OMB to use cost principles other than A-122 in their grants, cooperative agreements, and contracts with the Federal government. The Office of Overhead and Special Costs and Contract Closeout has an additional list of organizations which have been approved by OMB to use cost principles other than A-122. The Office of Overhead and Special Costs and Contract Closeout should be contacted if there is a question as to which cost principles should be used.

FINANCIAL STATUS REPORT

(Long Form)

(Follow instructions on the back)

1. Federal Agency and Organizational Element to Which Report is Submitted	2. Federal Grant or Other Identifying Number Assigned By Federal Agency	OMB Approval No. 0348-0039	Page of pages
3. Recipient Organization (Name and complete address, including ZIP code)			
4. Employer Identification Number	5. Recipient Account Number or Identifying Number	6. Final Report ☐ Yes ☐ No	7. Basis ☐ Cash ☐ Accrual
8. Funding/Grant Period (*See instructions*) From: (Month, Day, Year)	To: (Month, Day, Year)	9. Period Covered by this Report From: (Month, Day, Year)	To: (Month, Day, Year)

10. Transactions:	I Previously Reported	II This Period	III Cumulative
a. Total outlays			
b. Refunds, rebates, etc.			
c. Program income used in accordance with the deduction alternative			
d. Net outlays *(Line a, less the sum of lines b and c)*			
Recipient's share of net outlays, consisting of: e. Third party (in-kind) contributions			
f. Other Federal awards authorized to be used to match this award			
g. Program income used in accordance with the matching or cost sharing alternative			
h. All other recipient outlays not shown on lines e, f or g			
i. Total recipient share of net outlays *(Sum of lines e, f, g and h)*			
j. Federal share of net outlays (line d less line i)			
k. Total unliquidated obligations			
l. Recipient's share of unliquidated obligations			
m. Federal share of unliquidated obligations			
n. Total federal share (sum of lines j and m)			
o. Total federal funds authorized for this funding period			
p. Unobligated balance of federal funds *(Line o minus line n)*			
Program income, consisting of: q. Disbursed program income shown on lines c and/or g above			
r. Disbursed program income using the addition alternative			
s. Undisbursed program income			
t. Total program income realized *(Sum of lines q, r and s)*			

11. Indirect Expense				
a. Type of Rate *(Place "X" in appropriate box)* ☐ Provisional ☐ Predetermined ☐ Final ☐ Fixed				
b. Rate	c. Base	d. Total Amount	e. Federal Share	

12. *Remarks: Attach any explanations deemed necessary or information required by Federal sponsoring agency in compliance with governing legislation.*

13. Certification: **I certify to the best of my knowledge and belief that this report is correct and complete and that all outlays and unliquidated obligations are for the purposes set forth in the award documents.**

Typed or Printed Name and Title	Telephone (Area code, number and extension)
Signature of Authorized Certifying Official	Date Report Submitted

Previous Editions not Usable

Standard Form 269 (REV 4-88)
Prescribed by OMB Circulars A-102 and A-110

FINANCIAL STATUS REPORT

(Long Form)

Please type or print legibly. The following general instructions explain how to use the form itself. You may need additional information to complete certain items correctly, or to decide whether a specific item is applicable to this award. Usually, such information will be found in the Federal agency's grant regulations or in the terms and conditions of the award (e.g., how to calculate the Federal share, the permissible uses of program income, the value of in-kind contributions, etc.). You may also contact the Federal agency directly.

Item	Entry
1, 2 and 3.	Self-explanatory.
4.	Enter the employer identification number assigned by the U.S. Internal Revenue Service.
5.	Space reserved for an account number or other identifying number assigned by the recipient.
6.	Check *yes* only if this is the last report for the period shown in item 8.
7.	Self-explanatory.
8.	Unless you have received other instructions from the awarding agency, enter the beginning and ending dates of the current funding period. If this is a multi-year program, the Federal agency might require cumulative reporting through consecutive funding periods. In that case, enter the beginning and ending dates of the grant period, and in the rest of these instructions, substitute the term "grant period" for "funding period."
9.	Self-explanatory.
10.	The purpose of columns, I, II and III is to show the effect of this reporting period's transactions on cumulative financial status. The amounts entered in column I will normally be the same as those in column III of the previous report *in the same funding period.* If this is the first or only report of the funding period, leave columns I and II blank. If you need to adjust amounts entered on previous reports, footnote the column I entry on this report and attach an explanation.
10a.	Enter total gross program outlays. Include disbursements of cash realized as program income if that income will also be shown on lines 10c or 10g. Do not include program income that will be shown on lines 10r or 10s. For reports prepared on a cash basis, outlays are the sum of actual cash disbursements for direct costs for goods and services, the amount of indirect expense charged, the value of in-kind contributions applied, and the amount of cash advances payments made to subrecipients. For reports prepared on an accrual basis, outlays are the sum of actual cash disbursements for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied, and the net increase or decrease in the amounts owed by the recipient for goods and other property received, for services performed by employees, contractors, subgrantees and other payees, and other amounts becoming owed under programs for which no current services or performances are required, such as annuities, insurance claims, and other benefit payments.
10b.	Enter any receipts related to outlays reported on the form that are being treated as a reduction of expenditure rather than income, and were not already netted out of the amount shown as outlays on line 10a.
10c.	Enter the amount of program income that was used in accordance with the deduction alternative.
Note:	Program income used in accordance with other alternatives is entered on lines q, r, and s. Recipients reporting on a cash basis should enter the amount of cash income received; on an accrual basis, enter the program income earned. Program income may or may not have been included in an application budget and/or a budget on the award document. If actual income is from a different source or is significantly different in amount, attach an explanation or use the remarks section.
10d, e, f, g, h, i and j.	Self-explanatory.
10k.	Enter the total amount of unliquidated obligations, including unliquidated obligations to subgrantees and contractors. Unliquidated obligations on a cash basis are obligations incurred, but not yet paid. On an accrual basis, they are obligations incurred, but for which an outlay has not yet been recorded. Do not include any amounts on line 10k that have been included on lines 10a and 10j. On the final report, line 10k must be zero.
10l.	Self-explanatory.
10m.	On the final report, line 10m must also be zero.
10n,	o, p, q, r, s and t. Self-explanatory.
11a.	Self-explanatory.
11b.	Enter the indirect cost rate in effect during the reporting period.
11c.	Enter the amount of the base against which the rate was applied.
11d.	Enter the total amount of indirect costs charged during the report period.
11e.	Enter the Federal share of the amount in 11d.
Note:	If more than one rate was in effect during the period shown in item 8, attach a schedule showing the bases against which the different rates were applied, the respective rates, the calendar periods they were in effect, amounts of indirect expense charged to the project, and the Federal share of indirect expense charged to the project to date.

FINANCIAL STATUS REPORT

(Short Form)

(Follow instructions on the back)

1. Federal Agency and Organizational Element to Which Report is Submitted	2. Federal Grant or Other Identifying Number Assigned By Federal Agency	OMB Approval No. 0348-0039	Page	of pages
3. Recipient Organization (Name and complete address, including ZIP code)				

4. Employer Identification Number	5. Recipient Account Number or Identifying Number	6. Final Report ☐ Yes ☐ No	7. Basis ☐ Cash ☐ Accrual
8. Funding/Grant Period *(See Instructions)* From: (Month, Day, Year)	To: (Month, Day, Year)	9. Period Covered by this Report From: (Month, Day, Year)	To: (Month, Day, Year)

10. Transactions:	I Previously Reported	II This Period	III Cumulative
a. Total outlays			
b. Recipient share of outlays			
c. Federal share of outlays			
d. Total unliquidated obligations			
e. Recipient share of unliquidated obligations			
f. Federal share of unliquidated obligations			
g. Total Federal share *(Sum of lines c and f)*			
h. Total Federal funds authorized for this funding period			
i. Unobligated balance of Federal funds *(Line h minus line g)*			

11. Indirect Expense	a. Type of Rate *(Place "X" in appropriate box)* ☐ Provisional ☐ Predetermined ☐ Final ☐ Fixed			
	b. Rate	c. Base	d. Total Amount	e. Federal Share

12. *Remarks: Attach any explanations deemed necessary or information required by Federal sponsoring agency in compliance with governing legislation.*

13. Certification: **I certify to the best of my knowledge and belief that this report is correct and complete and that all outlays and unliquidated obligations are for the purposes set forth in the award documents.**

Typed or Printed Name and Title	Telephone (Area code, number and extension)
Signature of Authorized Certifying Official	Date Report Submitted

Previous Editions not Usable

Standard Form 269A (REV 4-88)
Prescribed by OMB Circulars A-102 and A-110

FINANCIAL STATUS REPORT

(Short Form)

Please type or print legibly. The following general instructions explain how to use the form itself. You may need additional information to complete certain items correctly, or to decide whether a specific item is applicable to this award. Usually, such information will be found in the Federal agency's grant regulations or in the terms and conditions of the award. You may also contact the Federal agency directly.

Item	Entry

1, 2 and 3. Self-explanatory.

4. Enter the employer identification number assigned by the U.S. Internal Revenue Service.

5. Space reserved for an account number or other identifying number assigned by the recipient.

6. Check *yes* only if this is the last report for the period shown in item 8.

7. Self-explanatory.

8. Unless you have received other instructions from the awarding agency, enter the beginning and ending dates of the current funding period. If this is a multi-year program, the Federal agency might require cumulative reporting through consecutive funding periods. In that case, enter the beginning and ending dates of the grant period, and in the rest of these instructions, substitute the term "grant period" for "funding period."

9. Self-explanatory.

10. The purpose of columns, I, II and III is to show the effect of this reporting period's transactions on cumulative financial status. The amounts entered in column I will normally be the same as those in column III of the previous report in *the same funding period*. If this is the first or only report of the funding period, leave columns I and II blank. If you need to adjust amounts entered on previous reports, footnote the column I entry on this report and attach an explanation.

10a. Enter total program outlays less any rebates, refunds, or other credits. For reports prepared on a cash basis, outlays are the sum of actual cash disbursements for direct costs for goods and services, the amount of indirect expense charged, the value of in-kind contributions applied, and the amount of cash advances and payments made to sub-recipients. For reports prepared on an accrual basis, outlays are the sum of actual cash disbursements for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied, and the net increase or decrease in the amounts owed by the recipient for goods and other property received, for services performed by employees, contractors, subgrantees and other payees, and other amounts becoming owed under programs for which no current services or performances are required, such as annuities, insurance claims, and other benefit payments.

10b. Self-explanatory.

10c. Self-explanatory.

10d. Enter the amount of unliquidated obligations, including unliquidated obligations to subgrantees and contractors.

Unliquidated obligations on a cash basis are obligations incurred, but not yet paid. On an accrual basis, they are obligations incurred, but for which an outlay has not yet been recorded.

Do not include any amounts on line 10d that have been included on lines 10a, b or c.

On the final report, line 10d must be zero.

10e, f, g, h and i. Self-explanatory.

11a. Self-explanatory.

11b. Enter the indirect cost rate in effect during the reporting period.

11c. Enter the amount of the base against which the rate was applied.

11d. Enter the total amount of indirect costs charged during the report period.

11e. Enter the Federal share of the amount in 11d.

Note: If more than one rate was in effect during the period shown in item 8, attach a schedule showing the bases against which the different rates were applied, the respective rates, the calendar periods they were in effect, amounts of indirect expense charged to the project, and the Federal share of indirect expense charged to the project to date.

FEDERAL CASH TRANSACTIONS REPORT

(See instructions on the back. If report is for more than one grant or assistance agreement, attach completed Standard Form 272-A.)

Approved by Office of Management and Budget, No. 80-R0182

1. Federal sponsoring agency and organizational element to which this report is submitted

2. RECIPIENT ORGANIZATION

Name :

Number and Street :

City, State and ZIP Code:

FEDERAL EMPLOYER IDENTIFICATION NO.

4. Federal grant or other identification number

5. Recipient's account number or identifying number

6. Letter of credit number

7. Last payment voucher number

Give total number for this period

8. Payment Vouchers credited to your account

9. Treasury checks received (*whether or not deposited*)

10. PERIOD COVERED BY THIS REPORT

FROM (*month, day, year*)

TO (*month, day year*)

11. STATUS OF FEDERAL CASH (*See specific instructions on the back*)	
a. Cash on hand beginning of reporting period	$
b. Letter of credit withdrawals	
c. Treasury check payments	
d. Total receipts (*Sum of lines b and c*)	
e. Total cash available (*Sum of lines a and d*)	
f. Gross disbursements	
g. Federal share of program income	
h. Net disbursements (*Line f minus line g*)	
i. Adjustments of prior periods	
j. Cash on hand end of period	$

12. THE AMOUNT SHOWN ON LINE 11J, ABOVE, REPRESENTS CASH REQUIREMENTS FOR THE ENSUING *Days*

13. OTHER INFORMATION	
a. Interest income	$
b. Advances to subgrantees or subcontractors	$

REMARKS (*Attach additional sheets of plain paper, if more space is required*)

15. CERTIFICATION

I certify to the best of my knowledge and belief that this report is true in all respects and that all disbursements have been made for the purpose and conditions of the grant or agreement

AUTHORIZED CERTIFYING OFFICIAL

SIGNATURE

DATE REPORT SUBMITTED

TYPED OR PRINTED NAME AND TITLE

TELEPHONE (*Area Code*) (*Number*) (*Extension*)

THIS SPACE FOR AGENCY USE

INSTRUCTIONS

Please type or print legibly. Items 1, 2, 8, 9, 10, 11d, 11e, 11h, and 15 are self explanatory, specific instructions for other items are as follows:

Item	*Entry*
3	Enter employer identification number assigned by the U.S. Internal Revenue Service or the FICE (institution) code.
	If this report covers more than one grant or other agreement, leave items 4 and 5 blank and provide the information on Standard Form 272–A, Report of Federal Cash Transactions—Continued; otherwise;
4	Enter Federal grant number, agreement number, or other identifying numbers if requested by sponsoring agency.
5	This space reserved for an account number or other identifying number that may be assigned by the recipient.
6	Enter the letter of credit number that applies to this report. If all advances were made by Treasury check, enter "NA" for not applicable and leave items 7 and 8 blank.
7	Enter the voucher number of the last letter-of-credit payment voucher (Form TUS 5401) that was credited to your account.
11a	Enter the total amount of Federal cash on hand at the beginning of the reporting period including all of the Federal funds on deposit, imprest funds, and undeposited Treasury checks.
11b	Enter total amount of Federal funds received through payment vouchers (Form TUS 5401) that were credited to your account during the reporting period.
11c	Enter the total amount of all Federal funds received during the reporting period through Treasury checks, whether or not deposited.
11f	Enter the total Federal cash disbursements, made during the reporting period, including cash received as program income. Disbursements as used here also include the amount of advances and payments less refunds to subgrantees or contractors, the gross amount of direct salaries and wages, including the employee's share of benefits if treated as a direct cost, interdepartmental charges for supplies and services, and the amount to which the recipient is entitled for indirect costs.
11g	Enter the Federal share of program income that was required to be used on the project or program by the terms of the grant or agreement.
11i	Enter the amount of all adjustments pertaining to pr periods affecting the ending balance that have not been included in any lines above. Identify each grant or agreement for which adjustment was made, and enter an explanation for each adjustment under "Remarks." Use plain sheets of paper if additional space is required.
11j	Enter the total amount of Federal cash on hand at the end of the reporting period. This amount should include all funds on deposit, imprest funds, and undeposited funds (line e, less line h, plus or minus line i).
12	Enter the estimated number of days until the cash on hand, shown on line 11j, will be expended. If more than three days cash reqirements are on hand, provide an explanation under "Remarks" as to why the drawdown was made prematurely, or other reasons for the exce cash. The requirement for the explanation does n apply to prescheduled or automatic advances.
13a	Enter the amount of interest earned on advances of Federal funds but not remitted to the Federal agency. If this includes any amount earned and not remitted to the Federal sponsoring agency for over 60 days, explain under "Remarks." Do not report interest earned on advances to States.
13b	Enter amount of advance to secondary recipients included in item 11h.
14	In addition to providing explanations as required above, give additional explanation deemed necessary by the recipient and for information required by the Federal sponsoring agency in compliance with governing leg lation. Use plain sheets of paper if additional space required.

FEDERAL CASH TRANSACTIONS REPORT
CONTINUATION

(This form is completed and attached to Standard Form 272 only when reporting more than one grant or assistance agreement.)

Approved by Office of Management and Budget, No. 80-R0182

1. FEDERAL SPONSORING AGENCY AND ORGANIZATIONAL ELEMENT TO WHICH THIS REPORT IS SUBMITTED

2. RECIPIENT ORGANIZATION *(Give name only as shown in item 2, SF 272)*

3. PERIOD COVERED BY THIS REPORT *(As shown on SF 272)*

FROM *(Month, day, year)* | TO *(Month, day, year)*

4. List information below for each grant or other agreement covered by this report. Use additional forms if more space is required.

FEDERAL GRANT OR OTHER IDENTIFICATION *(Show a subdivision by other identifying numbers if required by the Federal Sponsoring Agency)*	RECIPIENT ACCOUNT NUMBER OR OTHER IDENTIFYING NUMBER	FEDERAL SHARE OF NET DISBURSEMENTS	
		NET DISBURSEMENTS *(Gross disbursements less program income received)* FOR REPORTING PERIOD	CUMULATIVE NET DISBURSEMENTS
(a)	(b)	(c)	(d)
		$	$
5. TOTALS *(Should correspond with amounts shown on SF 272 as follows: column (c) the same as line 11h; column (d) the sum of lines 11h and 11i, of this SF 272 and cumulative disbursements shown on last report. Attach explanation of any differences.)*		$	$

272-201

STANDARD FORM 272-A (7-76)
Prescribed by Office of Management and Budget
CIRCULAR NO. A-110

REQUEST FOR ADVANCE OR REIMBURSEMENT

(*See instructions on back*)

Approved by Office of Management and Budget, No. 80-R0183

PAGE OF PAGES

1. TYPE OF PAYMENT REQUESTED
   a. "X" one, or both boxes: ☐ ADVANCE ☐ REIMBURSEMENT
   b. "X" the applicable box: ☐ FINAL ☐ PARTIAL

2. BASIS OF REQUEST: ☐ CASH ☐ ACCRUAL

3. FEDERAL SPONSORING AGENCY AND ORGANIZATIONAL ELEMENT TO WHICH THIS REPORT IS SUBMITTED

4. FEDERAL GRANT OR OTHER IDENTIFYING NUMBER ASSIGNED BY FEDERAL AGENCY

5. PARTIAL PAYMENT REQUEST NUMBER FOR THIS REQUEST

6. EMPLOYER IDENTIFICATION NUMBER

7. RECIPIENT'S ACCOUNT NUMBER OR IDENTIFYING NUMBER

8. PERIOD COVERED BY THIS REQUEST
   FROM (*month, day, year*) TO (*month, day, year*)

9. RECIPIENT ORGANIZATION
   Name :
   Number and Street :
   City, State and ZIP Code :

10. PAYEE (*Where check is to be sent is different than item 9*)
   Name :
   Number and Street :
   City, State and ZIP Code :

11. COMPUTATION OF AMOUNT OF REIMBURSEMENTS/ADVANCES REQUESTED

PROGRAMS/FUNCTIONS/ACTIVITIES ►	(a)	(b)	(c)	TOTAL
a. Total program outlays to date (*As of date*)	$	$	$	$
b. *Less:* Cumulative program income				
c. Net program outlays (*Line a minus line b*)				
d. Estimated net cash outlays for advance period				
e. Total (*Sum of lines c & d*)				
f. Non-Federal share of amount on line e				
g. Federal share of amount on line e				
h. Federal payments previously requested				
i. Federal share now requested (*Line g minus line h*)				
j. Advances required by month, when requested by Federal grantor agency for use in making pre-scheduled advances — 1st month				
2nd month				
3rd month				

12. ALTERNATE COMPUTATION FOR ADVANCES ONLY

a. Estimated Federal cash outlays that will be made during period covered by the advance	$
b. *Less:* Estimated balance of Federal cash on hand as of beginning of advance period	
c. Amount requested (*Line a minus line b*)	$

13. CERTIFICATION

I certify that to the best of my knowledge and belief the data above are correct and that all outlays were made in accordance with the grant conditions or other agreement and that payment is due and has not been previously requested.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL

DATE REQUEST SUBMITTED

TYPED OR PRINTED NAME AND TITLE

TELEPHONE — *Area Code* — *Number* — *Extension*

This space for agency use

INSTRUCTIONS

Please type or print legibly. Items 1, 3, 5, 9, 10, 11c, 11e, 11f, 11g, 11i, 12 and 13 are self-explanatory; specific instructions for other items are as follows:

Item	*Entry*
2	Indicate whether request is prepared on cash or accrued expenditure basis. All requests for advances shall be prepared on a cash basis.
4	Enter the Federal grant number, or other identifying number assigned by the Federal sponsoring agency. If the advance or reimbursement is for more than one grant or other agreement, insert N/A; then, show the aggregate amounts. On a separate sheet, list each grant or agreement number and the Federal share of outlays made against the grant or agreement.
6	Enter the employer identification number assigned by the U.S. Internal Revenue Service, or the FICE (institution) code if requested by the Federal agency.
7	This space is reserved for an account number or other identifying number that may be assigned by the recipient.
8	Enter the month, day, and year for the beginning and ending of the period covered in this request. If the request is for an advance or for both an advance and reimbursement, show the period that the advance will cover. If the request is for reimbursement, show the period for which the reimbursement is requested.
Note:	The Federal sponsoring agencies have the option of requiring recipients to complete items 11 or 12, but not both. Item 12 should be used when only a minimum amount of information is needed to make an advance and outlay information contained in Item 11 can be obtained in a timely manner from other reports.
11	The purpose of the vertical columns (a), (b), and (c), is to provide space for separate cost breakdowns when a project has been planned and budgeted by program, function, or activity. If additional columns are needed, use as many additional forms as needed and indicate page number in space provided in upper right; however, the summary totals of all programs, functions, or activities should be shown in the "total" column on the first page.
11a	Enter in "as of date", the month, day, and year of the ending of the accounting period to which this amount applies. Enter program outlays to date (net of refunds, rebates, and discounts), in the appropriate columns. For requests prepared on a cash basis, outlays are the sum of actual cash disbursements for goods and services, the amount of indirect expenses charged, the value of in-kind contributions applied, and the amount of cash advances and payments made to subcontractors and subrecipients. For requests prepared on an accrued expenditure basis, outlays are the sum of the actual cash disbursements, the amount of indirect expenses incurred, and the net increase (or decrease) in the amounts owed by the recipient for goods and other property received and for services performed by employees, contracts, subgrantees and other payees.
11b	Enter the cumulative cash income received to date, if requests are prepared on a cash basis. For requests prepared on an accrued expenditure basis, enter the cumulative income earned to date. Under either basis, enter only the amount applicable to program income that was required to be used for the project or program by the terms of the grant or other agreement.
11d	Only when making requests for advance payments, enter the total estimated amount of cash outlays that will be made during the period covered by the advance.
13	Complete the certification before submitting this request.

OUTLAY REPORT AND REQUEST FOR REIMBURSEMENT FOR CONSTRUCTION PROGRAMS

(See instructions on back)

Approved by Office of Management and Budget, No. 80-R0181

PAGE OF PAGES

1. TYPE OF REQUEST ☐ FINAL ☐ PARTIAL

2. BASIS OF REQUEST ☐ CASH ☐ ACCRUAL

3. FEDERAL SPONSORING AGENCY AND ORGANIZATIONAL ELEMENT TO WHICH THIS REPORT IS SUBMITTED

4. FEDERAL GRANT OR OTHER IDENTIFYING NUMBER ASSIGNED BY FEDERAL AGENCY

5. PARTIAL PAYMENT REQUEST NO.

6. EMPLOYER IDENTIFICATION NUMBER

7. RECIPIENT ACCOUNT OR OTHER IDENTIFYING NUMBER

PERIOD COVERED BY THIS REPORT

FROM (*Month, day, year*)

TO (*Month, day, year*)

9. RECIPIENT ORGANIZATION

Name :

No. and Street :

City, State and ZIP Code :

10. PAYEE (*Where check should be sent if different than item 9*)

Name :

No. and Street :

City, Street and ZIP Code :

11. STATUS OF FUNDS

CLASSIFICATION	PROGRAMS—FUNCTIONS—ACTIVITIES (a)	(b)	(c)	TOTAL
a. Administrative expense	$	$	$	$
b. Preliminary expense				
c. Land, structures, right-of-way				
d. Architectural engineering basic fees				
e. Other architectural engineering fees				
f. Project inspection fees				
g. Land development				
h. Relocation expense				
i. Relocation payments to individuals and businesses				
j. Demolition and removal				
k. Construction and project improvement cost				
l. Equipment				
m. Miscellaneous cost				
n. Total cumulative to date (sum of lines a thru m)				
o. Deductions for program income				
p. Net cumulative to date (Line n minus line o)				
q. Federal share to date				
r. Rehabilitation grants (100% reimbursement)				
s. Total Federal share (sum of lines q and r)				
t. Federal payments previously requested				
u. Amount requested for reimbursement	$	$	$	$
v. Percentage of physical completion of project	%	%	%	%

12. CERTIFICATION

I certify that to the best of my knowledge and belief the billed costs or disbursements are in accordance with the terms of the project and that the reimbursement represents the Federal share due which has not been previously requested and that an inspection has been performed and all work is in accordance with the terms of the award.

a. RECIPIENT	SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	DATE REPORT SUBMITTED
	TYPED OR PRINTED NAME AND TITLE	TELEPHONE (*Area code, number and extension*)
b. Representative certifying to line 11v.	SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	DATE SIGNED
	TYPED OR PRINTED NAME AND TITLE	TELEPHONE (*Area code number and extension*)

INSTRUCTIONS

Please type or print legibly. Items 3, 4, 5, 8, 9, 10, 11s, and 11v are self-explanatory; specific instructions for other items are as follows:

Item	*Entry*
1	Mark the appropriate box. If the request is final, the amounts billed should represent the final cost of the project.
2	Show whether amounts are computed on an accrued expenditure or cash disbursement basis.
6	Enter the employer identification number assigned by the U.S. Internal Revenue Service [or FICE (institution) code if requested by the Federal agency].
7	This space is reserved for an account number or other identifying number that may be assigned by the recipient.
11	The purpose of vertical columns (a) through (c) is to provide space for separate cost breakdowns when a large project has been planned and budgeted by program, function or activity. If additional columns are needed, use as many additional forms as needed and indicate page number in space provided in upper right; however, the summary totals of all programs, functions, or activities should be shown in the "total" column on the first page. All amounts are reported on a cumulative basis.
11a	Enter amounts expended for such items as travel, legal fees, rental, of vehicles and any other administrative expenses. Include the amount of interest expense when authorized by program legislation. Also show the amount of interest expense on a separate sheet.
11b	Enter amounts pertaining to the work of locating and designing, making surveys and maps, sinking test holes, and all other work required prior to actual construction.
11c	Enter all amounts directly associated with the acquisition of land, existing structures and related right-of-way.
11d	Ener basic fees for services of architectural engineers.
11e	Enter other architectural engineering services. Do not include any amounts shown on line d.
11f	Enter inspection and audit fees of construction and related programs.
11g	Enter all amounts associated with the development of land where the primary purpose of the grant is land improvement. The amount pertaining to land development normally associated with major construction should be excluded from this category and entered on line k.
11h	Enter the dollar amounts used to provide relocation advisory assistance and net costs of replacement housing (last resort). Do not include amounts needed for relocation administrative expenses; these amounts should be included in amounts shown on line a.
11i	Enter the amount of relocation payments made by the recipient to displaced persons, farms, business concerns, and nonprofit organizations.
11j	Enter gross salaries and wages of employees of the recipient and payments to third party contractors directly engaged in performing demolition or removal of structures from developed land. All proceeds from the sale of salvage or the removal of structures should be credited to this account; thereby reflecting net amounts if required by the Federal agency.
11k	Enter those amounts associated with the actual construction of, addition to, or restoration of a facility. Also, include in this category, the amounts for project improvements such as sewers, streets, landscaping, and lighting.
11l	Enter amounts for all equipment, both fixed and movable, exclusive of equipment used for construction. For example, permanently attached laboratory tables, built-in audio visual systems, movable desks, chairs, and laboratory equipment.
11m	Enter the amounts for all items not specifically mentioned above.
11n	Enter the total cumulative amount to date which should be the sum of lines a through m.
11o	Enter the total amount of program income applied to the grant or contract agreement except income included on line j. Identify on a separate sheet of paper the sources and types of the income.
11p	Enter the net cumulative amount to date which should be the amount shown on line n minus the amount on line o.
11q	Enter the Federal share of the amount shown on line p.
11r	Enter the amount of rehabilitation grant payments made to individuals when program legislation provides 100 percent payment by the Federal agency.
11t	Enter the total amount of Federal payments previously requested, if this form is used for requesting reimbursement.
11u	Enter the amount now being requested for reimbursement. This amount should be the difference between the amounts shown on lines s and t. If different, explain on a separate sheet.
12a	To be completed by the recipient official who is responsible for the operation of the program. The date should be the actual date the form is submitted to the Federal agency.
12b	To be completed by the official representative who is certifying to the percent of project completion as provided for in the terms of the grant or agreement

APPENDIX 1F - RESOLUTION OF COSTS QUESTIONED IN AUDIT REPORTS

1. Purpose: The purpose of this Handbook 13, Chapter 1 Appendix, is to formalize procedures for processing costs questioned in audit reports.

2. Responsibility: Final resolution of costs claimed by a recipient under an AID grant or cooperative agreement and questioned in an audit report, is the responsibility of the grant oofficer under the authority provided in the "Disputes" and "Allowable Cost" provisions of each grant or cooperative agreement.

3. Procedures: Upon receipt of an audit report that questions costs claimed by a recipient, the grant oofficer shall take the following actions:

a. Administration

(1) Within 2 weeks after receipt of the audit report, formally notify the recipient by letter of the cost questioned. Include a statement to advise the recipient that any nonconcurrence with the questioned costs should be made known to the grant oofficer promptly. If warranted in the circumstances, invite the recipient to participate in negotiations to arrive at a mutually acceptable settlement of such costs. If no response has been received within 30 days following the initial notification to the recipient of the questioned costs, issue a follow-up letter to the recipient. If no response is received 20 days after the follow-up letter, the grant oofficer makes a final determination of the disposition of the questioned costs in the audit report, and issues in writing, the appropriate grant oofficer's decision as authorized in the "Disputes" provisions of the grant or cooperative agreement.

(2) If the recipient responds to the grant oofficer's letter identifying questioned costs to be disallowed but an acceptable settlement is not achieved within a reasonable period of time, the grant oofficer shall consider negotiations to have reached an impasse. The grant oofficer shall then issue the appropriate decision as authorized in the "Disputes" provisions of the grant or cooperative agreement.

(3) In the event a mutually acceptable settlement is reached, the grant oofficer shall document the result of the negotiation and issue a decision as authorized in the "Allowable Cost" provision of the grant or cooperative agreement. Reimbursements from the recipient as a result of negotiations shall be submitted directly to the AID Controller.

b. Settlement

Based on the decision reached in (1), (2), or (3) above, the grant oofficer requests the Controller to issue a bill for collection in accordance with Attachment A. M/FM will provide M/SER/OP/A/SUP with a copy of the bill for collection issued, as well as a copy of the notice of collection or aadjustment. USAID Controllers will develop and follow a similar procedure for mission issued grants and cooperative agreements covered by this Handbook.

c. Collection

If a refund check is not received promptly, the Controller informs the recipient and the grant oofficer that one of the following actions will be initiated:

(1) The amount of the bill for collection will be setoff against future billings.

(2) The amount of the bill for collection will be setoff against future billings under other contracts, grants, or cooperative agreements which the recipient may have with AID.

(3) The amount of the bill for collection will be setoff by contacting other U.S. Government agencies with which the recipient is doing business for offset against the payments of these agencies to the recipient.

d. Documentation

(1) All correspondence with the Controller shall specify the grant or cooperative agreement number, recipient's name, audit report number, and recommendation number, plus the amount of the questioned costs disallowed by the grant oofficer.

(2) To ensure adequate internal control, all documents pertaining to recipient disallowed costs will be processed through M/SER/OP/A/SUP. The latter office will also maintain a tickler file. USAID Controllers will establish a similar procedure for mission issued grants and cooperative agreements covered by this Handbook.

4. Closing Audit Recommendations: M/SER/OP may request the IG to close the audit recommendations when the grant oofficer has made a determination per paragraph 3a.(1) to (3) above, and M/FM has issued a bill for collection, if appropriate.

Attachment A to Appendix 1F

Date _____

TO: M/FM

FROM: M/SER/OP/A/SUP

SUBJECT: Request for Issuance of Bill for Collection
Request No. _____

Pursuant to the grant officer's final determination letter attached, please issue a Bill for Collection (B/C) to the grantee listed below:

Name of Grantee _____

Address of Grantee _____

_____

Grant or Cooperative Agreement No._____

Amount due U.S. Government _____

Reason for issuance of B/C _____

_____

_____

_____

_____

_____

Audit Report Reference No._____

Attachment: Grant officer's final determination letter of _____

M/SER/OP Grant Officer:_____

_____

_____

_____

APPENDIX 1G

SELECTION PROCEDURES - SPECIAL GRANT PROGRAMS

RESERVED

APPENDIX IH

ASSURANCE OF COMPLIANCE WITH LAWS AND REGULATIONS GOVERNING NON-DISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS

RESERVED

APPENDIX 1I IS RESERVED

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

AGENCY FOR INTERNATIONAL DEVELOPMENT

REDELEGATION OF AUTHORITY REGARDING ASSISTANCE

MISSION DIRECTORS AND PRINCIPAL A.I.D. OFFICERS

Redelegation of Authority No. 149.1.1

Pursuant to the authority delegated to me by the Assistant to the Administrator for Management under Redelegation of Authority No. 149.1, I hereby redelegate to Mission Directors or A.I.D. Principal Officers in the field, the authority to execute the following:

1. Cooperative agreements in an amount not exceeding $100,000 (or local currency equivalent) in the aggregate.

2. U.S. government grants (other than grants to foreign governments or agencies thereof) in an amount not exceeding $5 million.

The Mission Director or A.I.D. Principal Officer may approve the making of advance payments to non-profit organizations.

The authority herein delegated shall not be redelegated but may be exercised by authorized persons who are performing the functions of the Mission Director or A.I.D. Principal Officer in an acting capacity.

The authority redelegated herein shall be exercised in accordance with regulations, procedures, and policies established or modified and promulgated within A.I.D. and is not in derogation of the authority of the Director of the Office of Contract Management to exercise the functions herein redelegated.

* This redelegation of authority is effective on June 1, 1985.

MAY 15 1985

DATE

John F. Owens
Associate Assistant To The
Administrator For Management

*

* Revised

APPENDIX 1K

OMB No. 0412-0510
Expires 7/31/94

INFORMATION COLLECTION REQUIREMENTS

Item No. and Information Requested*	HB 13 Cite	Est. Burden
Preaward Requirements	Chap. 4 (Secs.)	
1. Application - program and personnel, financial plan & supporting data	4E1-4E2	26 (hours)
2. Financial reports (3 yrs.)	4E3	.5
3. Budget, cash flow, organization chart, accounting manual	4E3	.5
4. Previous award information (3 yrs.)	4E5	.5
5. Personnel and travel policies	4E6 &4F4	.5
6. Procurement & property management policies	4F5	.5
Administration	App. 4C (pp.)	
1. Travel itinerary	4C-14, 4D-15	1
2. Explanation of U.S. flag nonavailability - air/ocean transportation PL 93--623 & FAA Sec. 603	4C-16, 4C-18 4C-15, 4C-19	.5
3. Information on procurements over $25,000 - FAA Sec. 602	4C-20, 4D-23	.5
4. Procurement records on selection & pricing	4C-23, 4D-36	.5

5.	Disclosure of inventions/discoveries protectable under Title 35 U.S.C. conceived or reduced to practice under agreement	4C-32, 4D-36	.5
6.	Copy of published works & list of other written works	4C-37, 4D-43	.5
7.	Proposed indirect cost rates and supporting data	4C-38 - 4C-41 4D-63	1

Item No. and Information Requested*		HB 13 Cite	Est. Burden
8.	Retention of voluntary sterilization authorization - FAA Sec. 104	4C-47, 4C-48 4D-54	.5
9.	Protection of individual as research subject - compliance & description 45 CFR Part 46	4C-54, 4D-61	1
10.	Records of property in grantee custody	4C-61 - 4C-64 4C-67, 4C-68 4D-67 - 4D-73	1.5

* Includes reference to applicable statutes or regulations. FAA means the Foreign Assistance Act of 1961 as amended.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

March 8, 1990

OMB Circular No. A-133

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

SUBJECT: Audits of Institutions of Higher Education and Other Nonprofit Institutions

1. Purpose. Circular A-133 establishes audit requirements and defines Federal responsibilities for implementing and monitoring such requirements for institutions of higher education and other nonprofit institutions receiving Federal awards.

2. Authority. Circular A-133 is issued under the authority of the Budget and Accounting Act of 1921, as amended; the Budget and Accounting Procedures Act of 1950, as amended; Reorganization Plan No. 2 of 1970; and Executive Order No. 11541.

3. Supersession. Circular A-133 supersedes Attachment F, subparagraph 2h, of Circular A-110, "Uniform Administrative Requirements for Grants and other Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations."

4. Applicability. The provisions of Circular A-133 apply to:

a. Federal departments and agencies responsible for administering programs that involve grants, cost-type contracts and other agreements with institutions of higher education and other nonprofit recipients.

b. Nonprofit institutions, whether they are recipients, receiving awards directly from Federal agencies, or are sub-recipients, receiving awards indirectly through other recipients.

These principles, to the extent permitted by law, constitute guidance to be applied by agencies consistent with and within the discretion, conferred by the statutes governing agency action.

5. Requirements and Responsibilities.

The specific requirements and responsibilities of Federal departments and agencies and institutions of higher education and other nonprofit institutions are set forth in the attachment.

6. Effective Date. The provisions of Circular A-133 are effective upon publication and shall apply to audits of nonprofit institutions for fiscal years that begin on or after January 1, 1990. Earlier implementation is encouraged. However, until this

Circular is implemented, the audit provisions of Attachment F to Circular A-110 shall continue to be observed.

7. Policy Review (Sunset) Date. Circular A-133 will have a policy review three years from the date of issuance.

8. Inquiries. Further information concerning Circular A-133 may be obtained by contacting the Financial Management Division, Office of Management and Budget, Washington, D.C. 20503, telephone (202) 395-3993.

Richard G. Darman
Director

OMB CIRCULAR A-133
AUDITS OF INSTITUTIONS OF HIGHER EDUCATION AND OTHER NONPROFIT INSTITUTIONS

ATTACHMENT

1. Definitions. For the purposes of this Circular, the following definitions apply:

a. "Award" means financial assistance, and Federal cost-type contracts used to buy services or goods for the use of the Federal Government. It includes awards received directly from the Federal agencies or indirectly through recipients. It does not include procurement contracts to vendors under grants or contracts, used to buy goods or services. Audits of such vendors shall be covered by the terms and conditions of the contract.

b. "Cognizant agency" means the Federal agency assigned by the Office of Management and Budget to carry out the responsibilities described in paragraph 3 of this Attachment.

c. "Coordinated audit approach" means an audit wherein the independent auditor, and other Federal and non-federal auditors consider each other's work, in determining the nature, timing, and extent of his or her own auditing procedures. A coordinated audit must be conducted in accordance with Government Auditing Standards and meet the objectives and reporting requirements set forth in paragraph 12(b) and 15, respectively, of this Attachment. The objective of the coordinated audit approach is to minimize duplication of audit effort, but not to limit the scope of the audit work so as to preclude the independent auditor from meeting the objectives set forth in paragraph 12(b) or issuing the reports required in paragraph 15 in a timely manner.

d. "Federal agency" has the same meaning as the term 'agency' in Section 551(1) of Title 5, United States Code.

e. "Federal Financial Assistance."

(1) "Federal financial assistance" means assistance provided by a Federal agency to a recipient or sub-recipient to carry out a program. Such assistance may be in the form of:

- grants;
- contracts;
- cooperative agreements;
- loans;
- loan guarantees;
- property;
- interest subsidies;
- insurance;
- direct appropriations;
- other non-cash assistance.

(2) Such assistance does not include direct Federal cash assistance to individuals.

(3) Such assistance includes awards received directly from Federal agencies, or indirectly when sub-recipients receive funds identified as Federal funds by recipients.

(4) The granting agency is responsible for identifying the source of funds awarded to recipients; the recipient is responsible for identifying the source of funds awarded to sub-recipients.

f. "Generally accepted accounting principles" has the meaning specified in the Government Auditing Standards.

g. "Independent auditor" means:

(1) A Federal, State, or local government auditor who meets the standards specified in the Government Auditing Standards; or

(2) A public accountant who meets such standards.

h. "Internal control structure" means the policies and procedures established to provide reasonable assurance that:

(1) Resource use is consistent with laws, regulations, and award terms;

(2) Resources are safeguarded against waste, loss, and misuse; and

(3) Reliable data are obtained, maintained, and fairly disclosed in reports.

i. "Major program" means an individual award or a number of awards in a category of Federal assistance or support for which total expenditures are the larger of three percent of total Federal funds expended or $100,000, on which the auditor will be required to express an opinion as to whether the major program is being administered in compliance with laws and regulations.

Each of the following categories of Federal awards shall constitute a major program where total expenditures are the larger of three percent of total Federal funds expended or $100,000:

- Research and Development.

- Student Financial Aid.

- Individual awards not in the student aid or research and development category.

j. "Management decision" means the evaluation by the management of an establishment of the findings and recommendations included in an audit report and the issuance of a final decision by management concerning its response to such findings and recommendations, including actions concluded to be necessary.

k. "Nonprofit institution" means any corporation, trust, association, cooperative or other organization which 1) is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest; 2) is not organized primarily for profit; and 3) uses its net proceeds to maintain, improve, and/or expand its operations. The term "nonprofit institutions" includes institutions of higher education, except those institutions that are audited as part of single audits in accordance with Circular A-128 "Audits of State and Local Governments." The term does not include hospitals which are not affiliated with an institution of higher education, or State and local governments and Indian tribes covered by Circular A-128 "Audits of State and Local Governments."

l. "Oversight" agency means the Federal agency that provides the predominant amount of direct funding to a recipient not assigned a cognizant agency, unless no direct funding is received. Where there is no direct funding, the Federal agency with the predominant indirect funding will assume the general oversight responsibilities. The duties of the oversight agency are described in paragraph 4 of this Attachment.

m. "Recipient" means an organization receiving financial assistance to carry out a program directly from Federal agencies.

n. "Research and development" includes all research activities, both basic and applied, and all development activities that are supported at universities, colleges, and other nonprofit institutions. "Research" is defined as a systematic study directed toward fuller scientific knowledge or understanding of the subject studied. "Development" is the systematic use of knowledge and understanding gained from research directed toward the production of useful materials, devices, systems, or methods, including design and development of prototypes and processes.

o. "Student Financial Aid" includes those programs of general student assistance in which institutions participate, such as those authorized by Title IV of the Higher Education Act of 1965 which is administered by the U.S. Department of Education and similar programs provided by other Federal agencies. It does not include programs which provide fellowships or similar awards

to students on a competitive basis, or for specified studies or research.

p. "Sub-recipient" means any person or government department, agency, establishment, or nonprofit organization that receives financial assistance to carry out a program through a primary recipient or other sub-recipient, but does not include an individual that is a beneficiary of such a program. A sub-recipient may also be a direct recipient of Federal awards under other agreements.

q. "Vendor" means an organization providing a recipient or sub-recipient with generally required goods or services that are related to the administrative support of the Federal assistance program.

2. Audit of Nonprofit Institutions.

a. Requirements Based on Awards Received.

(1) Nonprofit institutions that receive $100,000 or more a year in Federal awards shall have an audit made in accordance with the provisions of this Circular. However, nonprofit institutions receiving $100,000 or more but receiving awards under only one program have the option of having an audit of their institution prepared in accordance with the provisions of the Circular or having an audit made of the one program. For prior or subsequent years, when an institution has only loan guarantees or outstanding loans that were made previously, the institution may be required to conduct audits for those programs, in accordance with regulations of the Federal agencies providing those guarantees or loans.

(2) Nonprofit institutions that receive at least $25,000 but less than $100,000 a year in Federal awards shall have an audit made in accordance with this Circular or have an audit made of each Federal award, in accordance with Federal laws and regulations governing the programs in which they participate.

(3) Nonprofit institutions receiving less than $25,000 a year in Federal awards are exempt from Federal audit requirements, but records must be available for review by appropriate officials of the Federal grantor agency or subgranting entity.

b. Oversight by Federal Agencies.

(1) To each of the larger nonprofit institutions the Office of Management and Budget (OMB) will assign a Federal agency as the cognizant agency for monitoring audits and ensuring the resolution of audit findings that affect the programs of more than one agency.

(2) Smaller institutions not assigned a cognizant agency will be under the general oversight of the Federal agency that provides them with the most funds.

(3) Assignments to Federal cognizant agencies for carrying out responsibilities in this section are set forth in a separate supplement to this Circular.

(4) Federal Government-owned, contractor-operated facilities at institutions or laboratories operated primarily for the Government are not included in the cognizance assignments. These will remain the responsibility of the contracting agencies. The listed assignments cover all of the functions in this Circular unless otherwise indicated. The Office of Management and Budget will coordinate changes in agency assignments.

3. Cognizant Agency Responsibilities. A cognizant agency shall:

a. Ensure that audits are made and reports are received in a timely manner and in accordance with the requirements of this Circular.

b. Provide technical advice and liaison to institutions and independent auditors.

c. Obtain or make quality control reviews of selected audits made by non-Federal audit organizations, and provide the results, when appropriate, to other interested organizations.

d. Promptly inform other affected Federal agencies and appropriate Federal law enforcement officials of any reported illegal acts or irregularities. A cognizant agency should also inform State or local law enforcement and prosecuting authorities, if not advised by the recipient, of any violation of law within their jurisdiction.

e. Advise the recipient of audits that have been found not to have met the requirements set forth in this Circular. In such instances, the recipient will work with the auditor to take corrective action. If corrective action is not taken, the cognizant agency shall notify the recipient and Federal awarding agencies of the facts and make recommendations for follow-up action. Major inadequacies or repetitive substandard performance of independent auditors shall be referred to appropriate professional bodies for disciplinary action.

f. Coordinate, to the extent practicable, audits or reviews made for Federal agencies that are in addition to the audits made pursuant to this Circular, so that the additional

audits or reviews build upon audits performed in accordance with the Circular.

g. Ensure the resolution of audit findings that affect the programs of more than one agency.

h. Seek the views of other interested agencies before completing a coordinated program.

i. Help coordinate the audit work and reporting responsibilities among independent public accountants, State auditors, and both resident and non-resident Federal auditors to achieve the most cost-effective audit.

4. Oversight Agency Responsibilities. An oversight agency shall provide technical advice and counsel to institutions and independent auditors when requested by the recipient. The oversight agency may assume all or some of the responsibilities normally performed by a cognizant agency.

5. Recipient Responsibilities. A recipient that receives a Federal award and provides $25,000 or more of it during its fiscal year to a sub-recipient shall:

a. Ensure that the nonprofit institution sub-recipients that receive $25,000 or more have met the audit requirements of this Circular, and that sub-recipients subject to OMB Circular A-128 have met the audit requirements of that Circular;

b. Ensure that appropriate corrective action is taken within six months after receipt of the sub-recipient audit report in instances of noncompliance with Federal laws and regulations;

c. Consider whether sub-recipient audits necessitate adjustment of the recipient's own records; and

d. Require each sub-recipient to permit independent auditors to have access to the records and financial statements as necessary for the recipient to comply with this Circular.

6. Relation to Other Audit Requirements.

a. An audit made in accordance with this Circular shall be in lieu of any financial audit required under individual Federal awards. To the extent that an audit made in accordance with this Circular provides Federal agencies with the information and assurances they need to carry out their overall responsibilities, they shall rely upon and use such information. However, a Federal agency shall make any additional audits or reviews necessary to carry out responsibilities under Federal law and regulation. Any additional Federal audits or reviews shall be

planned and carried out in such a way as to build upon work performed by the independent auditor.

b. Audit planning by Federal audit agencies should consider the extent to which reliance can be placed upon work performed by other auditors. Such auditors include State, local, Federal, and other independent auditors, and a recipient's internal auditors. Reliance placed upon the work of other auditors should be documented and in accordance with Government Auditing Standards.

c. The provisions of this Circular do not limit the authority of Federal agencies to make or contract for audits and evaluations of Federal awards, nor do they limit the authority of any Federal agency Inspector General or other Federal official.

d. The provisions of this Circular do not authorize any institution or sub-recipient thereof to constrain Federal agencies, in any manner, from carrying out additional audits, evaluations or reviews.

e. A Federal agency that makes or contracts for audits, in addition to the audits made by recipients pursuant to this Circular, shall, consistent with other applicable laws and regulations, arrange for funding the cost of such additional audits. Such additional audits or reviews include financial, performance audits and program evaluations.

7. Frequency of Audit. Audits shall usually be performed annually but not less frequently than every two years.

8. Sanctions. No audit costs may be charged to Federal awards when audits required by this Circular have not been made or have been made but not in accordance with this Circular. In cases of continued inability or unwillingness to have a proper audit in accordance with the Circular, Federal agencies must consider appropriate sanctions including:

-- withholding a percentage of awards until the audit is completed satisfactorily;

-- withholding or disallowing overhead costs; or

-- suspending Federal awards until the audit is made.

9. Audit Costs. The cost of audits made in accordance with the provisions of this Circular are allowable charges to Federal awards. The charges may be considered a direct cost or an allocated indirect cost, determined in accordance with the provisions of Circular A-21, "Cost Principles for Universities" or Circular A-122, "Cost Principles for Nonprofit Organizations,"

FAR subpart 31, or other applicable cost principles or regulations.

10. Auditor Selection. In arranging for audit services institutions shall follow the procurement standards prescribed by Circular A-110, "Uniform Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and other Nonprofit Organizations."

11. Small and Minority Audit Firms.

a. Small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in contracts awarded to fulfill the requirements of this Circular.

b. Recipients of Federal awards shall take the following steps to further this goal:

(1) Ensure that small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals are used to the fullest extent practicable;

(2) Make information on forthcoming opportunities available and arrange timeframes for the audit to encourage and facilitate participation by small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals;

(3) Consider in the contract process whether firms competing for larger audits intend to subcontract with small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals;

(4) Encourage contracting with small audit firms or audit firms owned and controlled by socially and economically disadvantaged individuals which have traditionally audited government programs, and in cases where this is not possible, assure that these firms are given consideration for audit subcontracting opportunities;

(5) Encourage contracting with consortiums of small audit firms as described in section (1), above, when a contract is too large for an individual small audit firm or audit firm owned and controlled by socially and economically disadvantaged individuals; and

(6) Use the services and assistance, as appropriate, of such organizations as the Small Business Administration in the solicitation and utilization of small audit firms or audit firms owned and controlled by socially and economically disadvantaged individuals.

12. Scope of Audit and Audit Objectives.

a. The audit shall be made by an independent auditor in accordance with Government Auditing Standards developed by the Comptroller General of the United States covering financial audits. An audit under this Circular should be an organization-wide audit of the institution. However, there may be instances where Federal auditors are performing audits or are planning to perform audits at nonprofit institutions. In these cases, to minimize duplication of audit work, a coordinated audit approach may be agreed upon between the independent auditor, the recipient and the cognizant agency or the oversight agency. Those auditors who assume responsibility for any or all of the reports called for by paragraph 15 should follow guidance set forth in Government Auditing Standards in using work performed by others.

b. The auditor shall determine whether:

(1) The financial statements of the institution present fairly its financial position and the results of its operations in accordance with generally accepted accounting principles;

(2) The institution has an internal control structure to provide reasonable assurance that the institution is managing Federal awards in compliance with applicable laws and regulations, and controls that ensure compliance with the laws and regulations that could have a material impact on the financial statements; and

(3) The institution has complied with laws and regulations that may have a direct and material effect on its financial statement amounts and on each major Federal program.

13. Internal Controls Over Federal Awards; Compliance Reviews.

a. General. The independent auditor shall determine and report on whether the recipient has an internal control structure to provide reasonable assurance that it is managing Federal awards in compliance with applicable laws, regulations, and contract terms, and that it safeguards Federal funds. In performing these reviews, independent auditors should rely upon work performed by a recipient's internal auditors to the maximum extent possible. The extent of such reliance should be based upon the Government Auditing Standards.

b. Internal Control Review.

(1) In order to provide this assurance on internal controls, the auditor must obtain an understanding of the

internal control structure and assess levels of internal control risk. After obtaining an understanding of the controls, the assessment must be made whether or not the auditor intends to place reliance on the internal control structure.

(2) As part of this review, the auditor shall:

(a) Perform tests of controls to evaluate the effectiveness of the design and operation of the policies and procedures in preventing or detecting material noncompliance. Tests of controls will not be required for those areas where the internal control structure policies and procedures are likely to be ineffective in preventing or detecting noncompliance, in which case a reportable condition or a material weakness should be reported in accordance with paragraph 15 c(2) of this Circular.

(b) Review the recipient's system for monitoring sub-recipients and obtaining and acting on sub-recipient audit reports.

(c) Determine whether controls are in effect to ensure direct and indirect costs were computed and billed in accordance with the guidance provided in the general requirements section of the compliance supplement to this Circular.

c. Compliance Review.

(1) The auditor shall determine whether the recipient has complied with laws and regulations that may have a direct and material effect on any of its major Federal programs. In addition, transactions selected for non-major programs shall be tested for compliance with Federal laws and regulations that apply to such transactions.

(2) In order to determine which major programs are to be tested for compliance, recipients shall identify, in their accounts, all Federal funds received and expended and the programs under which they were received. This shall include funds received directly from Federal agencies, through other State and local governments or other recipients. To assist recipients in identifying Federal awards, Federal agencies and primary recipients shall provide the Catalog of Federal Domestic Assistance (CFDA) numbers to the recipients when making the awards.

(3) The review must include the selection of an adequate number of transactions from each major Federal financial assistance program so that the auditor obtains sufficient evidence to support the opinion on compliance required by paragraph 15c(3) of this Attachment. The selection and testing of transactions shall be based on the auditors' professional judgment considering such factors as the amount of expenditures

for the program; the newness of the program or changes in its conditions; prior experience with the program particularly as revealed in audits and other evaluations (e.g., inspections, program reviews, or system reviews required by Federal Acquisition Regulations); the extent to which the program is carried out through sub-recipients; the extent to which the program contracts for goods or services; the level to which the program is already subject to program reviews or other forms of independent oversight; the adequacy of the controls for ensuring compliance; the expectation of adherence or lack of adherence to the applicable laws and regulations; and the potential impact of adverse findings.

(4) In making the test of transactions, the auditor shall determine whether:

-- the amounts reported as expenditures were for allowable services, and

-- the records show that those who received services or benefits were eligible to receive them.

(5) In addition to transaction testing, the auditor shall determine whether:

-- matching requirements, levels of effort and earmarking limitations were met,

-- Federal financial reports and claims for advances and reimbursement contain information that is supported by books and records from which the basic financial statements have been prepared, and

-- amounts claimed or used for matching were determined in accordance with 1) OMB Circular A-21, "Cost Principles for Educational Institutions"; 2) matching or cost sharing requirements in Circular A-110, "Uniform Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organizations"; 3) Circular A-122, "Cost Principles for Nonprofit Organizations"; 4) FAR subpart 31 cost principles; and 5) other applicable cost principles or regulations.

(6) The principal compliance requirements of the largest Federal programs may be ascertained by referring to the "Compliance Supplement for Single Audits of Educational Institutions and Other Nonprofit Organizations," and the

"Compliance Supplement for Single Audits of State and Local Governments," issued by OMB and available from the Government Printing Office. For those programs not covered in the Compliance Supplements, the auditor should ascertain compliance requirements by reviewing the statutes, regulations, and agreements governing individual programs.

(7) Transactions related to other awards that are selected in connection with examinations of financial statements and evaluations of internal controls shall be tested for compliance with Federal laws and regulations that apply to such transactions.

14. Illegal Acts. If, during or in connection with the audit of a nonprofit institution, the auditor becomes aware of illegal acts, such acts shall be reported in accordance with the provisions of the Government Auditing Standards.

15. Audit Reports.

a. Audit reports must be prepared at the completion of the audit.

b. The audit report shall state that the audit was made in accordance with the provisions of this Circular.

c. The report shall be made up of at least the following three parts:

(1) The financial statements and a schedule of Federal awards and the auditor's report on the statements and the schedule. The schedule of Federal awards should identify major programs and show the total expenditures for each program. Individual major programs other than Research and Development and Student Aid should be listed by catalog number as identified in the Catalog of Federal Domestic Assistance. Expenditures for Federal programs other than major programs shall be shown under the caption "other Federal assistance." Also, the value of non-cash assistance such as loan guarantees, food commodities or donated surplus properties or the outstanding balance of loans should be disclosed in the schedule.

(2) A written report of the independent auditor's understanding of the internal control structure and the assessment of control risk. The auditor's report should include as a minimum: 1) the scope of the work in obtaining understanding of the internal control structure and in assessing the control risk, 2) the nonprofit institution's significant internal controls or control structure including the controls established to ensure compliance with laws and regulations that have a material impact on the financial statements and those that provide reasonable assurance that Federal awards are being

managed in compliance with applicable laws and regulations, and 3) the reportable conditions, including the identification of material weaknesses, identified as a result of the auditor's work in understanding and assessing the control risk. If the auditor limits his/her consideration of the internal control structure for any reason, the circumstances should be disclosed in the report.

(3) The auditor's report on compliance containing:

-- An opinion as to whether each major Federal program was being administered in compliance with laws and regulations applicable to the matters described in paragraph 13(c)(3) of this Attachment, including compliance with laws and regulations pertaining to financial reports and claims for advances and reimbursements;

-- A statement of positive assurance on those items that were tested for compliance and negative assurance on those items not tested;

-- Material findings of noncompliance presented in their proper perspective:

o The size of the universe in number of items and dollars,

o The number and dollar amount of transactions tested by the auditors,

o The number and corresponding dollar amount of instances of noncompliance;

-- Where findings are specific to a particular Federal award, an identification of total amounts questioned, if any, for each Federal award, as a result of noncompliance and the auditor's recommendations for necessary corrective action.

c. The three parts of the audit report may be bound into a single document, or presented at the same time as separate documents.

d. Nonmaterial findings need not be disclosed with the compliance report but should be reported in writing to the recipient in a separate communication. The recipient, in turn, should forward the findings to the Federal grantor agencies or subgrantor sources.

e. All fraud or illegal acts or indications of such acts, including all questioned costs found as the result of these acts

that auditors become aware of, may be covered in a separate written report submitted in accordance with the Government Auditing Standards.

f. The auditor's report should disclose the status of known but uncorrected significant material findings and recommendations from prior audits that affect the current audit objective as specified in the Government Auditing Standards.

g. In addition to the audit report, the recipient shall provide a report of its comments on the findings and recommendations in the report, including a plan for corrective action taken or planned and comments on the status of corrective action taken on prior findings. If corrective action is not necessary, a statement describing the reason it is not should accompany the audit report.

h. Copies of the audit report shall be submitted in accordance with the reporting standards for financial audits contained in the Government Auditing Standards. Sub-recipient auditors shall submit copies to recipients that provided Federal awards. The report shall be due within 30 days after the completion of the audit, but the audit should be completed and the report submitted not later than 13 months after the end of the recipient's fiscal year unless a longer period is agreed to with the cognizant or oversight agency.

i. Recipients of more than $100,000 in Federal awards shall submit one copy of the audit report within 30 days after issuance to a central clearinghouse to be designated by the Office of Management and Budget. The clearinghouse will keep completed audit reports on file.

j. Recipients shall keep audit reports, including sub-recipient reports, on file for three years from their issuance.

16. Audit Resolution.

a. As provided in paragraph 3, the cognizant agency shall be responsible for ensuring the resolution of audit findings that affect the programs of more than one Federal agency. Resolution of findings that relate to the programs of a single Federal agency will be the responsibility of the recipient and the agency. Alternate arrangements may be made on case-by-case basis by agreement among the agencies concerned.

b. A management decision shall be made within six months after receipt of the report by the Federal agencies responsible for audit resolution. Corrective action should proceed as rapidly as possible.

17. **Audit Workpapers and Reports**. Workpapers and reports shall be retained for a minimum of three years from the date of the audit report, unless the auditor is notified in writing by the cognizant agency to extend the retention period. Audit workpapers shall be made available upon request to the cognizant agency or its designee or the General Accounting Office, at the completion of the audit.

CHAPTER 2

SELECTION OF RECIPIENTS

2A. Policy

1. A.I.D. encourages competition in the award of grants or cooperative agreements in accordance with the requirements in the Federal Grant and Cooperative Agreement Act of 1977 to "...encourage competition, where deemed appropriate, in the award of grants and cooperative agreements."

2B. Competition

1. Requirement for Competition. Competition is to be used to the maximum practicable extent for the award of grants or cooperative agreements. A grant or cooperative agreement shall be considered to have been awarded on a competitive basis if the award was made after consideration of applications from two or more potential recipients submitted in response to an invitation for applications (see 2C below) issued by A.I.D. Invitations for applications should be announced in appropriate publications to the extent practicable.

2. Special Programs. The requirement for competition is considered to be met when assistance awards are based on prescribed eligibility requirements and selection procedures for special assistance programs as follows:

a. Title XII University Strengthening Grants (See Appendix 2A);

b. Title XII Program Support Grants (See Appendix 2A);

c. Title XII Collaborative Research Support Program (CRSP) Grants (See Appendix 2A);

d. Centrally funded grants and cooperative agreements to registered Private and Voluntary Organizations and cooperatives based on prescribed eligibility requirements and selection procedures outlined in a invitation for applications (See Appendix 2A);

e. Mission funded grants and cooperative agreements to registered Private Voluntary Organizations and cooperatives for umbrella programs, field programs, institutional development/ strengthening, and collaboration among PVOs and cooperatives (See Appendix 4B of Chapter 4 of Handbook 3, Project Assistance);

3. Exceptions. Competition is not required for:

a. Assistance awards based on an unsolicited application when the project office certifies based on explanatory findings and determinations that the proposal:

(1) Was not solicited by A.I.D.; and

(2) Is unique, innovative, or proprietary, and acceptance would be fair, reasonable, and would represent appropriate use of A.I.D. funds to support or stimulate a public purpose;

b. Assistance awards for which one recipient is considered to have exclusive or predominant capability, based on experience, specialized facilities or technical competence, or based on an existing relationship with the cooperating country or beneficiaries;

c. Amendments to existing assistance awards;

d. Follow on assistance awards intended to continue or further develop an existing assistance relationship.

e. Such other circumstances as are determined to be critical to the objectives of the foreign assistance program by the cognizant AA or Office Director who reports directly to the Administrator.

4. Justification of Noncompetitive Awards.

a. Noncompetitive awards must be justified in writing by the technical office. Justifications shall be based on one of the exceptions in paragraph 2B3 above and shall provide sufficient evidence to clearly show that the exception is proper.

b. The justification shall be submitted to the cognizant grant officer for review (except for a justification made under para. 2B3e -- such justifications are final and are not subject to review). If the grant officer rejects the justification, he or she will notify the project office in writing, explaining the reasons for rejection. The technical office may appeal any rejection to the responsible Assistant Administrator or Office Director who reports directly to the Administrator. The decision of that official shall be final.

2C. Application and Award

1. Invitation for Applications (IAs). IAs are notices prepared by the technical office in collaboration with the grant officer, or by the grant officer, announcing A.I.D.'s interest in supporting/stimulating

a public purpose (described in sufficient detail to enable potential recipients to determine their interest in and qualifications for the activity); inviting the submission of applications; specifying the required information to be submitted and the evaluation criteria which will be used; and requiring past performance data as specified in 2C4, below.

2. The technical office shall provide the grant officer with the following information for the IA:

a. The total estimated amount of funding available for the contending applicants;

b. The estimated number of grants or cooperative agreements that will be awarded, including any dollar limitation for each grant or cooperative agreement; and

c. The technical evaluation criteria to be used in rating and selecting the successful applicants.

3. Applications received will be evaluated in accordance with the specified criteria by reviewers who are sufficiently independent to insure that the criteria are applied fairly and consistently. The choice of recipients in accordance with the criteria and procedures herein is the responsibility of the technical office. Award will be made by the grant officer in accordance with the applicable chapter of this Handbook.

4. Past Performance Data. All instructions for preparation of applications for assistance awards shall include a statement that the quality of an applicant's past performance on similar projects is a factor in considering new assistance awards. Requests for applications shall include a requirement that applicants submit information with respect to all contracts, grants or cooperative agreements involving similar or related projects over the last three years funded by A.I.D. and other organizations (both commercial and Governmental). The information supplied must include the name and address of the organization which funded the projects or for whom services were performed, the current telephone number of a responsible technical representative of that organization, the number, if any, of each contract, grant or cooperative agreement; and a brief description of the project. This information will be submitted to the grant officer, who will consider such performance data along with other factors in determining whether the applicant is responsible as defined in paragraph 4F of this Handbook.

APPENDIX 2A

SELECTION PROCEDURES - SPECIAL GRANT PROGRAMS

The following list of documents describe the eligibility requirements and selection procedures established for four special grant programs.

Copies of these documents may be obtained from the indicated author offices:

1. Title XII University Strengthening Grants: (Author Office: S&T/RUR)

   a. "Guidelines for the Preparation and Submission of Proposals for Matching Formula Title XII University Strengthening Grants" of March 24, 1978.

   b. "Instructions to Reviewers for Evaluating Matching Formula Title XII University Strengthening Proposals" of October 4, 1978, as revised December 28, 1978.

   c. "Guidelines for the Preparation of Proposals for Minority Institutions, Title XII University Strengthening Grants" of April 14, 1978.

   d. Action Memoranda for the Administrator of March 28, 1979 and May 18, 1979 approving procedures contained in above noted Guidelines.

2. Title XII Collaborative Research Support Program (CRSP) Grants: (Author Office: S&T/RUR).

   "Guidelines for the Conduct of Collaborative Research Support Activity under Title XII of the International Development and Food Assistance Act of 1975" of October 10, 1979.

3. Matching Grants to Registered Private and Voluntary Organizations: (Author Office: FVA/PVC)

   "Matching Grant Program: Policies and Procedures" of May 21, 1982.

4. Institutional Grants to U.S. Research and Educational Institutions Under the Authority of Sec. 122(d) (Formerly Sec. 211(d) of the Foreign Assistance Act: (Author Office: S&T/RUR)

   "Policy Guidance for the Institutional Grants Program" (as formerly set forth in Handbook 13, Chapter 2, under the authority of Sec. 211(d) of the Foreign Assistance Act).

CHAPTER 3

STATUTORY AND REGULATORY REQUIREMENTS

3A. Introduction

This Chapter covers Government-wide requirements applicable to Federal grants and cooperative agreements concerning suspension and debarment regulations, drug-free workplace requirements, restrictions on lobbying, and nondiscrimination in Federally asssisted programs.

3B. Suspension and Debarment

1. AID has implemented the Government-wide regulations covering suspension and debarment under Federal nonprocurement activities in 22 CFR 208 which appears as Appendix 3A to this Chapter.

2. AID shall not award assistance to applicants that are debarred or suspended, or are otherwise excluded from, or ineligible for participation in Federal assistance programs under Executive Order 12549. Recipients must certify to their eligibility in accordance with the provisions of 22 CFR 208. The required certifications appear in Appendix 3A, Annex 1.

3C. Drug Free Workplace Requirements

Subpart F of 22 CFR 208 contains the Government-wide rule implementing the requirements for drug free workplaces in accordance with the Drug-Free Workplace Act of 1988 (Pub. L. 100-690). The certification required from grantees in accordance with the regulation appears in Appendix 3A, Annex 2.

3D. Restrictions on Lobbying

In accordance with the Department of the Interior and Related Agencies Appropriations Act for FY 1990, 31 U.S.C. 1352 was added to cover "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions." AID has implemented the Government-wide common rule in 22 CFR 227 which appears as Appendix 3B to this Chapter. The required certification and disclosure forms also appear in Appendix 3B.

3E. Nondiscrimination in Federally Assisted Programs

1. All U.S. organizations or institutions which are recipients of AID assistance are subject to following laws and AID regulations. Non-U.S. organizations or institutions are subject to these requirements if any part of the program supported by an AID grant or cooperative agreement will be undertaken in the United States.

3E1

a. Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352, 42 U.S.C. 2000-d) which prohibits discrimination on the basis of race, color, or national origin, in programs and activities receiving Federal financial assistance,

b. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), which prohibits discrimination on the basis of handicap in programs and activities receiving Federal financial assistance,

c. The Age Discrimination Act of 1975, as amended (Pub. L. 95-478), which prohibits discrimination based on age in the delivery of services and benefits supported with Federal funds,

d. Title IX of the Education Amendments of 1972 (20 U.S.C. 1681, et. seq.) which prohibits discrimination on bhe basis of sex in education programs and activities receiving Federal financial assistance (whether or not the programs or activities are offered or sponsored by an educational institution); and

e. 22 CFR 209, 217 and 218 implementing these are set forth in Chapter II of Title 22 of the Code of Federal Regulations.

2. Applicants of AID grants and cooperative agreements must execute the "Assurance of Compliance with Laws and Regulations Governing Nondiscrimination in Federally Assisted Programs" (Appendix 3C of this Chapter) if they are U.S. organizations or institutions. If applicants are non-U.S. organizations or institution, they must execute the Assurance if any part of the program supported by the grant of cooperative agreement is to be undertaken in the United States. Grant officers must obtain one copy of the Assurance from assistance applicants PRIOR to grant officer signature on the grant of cooperative agreement.

3. If an applicant refuses or fails to execute the Assurance, the grant officer will notify the project officer, who is responsible for seeking and exception to the requirement for the Assurance from the Administrator before the grant officer may execute the grant or cooperative agreement.

APPENDIX 3A

AID REGULATION 8
22 CFR 208

PART 208 - GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENT-WIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

PART 208 - GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENT-WIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

Subpart A -- General

Section

208.100 Purpose.
208.105 Definitions.
208.110 Coverage.
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Subpart B -- Effect of Action

208.200 Debarment or suspension.
208.205 Ineligible persons.
208.210 Voluntary exclusion.
208.215 Exception provision.
208.220 Continuation of covered transactions.
208.225 Failure to adhere to restrictions.

Subpart C -- Debarment

208.300 General.
208.305 Causes for debarment.
208.310 Procedures.
208.311 Investigation and referral.
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Appendix A -- Certification Regarding Debarment, Suspension, and Other Responsibility Matters -- Primary Covered Transactions

Appendix B -- Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions

Appendix C -- Certification Regarding Drug-Free Workplace Requirements

Authority: Executive Order 12549, Sec. 621, Pub. L. 87-195, 75 stat. 445 (22 U.S.C. 2381), as amended; E.O. 12163, Sept. 29, 1979 44 FR 56673, 3 CFR 1979 Comp., p.435.

Subpart A -- General

§208.100 Purpose.

(a) Executive Order 12549 provides that, to the extent permitted by law, executive departments and agencies shall participate in a government-wide system for nonprocurement debarment and suspension. A person who is debarred or suspended shall be excluded from Federal financial and nonfinancial assistance and benefits under Federal programs and activities. Debarment or suspension of a participant in a program by one agency shall have government-wide effect.

(b) These regulations implement section 3 of Executive Order 12549 and the guidelines promulgated by the Office of Management and Budget under section 6 of the Executive Order by:

(1) Prescribing the programs and activities that are covered by the government-wide system:

(2) Prescribing the government-wide criteria and government-wide minimum due process procedures that each agency shall use;

(3) Providing for the listing of debarred and suspended participants, participants declared ineligible [see definition of "ineligible" in §208.105(i)], and participants who have voluntarily excluded themselves from participation in covered transactions;

(4) Setting forth the consequences of a debarment, suspension, determination of ineligibility, or voluntary exclusion; and

(5) Offering such other guidance as necessary for the effective implementation and administration of the government wide system.

(c) Although these regulations cover the listing of ineligible participants and the effect of such listing, they do not prescribe policies and procedures governing declarations of ineligibility.

§208.105 Definitions.

(a) Adequate evidence. Information sufficient to support the reasonable belief that a particular act or omission has occurred.

(b) Affiliate. Persons are affiliates of each another if, directly or indirectly, either one controls or has the power to control the other, or, a third person controls or has the power to control both. Indicia of control include, but are not limited to: interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized following the suspension or debarment of a person which has the same or similar management, ownership, or principal employees as the suspended, debarred, ineligible, or voluntarily excluded person.

(c) Agency. Any executive department, military department or defense agency or other agency of the executive branch, excluding the independent regulatory agencies.

(d) Civil judgment. The disposition of a civil action by any court of competent jurisdiction, whether entered by verdict, decision, settlement, stipulation, or otherwise creating a civil liability for the wrongful acts complained of; or a final determination of liability under the Program Fraud Civil Remedies Act of 1988 (31 U.S.C. 3801-12).

(e) Conviction. A judgment of conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, including a plea of nolo contendere.

(f) Debarment. An action taken by a debarring official in accordance with these regulations to exclude a person from participating in covered transactions. A person so excluded is "debarred."

(g) Debarring official. An official authorized to impose debarment. The debarring official is either:

(1) The agency head, or

(2) An official designated by the agency head.

(3) The AID debarring official is the Deputy Assistant to the Administrator for Management Services (DAA/MS).

(h) Indictment. Indictment for a criminal offense. An information or other filing by competent authority charging a criminal offense shall be given the same effect as an indictment.

(i) Ineligible. Excluded from participation in Federal nonprocurement programs pursuant to a determination of ineligibility under statutory, executive order, or regulatory authority, other than Executive Order 12549 and its agency implementing regulations; for example, excluded pursuant to the Davis-Bacon Act and its implementing regulations, the equal employment opportunity acts and executive orders, or the environmental protection acts and executive orders. A person is ineligible where the determination or ineligibility affects such person's eligibility to participate in more than one covered transaction.

(j) Legal proceedings. Any criminal proceeding or any civil judicial proceeding to which the Federal Government or a State or local government or quasi-governmental authority is a party. The term includes appeals from such proceedings.

(k) Nonprocurement List. The portion of the List of Parties Excluded from Federal Procurement or Nonprocurement Programs compiled, maintained and distributed by the General Services Administration (GSA) containing the names and other information about persons who have been debarred, suspended, or voluntarily excluded under Executive Order 12549 and these regulations, and those who have been determined to be ineligible.

(l) Notice. A written communication served in person or sent by certified mail, return receipt requested, or its equivalent, to the last known address of a party, its identified counsel, its agent for service of process, or any partner, officer, director, owner, or joint venturer of the party. Notice, if undeliverable, shall be considered to have been received by the addressee five days after being properly sent to the last address known by the agency.

(m) Participant. Any person who submits a proposal for, enters into, or reasonably may be expected to enter into a covered transaction. This term also includes any person who acts on behalf of or is authorized to commit a participant in a covered transaction as an agent or representative of another participant.

(n) Person. Any individual, corporation, partnership, association, unit of government or legal entity, however organized, except: foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, and entities consisting wholly or partially of foreign governments or foreign governmental entities.

(o) Preponderance of the evidence. Proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

(p) Principal. Officer, director, owner, partner, key employee, or other person within a participant with primary management or supervisory responsibilities; or a person who has a critical influence on or substantive control over a covered transaction, whether or not employed by the participant. Persons who have a critical influence on or substantive control over a covered transaction are:

(1) Principal investigators.

(q) Proposal. A solicited or unsolicited bid, application, request, invitation to consider or similar communication by or on behalf of a person seeking to participate or to receive a benefit, directly or indirectly, in or under a covered transaction.

(r) Respondent. A person against whom a debarment or suspension action has been initiated.

(s) State. Any of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency of a State, exclusive of institutions of higher education, hospitals, and units of local government. A State instrumentality will be considered part of the State government if it has a written determination from a State government that such State considers that instrumentality to be an agency of the State government.

(t) Suspending official. An official authorized to impose suspension. The suspending official is either:

(1) The agency head, or

(2) An official designated by the agency head.

(3) The AID suspending official is the Deputy Assistant to the Administrator for Management Services (DAA/MS).

(u) Suspension. An action taken by a suspending official in accordance with these regulations that immediately excludes a person from participating in covered transactions for a temporary period, pending completion of an investigation and such legal, debarment, or Program Fraud Civil Remedies Act proceedings as may ensue. A person so excluded is "suspended."

(v) Voluntary exclusion or voluntarily excluded. A status of nonparticipation or limited participation in covered transactions assumed by a person pursuant to the terms of a settlement.

(w) AID Agency for International Development.

208.110 Coverage.

(a) These regulations apply to all persons who have participated, are currently participating or may reasonably be expected to participate in transactions under Federal nonprocurement programs. For purposes of these regulations such transactions will be referred to as "covered transactions."

(1) Covered transaction. For purposes of these regulations, a covered transaction is a primary covered transaction or a lower tier covered transaction. Covered transactions at any tier need not involve the transfer of Federal funds.

(i) Primary covered transaction. Except as noted in paragraph (a)(2) of this section, a primary covered transaction is any nonprocurement transaction between an agency and a person, regardless of type, including: grants, cooperative agreements, scholarships, fellowships, contracts of assistance, loans, loan guarantees, subsidies, insurance, payments for specified use, donation agreements and any other nonprocurement transactions between a Federal agency and a person. Primary covered transactions also include those transactions specially designated by the U.S. Department of Housing and Urban Development in such agency's regulations governing debarment and suspension.

(ii) Lower tier covered transaction. A lower tier covered transaction is:

(A) Any transaction between a participant and a person other than a procurement contract for goods or services, regardless of type, under a primary covered transaction.

(B) Any procurement contract for goods or services between a participant and a person, regardless of type, expected to equal or exceed the Federal procurement small purchase threshold fixed at 10 U.S.C. 2304(g) and 41 U.S.C. 253(g) (currently $25,000) under a primary covered transaction.

(C) Any procurement contract for goods or services between a participant and a person under a covered transaction, regardless of amount, under which that person will have a critical influence on or substantive control over that covered transaction. Such persons are:

(1) Principal investigators.

(2) Providers of federally-required audit services.

(2) Exceptions. The following transactions are not covered:

(i) Statutory entitlements or mandatory awards (but not subtier awards thereunder which are not themselves mandatory), including deposited funds insured by the Federal Government;

(ii) Direct awards to foreign governments or public international organizations, or transactions with foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, entities consisting wholly or partially of foreign governments or foreign governmental entities;

(iii) Benefits to an individual as a personal entitlement without regard to the individual's present responsibility (but benefits received in an individual's business capacity are not excepted);

(iv) Federal employment;

(v) Transactions pursuant to national or agency-recognized emergencies or disasters;

(vi) Incidental benefits derived from ordinary governmental operations; and

(vii) Other transactions where the application of these regulations would be prohibited by law.

(b) Relationship to other sections. This section describes the types of transactions to which a debarment or suspension under the regulations will apply. Subpart B, "Effect of Action," §208.200, "Debarment or suspension," sets forth the consequences of a debarment or suspension. Those consequences would obtain only with respect to participants and principals in the covered transactions and activities described in §208.110(a). Sections 208.325, "Scope of debarment," and 208.420, "Scope of suspension," govern the extent to which a specific participant or organizational elements of a participant would be automatically included within a debarment or suspension action, and the conditions under which affiliates or persons associated with a participant may also be brought within the scope of the action.

(c) Relationship to Federal procurement activities. Debarment and suspension of Federal procurement contractors and subcontractors under Federal procurement contracts are covered by the Federal Acquisition Regulation (FAR), 48 CFR Subpart 9.4.

§208.115 Policy.

(a) In order to protect the public interest, it is the policy of the Federal Government to conduct business only with responsible persons. Debarment and suspension are discretionary actions that, taken in accordance with Executive Order 12549 and these regulations, are appropriate means to implement this policy.

(b) Debarment and suspension are serious actions which shall be used only in the public interest and for the Federal Government's protection and not for purposes of punishment. Agencies may impose debarment or suspension for the causes and in accordance with the procedures set forth in these regulations.

(c) When more than one agency has an interest in the proposed debarment or suspension of a person, consideration shall be given to designating one agency as the lead agency for making the decision. Agencies are encouraged to establish methods and procedures for coordinating their debarment or suspension actions.

Subpart B -- Effect of Action

§208.200 Debarment or suspension.

(a) Primary covered transactions. Except to the extent prohibited by law, persons who are debarred or suspended shall be excluded from primary covered transactions as either participants or principals throughout the executive branch of the Federal Government for the period of their debarment or suspension. Accordingly, no agency shall enter into primary covered transactions with such debarred or suspended persons during such period, except as permitted pursuant to §208.215.

(b) Lower tier covered transactions. Except to the extent prohibited by law, persons who have been debarred or suspended shall be excluded from participating as either participants or principals in all lower tier covered transactions [see §208.110(a)(1ii)] for the period of their debarment or suspension.

(c) Exceptions. Debarment or suspension does not affect a person's eligibility for:

(1) Statutory entitlements or mandatory awards (but not subtier awards thereunder which are not themselves mandatory), including deposited funds insured by the Federal Government;

(2) Direct awards to foreign governments or public international organizations, or transactions with foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, and entities consisting wholly or partially of foreign governments or foreign governmental entities;

(3) Benefits to an individual as a personal entitlement without regard to the individual's present responsibility (but benefits received in an individual's business capacity are not excepted);

(4) Federal employment;

(5) Transactions pursuant to national or agency-recognized emergencies or disasters;

(6) Incidental benefits derived from ordinary governmental operations; and

(7) Other transactions where the application of these regulations would be prohibited by law.

§208.205 Ineligible persons.

Persons who are ineligible, as defined in §208.105(i), are excluded in accordance with the applicable statutory, executive order, or regulatory authority.

208.210 Voluntary exclusion.

Persons who accept voluntary exclusions under §208.315 are excluded in accordance with the terms of their settlements. AID shall, and participants may, contact the original action agency to ascertain the extent of the exclusion.

§208.215 Exception provision.

AID may grant an exception permitting a debarred, suspended, or voluntarily excluded person to participate in a particular covered transaction upon a written determination by the agency head or an authorized designee stating the reason(s) for deviating from the Presidential policy established by Executive Order 12549 and §208.200 of this rule. However, in accordance with the President's stated intention in the Executive Order, exceptions shall be granted only infrequently. Exceptions shall be reported in accordance with §208.505(a).

(a) The Associate Assistant to the Administrator for Management has authority to grant exceptions.

§208.220 Continuation of covered transactions.

(a) Notwithstanding the debarment, suspension, determination of ineligibility, or voluntary exclusion of any person by an agency, agencies and participants may continue covered transactions in existence at the time the person was debarred, suspended, declared ineligible, or voluntarily excluded. A decision as to the type of termination action, if any, to be taken should be made only after thorough review to ensure the propriety of the proposed action.

(b) Agencies and participants shall not renew or extend covered transactions (other than no-cost time extensions) with any person who is debarred, suspended, ineligible, or voluntarily excluded, except as provided in §208.215.

§208.225 Failure to adhere to restrictions.

Except as permitted under §208.215 or §208.220 of these regulations, a participant shall not knowingly do business under a covered transaction with a person who is debarred or suspended, or with a person who is ineligible for or voluntarily excluded from that covered transaction. Violation of this restriction may result in disallowance of costs, annulment or termination of award, issuance of a stop work order, debarment or suspension, or other remedies, as appropriate. A participant may rely upon the certification of a prospective participant in a lower tier covered transaction that it and its principals are not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction (see Appendix B), unless it knows that the certification is erroneous. An agency has the burden of proof that such participant did knowingly do business with such a person.

Subpart C -- Debarment

§208.300 General.

The debarring official may debar a person for any of the causes in §208.305, using procedures established in §§208.310 through 208.314. The existence of a cause for debarment, however, does not necessarily require that the person be debarred; the seriousness of the person's acts or omissions and any mitigating factors shall be considered in making any debarment decision.

§208.305 Causes for debarment.

Debarment may be imposed in accordance with the provisions of §§208.300 through 208.314 for:

(a) Conviction of or civil judgment for:

(1) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction;

(2) Violation of Federal or State antitrust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging;

(3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, or obstruction of justice; or

(4) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a person.

(b) Violation of the terms of a public agreement or transaction so serious as to affect the integrity of an agency program, such as:

(1) A willful failure to perform in accordance with the terms of one or more public agreements or transactions;

(2) A history of failure to perform or of unsatisfactory performance of one or more public agreements or transactions; or

(3) A willful violation of a statutory or regulatory provision or requirement applicable to a public agreement or transaction.

(c) Any of the following causes:

(1) A nonprocurement debarment by any Federal agency taken before October 1, 1988, the effective date of these regulations, or a pr curement debarment by any Federal agency taken pursuant to 48 CFR Subpart 9.4;

(2) Knowingly doing business with a debarred, suspended, ineligible, or voluntarily excluded person, in connection with a covered transaction, except as permitted in §208.215 or §208.220;

(3) Failure to pay a single substantial debt, or a number of outstanding debts (including disallowed costs and overpayments, but not including sums owed the Federal Government under the Internal Revenue Code) owed to any Federal agency or instrumentality, provided the debt is uncontested by the debtor or, if contested, provided that the debtor's legal and administrative remedies have been exhausted;

(4) Violation of a material provision of a voluntary exclusion agreement entered into under §208.315 or of any settlement of a debarment or suspension action; or

(5) Violation of any requirement of Subpart F of this part, relating to providing a drug-free workplace, as set forth in §208.615 of this part.

(d) Any other cause of so serious or compelling a nature that it affects the present responsibility of a person.

§208.310 Procedures.

AID shall process debarment actions as informally as practicable, consistent with the principles of fundamental fairness, using the procedures in §§ 208.311 through 208.314.

§208.311 Investigation and referral.

Information concerning the existence of a cause for debarment from any source for debarment from any source shall be promptly reported, investigated, and referred, when appropriate, to the debarring official for consideration. After consideration, the debarring official may issue a notice of proposed debarment.

§208.312 Notice of proposed debarment.

A debarment proceeding shall be initiated by notice to the respondent advising:

(a) That debarment is being considered;

(b) Of the reasons for the proposed debarment in terms sufficient to put the respondent on notice of the conduct or transaction(s) upon which it is based;

(c) Of the cause(s) relied upon under §208.305 for proposing debarment;

(d) Of the provisions of §208.311 through §208.314, and any other AID procedures, if applicable, governing debarment decision making; and

(e) Of the potential effect of a debarment.

§208.313 Opportunity to contest proposed debarment.

(a) Submission in opposition. Within 30 days after receipt of the notice of proposed debarment, the respondent may submit, in person, in writing, or through a representative, information and argument in opposition to the proposed debarment.

(b) Additional proceedings as to disputed material facts. (1) In actions not based upon a conviction or civil judgment, if the debarring official finds that the respondent's submission in opposition raises a genuine dispute over facts material to the proposed debarment, respondent(s) shall be afforded an opportunity to appear with a representative, submit documentary evidence, present witnesses, and confront any witness the agency presents.

(2) A transcribed record of any additional proceedings shall be made available at cost to the respondent, upon request, unless the respondent and the agency, by mutual agreement, waive the requirement for a transcript.

§208.314 Debarring official's decision.

(a) No additional proceedings necessary. In actions based upon a conviction or civil judgment, or in which there is no genuine dispute over material facts, the debarring official shall make a decision on the basis of all the information in the administrative record, including any submission made by the respondent. The decision shall be made within 45 days after receipt of any information and argument submitted by the respondent, unless the debarring official extends this period for good cause.

(b) Additional proceedings necessary.

(1) In actions in which additional proceedings are necessary to determine disputed material facts, written findings of fact shall be prepared. The debarring official shall base the decision on the facts as found, together with any information and argument submitted by the respondent and any other information in the administrative record.

(2) The debarring official may refer disputed material facts to another official for findings of fact. The debarring official may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary and capricious or clearly erroneous.

(3) The debarring official's decision shall be made after the conclusion of the proceedings with respect to disputed facts.

(c)(1) Standard of proof. In any debarment action, the cause for debarment must be established by a preponderance of the evidence. Where the proposed debarment is based upon a conviction or civil judgment, the standard shall be deemed to have been met.

(2) Burden of proof. The burden of proof is on the agency proposing debarment.

(d) fficial decides to impose debarment, the respondent shall be given prompt notice:

(i) Referring to the notice of proposed debarment;

(ii) Specifying the reasons for debarment;

(iii) Stating the period of debarment, including effective dates; and

(iv) Advising that the debarment is effective for covered transactions throughout the executive branch of the Federal Government unless an agency head or an authorized designee makes the determination referred to in §208.215.

(3) If the debarring official decides not to impose debarment, the respondent shall be given prompt notice of that decision. A decision not to impose debarment shall be without prejudice to a subsequent imposition of debarment by any other agency.

§208.315 Settlement and voluntary exclusion.

(a) When in the best interest of the Government, AID may, at any time, settle a debarment or suspension action.

(b) If a participant and the agency agree to a voluntary exclusion of the participant, such voluntary exclusion shall be entered on the Nonprocurement List (see Subpart E).

§208.320 Period of debarment.

(a) Debarment shall be for a period commensurate with the seriousness of the cause(s). If a suspension precedes a debarment, the suspension period shall be considered in determining the debarment period.

(1) Debarment for causes other than those related to a violation of the requirements of Subpart F of this part generally should not exceed three years. Where circumstances warrant, a longer period of debarment may be imposed.

(2) In the case of a debarment for a violation of the requirements of Subpart F of this part (see 208.305(c)(5), the period of debarment shall not exceed five years.

(b) The debarring official may extend an existing debarment for an additional period, if that official determines that an extension is necessary to protect the public interest. However, a debarment may not be extended solely on the basis of the facts and circumstances upon which the initial debarment action was based. If debarment for an additional period is determined to be necessary, the procedures of §§208.311 through 314 shall be followed to extend the debarment.

(c) The respondent may request the debarring official to reverse the debarment decision or to reduce the period or scope of debarment. Such a request shall be in writing and supported by documentation. The debarring official may grant such a request for reasons including, but not limited to:

(1) Newly discovered material evidence;

(2) Reversal of the conviction or civil judgment upon which the debarment was based;

(3) Bona fide change in ownership or management;

(4) Elimination of other causes for which the debarment was imposed; or

(5) Other reasons the debarring official deems appropriate.

§208.325 Scope of debarment.

(a) Scope in general.

(1) Debarment of a person under these regulations constitutes debarment of all its divisions and other organizational elements from all covered transactions, unless the debarment decision is limited by its terms to one or more specifically identified individuals, divisions or other organizational elements or to specific types of transactions.

(2) The debarment action may include any affiliate of the participant that is specifically named and given notice of the proposed debarment and an opportunity to respond [see §§208.311 through 208.314].

(b) Imputing conduct. For purposes of determining the scope of debarment, conduct may be imputed as follows:

(1) Conduct imputed to participant. The fraudulent, criminal or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with a participant may be imputed to the participant when the conduct occurred in connection with the individual's performance of duties for or on behalf of the participant, or with the participant's knowledge, approval, or acquiescence. The participant's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

(2) Conduct imputed to individuals associated with participant. The fraudulent, criminal, or other seriously improper conduct of a participant may be imputed to any officer, director,

shareholder, partner, employee, or other individual associated with the participant who participated in, knew of, or had reason to know of the participant's conduct.

(3) Conduct of one participant imputed to other participants in a joint venture. The fraudulent, criminal, or other seriously improper conduct of one participant in a joint venture, grant pursuant to a joint application, or similar arrangement may be imputed to other participants if the conduct occurred for or on behalf of the joint venture, grant pursuant to a joint application, or similar arrangement may be imputed to other participants if the conduct occurred for or on behalf of the joint venture, grant pursuant to a joint application, or similar arrangement or with the knowledge, approval, or acquiescence of these participants. Acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

Subpart D -- Suspension

§208.400 General.

(a) The suspending official may suspend a person for any of the causes in §208.405 using procedures established in §§208.410 through 208.413.

(b) Suspension is a serious action to be imposed only when:

(1) There exists adequate evidence of one or more of the causes set out in §208.405, and

(2) Immediate action is necessary to protect the public interest.

(c) In assessing the adequacy of the evidence, the agency should consider how much information is available, how credible it is given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result. This assessment should include an examination of basic documents such as grants, cooperative agreements, loan authorizations, and contracts.

§208.405. Causes for suspension.

(a) Suspension may be imposed in accordance with the provisions of §§208.400 through 208.413 upon adequate evidence:

(1) To suspect the commission of an offense listed in §208.305 (a); or

(2) That a cause for debarment under §208.305 may exist.

(b) decision making process. AID shall process suspension actions as informally as practicable, consistent with principles of fundamental fairness, using the procedures in §208.411 through §208.413.

§208.411 Notice of suspension.

When a respondent is suspended, notice shall immediately be given:

(a) That suspension has been imposed;

(b) That the suspension is based on an indictment, conviction, or other adequate evidence that the respondent has committed irregularities seriously reflecting on the propriety of further Federal Government dealings with the respondent;

(c) Describing any such irregularities in terms sufficient to put the respondent on notice without disclosing the Federal Government's evidence;

(d) Of the cause(s) relied upon under §208.405 for imposing suspension;

(e) That the suspension is for a temporary period pending the completion of an investigation or ensuing legal, debarment, or Program Fraud Civil Remedies Act proceedings;

(f) Of the provisions of §208.411 through §208.413 and any other AID procedures, if applicable, governing suspension decision making; and

(g) Of the effect of the suspension.

§208.412 Opportunity to contest suspension.

(a) Submission in opposition. Within 30 days after receipt of the notice of suspension, the respondent may submit, in person, in writing, or through a representative, information and argument in opposition to the suspension.

(b) Additional proceedings as to disputed material facts.

(1) If the suspending official finds that the respondent's submission in opposition raises a genuine dispute over facts material to the suspension, respondent(s) shall be afforded an opportunity to appear with a representative, submit documentary evidence, present witnesses, and confront any witness the agency presents, unless:

(i) The action is based on an indictment, conviction or civil judgment, or

(ii) A determination is made, on the basis of Department of Justice advice, that the substantial interests of the Federal Government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced.

(2) A transcribed record of any additional proceedings shall be prepared and made available at cost to the respondent, upon request, unless the respondent and the agency, by mutual agreement, waive the requirement for a transcript.

§208.413 Suspending official's decision.

The suspending official may modify or terminate the suspension (for example, see §208.320(c) for reasons for reducing the period or scope of debarment) or may leave it in force. However, a decision to modify or terminate the suspension shall be without prejudice to the subsequent imposition of suspension by any other agency or debarment by any agency. The decision shall be rendered in accordance with the following provisions:

(a) No additional proceedings necessary. In actions: based on an indictment, conviction, or civil judgment; in which there is no genuine dispute over material facts; or in which additional proceedings to determine disputed material facts have been denied on the basis of Department of Justice advice, the suspending official shall make a decision on the basis of all the information in the administrative record, including any submission made by the respondent. The decision shall be made within 45 days after receipt of any information and argument submitted by the respondent, unless the suspending official extends this period for good cause.

(b) Additional proceedings necessary.

(1) In actions in which additional proceedings are necessary to determine disputed material facts, written findings of fact shall be prepared. The suspending official shall base the decision on the facts as found, together with any information and argument submitted by the respondent and any other information in the administrative record.

(2) The suspending official may refer matters involving disputed material facts to another official for findings of fact. The suspending official may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary or capricious or clearly erroneous.

(c) Notice of suspending official's decision. Prompt written notice of the suspending official's decision shall be sent to the respondent.

§208.415 Period of suspension

(a) Suspension shall be for a temporary period pending the completion of an investigation or ensuing legal, debarment, or Program Fraud Civil Remedies Act proceedings, unless terminated sooner by the suspending official or as provided in paragraph (b) of this section.

(b) If legal or administrative proceedings are not initiated within 12 months after the date of the suspension notice, the suspension shall be terminated unless an Assistant Attorney General or United States Attorney requests its extension in writing, in which case it may be extended for an additional six months. In no event may a suspension extend beyond 18 months, unless such proceedings have been initiated within that period.

(c) The suspending official shall notify the Department of Justice of an impending termination of a suspension, at least 30 days before the 12-month period expires, to give that Department an opportunity to request an extension.

§208.420 Scope of suspension.

The scope of a suspension is the same as the scope of a debarment (see §208.325), except that the procedures of §§208.410 through 208.413 shall be used in imposing a suspension.

Subpart E -- Responsibilities of GSA, Agency and Participants

§208.500 GSA responsibilities.

(a) In accordance with the OMB guidelines, GSA shall compile, maintain, and distribute a list of all persons who have been debarred, suspended, or voluntarily excluded by agencies under Executive Order 12549 and these regulations, and those who have been determined to be ineligible.

(b) At a minimum, this list shall indicate:

(1) The names and addresses of all debarred, suspended, ineligible, and voluntarily excluded persons, in alphabetical order, with cross-references when more than one name is involved in a single action;

(2) The type of action;

(3) The cause for the action;

(4) The scope of the action;

(5) Any termination date for each listing; and

(6) The agency and name and telephone number of the agency point of contact for the action.

§208.505 AID responsibilities.

(a) The agency shall provide GSA with current information concerning debarments, suspension, determinations of ineligibility, and voluntary exclusions it has taken. Until February 18, 1989, the agency shall also provide GSA and OMB with information concerning all transactions in which AID has granted exceptions under §208.215 permitting participation by debarred, suspended, or voluntarily excluded persons.

(b) Unless an alternative schedule is agreed to by GSA, the agency shall advise GSA of the information set forth in §208.500(b) and of the exceptions granted under §208.215 within five working days after taking such actions.

(c) The agency shall direct inquiries concerning listed persons to the agency that took the action.

(d) Agency officials shall check the Nonprocurement List before entering covered transactions to determine whether a participant in a primary transaction is debarred, suspended, ineligible, or voluntarily excluded.

(e) Agency officials shall check the Nonprocurement List before approving principals or lower tier participants where agency approval of the principal or lower tier participant is required under the terms of the transaction, to determine whether such principals or participants are debarred, suspended, ineligible, or voluntarily excluded.

§208.510 Participants' responsibilities.

(a) Certification by participants in primary covered transactions. Each participant shall submit the certification in Appendix A to this Part for

it and its principals at the time the participant submits its proposal in connection with a primary covered transaction, except that States need only complete such certification as to their principals. Participants may decide the method and frequency by which they determine the eligibility of their principals. In addition, each participant may, but is not required to, check the Nonprocurement List for its principals. Adverse information on the certification will not necessarily result in denial of participation. However, the certification, and any additional information pertaining to the certification submitted by the participant, shall be considered in the administration of covered transactions.

(b) Certification by participants in lower tier covered transactions.

(1) Each participant shall require participants in lower tier covered transactions to include the certification in Appendix B to this Part for it and its principals in any proposal submitted in connection with such lower tier covered transactions.

(2) A participant may rely upon the certification of a prospective participant in a lower tier covered transaction that it and its principals are not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction by any Federal agency, unless it knows that the certification is erroneous. Participants may decide the method and frequency by which they determine the eligibility of their principals. In addition, a participant may, but is not required to, check the Nonprocurement List for its principals and for participants.

(c) Changed circumstances regarding certification. A participant shall provide immediate written notice to AID if at any time the participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. Participants in lower tier covered transactions shall provide the same updated notice to the participant to which it submitted its proposals.

Subpart F -- Drug-Free Workplace Requirements (Grants)

§208.600 Purpose.

(a) The purpose of this subpart is to carry out the Drug-Free Workplace Act of 1988 by requiring that--

(1) A grantee, other than an individual, shall certify to the agency that it will provide a drug-free workplace;

(2) A grantee who is an individual shall certify to the agency that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance in conducting any activity with the grant.

(b) Requirements implementing the Drug-Free Workplace Act of 1988 for contractors with the agency are found at 48 CFR Subparts 9.4, 23.5, and 52.2.

§208.605 Definitions.

(a) Except as amended in this section, the definitions of §208.105 apply to this subpart.

(b) For purposes of this subpart--

(1) "Controlled substance" means a controlled substance in schedules I through V of section 202 of the Controlled Substances Act [21 U.S.C. 812], and as further defined by regulation at 21 CFR 1300.11 through 1300.15.

(2) "Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

(3) "Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use or possession of any controlled substance;

(4) "Drug-free workplace" means a site for the performance of work done in connection with a specific grant at which employees of the grantee are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance;

(5) "Employee" means the employee of a grantee directly engaged in the performance of work pursuant to the provisions of the grant;

(6) "Federal agency" or "agency" means any United States executive department, military department, government corporation, government controlled corporation, any other establishment in the executive branch (including the Executive Office of the President), or any independent regulatory agency;

(7) "Grant" means an award of financial assistance, including a cooperative agreement, in the form of money, or property in lieu of money, by a Federal agency directly to a grantee. The term grant includes block grant and entitlement grant programs, whether or not exempted from coverage under the grants management government-wide regulation ("Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments"). The term does not include technical assistance which provides services instead of money, or other assistance in the form of loans, loan guarantees, interest subsidies, insurance, or direct appropriations; or any veterans' benefits to individuals, i.e., any benefit to veterans, their families, or survivors by virtue of the service of a veteran in the Armed Forces of the United States;

(8) "Grantee" means a person who applies for or receives a grant directly from a Federal agency;

(9) "Individual" means a natural person.

§208.610 Coverage.

(a) This subpart applies to any grantee of the agency.

(b) This subpart applies to any grant, except where application of this subpart would be inconsistent with the international obligations of the United States or the laws or regulations of a foreign government.

(c) The provisions of Subparts A, B, C, D, and E of this part apply to matters covered by this subpart, except where specifically modified by this subpart. In the event of any conflict between provisions of this subpart and other provisions of this part, the provisions of this subpart are deemed to control with respect to the implementation of drug-free workplace requirements concerning grants.

§208.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.

A grantee shall be deemed in violation of the requirements of this subpart if the agency head or his or her official designee determines, in writing, that--

(a) The grantee has made a false certification under §208.630;

(b) The grantee has violated the certification by failing to carry out the requirements of subparagraphs (A)(a)-(g) of the certification for grantees other than individuals [Alternate I to Appendix C] or by failing to carry out the requirements of the certification for grantees who are individuals [Alternate II to Appendix C]; or

(c) Such a number of employees of the grantee have been convicted of violations of criminal drug statues for violations occurring in the workplace as to indicate that the grantee has failed to make a good faith effort to provide a drug-free workplace.

§208.620 Effect of violation.

(a) In the event of a violation of this subpart as provided in §208.615, and in accordance with applicable law, the grantee shall be subject to one or more of the following actions:

(1) Suspension of payments under the grant;

(2) Suspension or termination of the grant; and

(3) Suspension or debarment of the grantee under the provisions of this part.

(b) Upon issuance of any final decision under this part requiring debarment of a grantee, the debarred grantee shall be ineligible for award of any grant from any Federal agency for a period specified in the decision, not to exceed five years(see §208.320(a)(2) of this part).

§208.625 Exception provision.

The agency head may waive with respect to a particular grant, in writing, a suspension of payments under a grant, suspension or termination of a grant, or suspension or debarment of a grantee if the agency head determines that such a waiver would be in the public interest. This exception authority cannot be delegated to any other official.

§208.630 Grantees' responsibilities.

(a) As a prior condition of being awarded a grant, each grantee shall make the appropriate certification to the agency, as provided in Appendix C to this part.

(b) Except as provided in this paragraph, a grantee shall make the required certification for each grant. A grantee that is a State may elect to submit an annual certification to each Federal agency from which it obtains grants in lieu of certifications for each grant during the year covered by the certification.

(c) Grantees are not required to provide a certification in order to continue receiving funds under a grant awarded before the effective date of this subpart or under a no-cost time extension of any grant.

APPENDIX 3A, ANNEX 1

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND
OTHER RESPONSIBILITY MATTERS -- PRIMARY COVERED TRANSACTIONS

Appendix A -- Certification Regarding Debarment, Suspension, and Other Responsibility Matters -- Primary Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms "covered transaction," "debarred," "suspended," "ineligible," lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to check the Nonprocurement List.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

Certification Regarding Debarment, Suspension, and Other Responsibility Matters--Primary Covered Transactions

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Appendix B -- Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," ineligible," lower tier covered transaction," "participant," "person," "primary covered transaction," "principal, "proposal," and "'voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

APPENDIX 3A, ANNEX 2

CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS

Appendix C to Part 208 -- Certification Regarding Drug-Free Workplace Requirements

Instructions for Certification

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.
2. The certification set out below is a material representation of fact upon which reliance was placed when the agency determined to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.
3. For grantees other than individuals, Alternate I applies.
4. For grantees who are individuals, Alternate II applies.

Certification Regarding Drug-Free Workplace Requirements

Alternate I

A. The grantee certifies that it will provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition:

(b) Establishing a drug-free awareness program to inform employees about--

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will--

(1) Abide by the terms of the statement; and

(2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;

(e) Notifying the agency within ten days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction;

(f) Taking one of the following actions, within 30 days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted--

(1) Taking appropriate personnel action against such an employee, up to and including termination; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee shall insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Alternate II

The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance in conducting any activity with the grant.

APPENDIX 3B

PART 227 - NEW RESTRICTIONS ON LOBBYING

Subpart A - General

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Appendix A to Part 227 - Certification Regarding Lobbying
Appendix B to Part 227 - Disclosure Form to Report Lobbying

Authority: Section 319, Public Law 101-121 (31 U.S.C. 1352); [citation to Agency rulemaking authority].

Cross reference: See also Office of Management and Budget notice published at 54 FR 523-6. December 20, 1989.

Subpart A - General

§227.100 Conditions on use of funds.

(a) No appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(b) Each person who requests or receives from an agency a Federal contract, grant, loan, or cooperative agreement shall file with that agency a certification, set forth in Appendix A, that the person has not made, and will not make, any payment prohibited by paragraph (a) of this section.

(c) Each person who requests or receives from an agency a Federal contract, grant, loan, or a cooperative agreement shall file with that agency a disclosure form, set forth in Appendix B, if such person has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered Federal action), which would be prohibited under paragraph (a) of this section if paid for with appropriated funds.

(d) Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with that agency a statement, set forth in Appendix A, whether that person has made or has agreed to make any payment to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with that loan insurance or guarantee.

(e) Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with that agency a disclosure form, set forth in Appendix B, if that person has made or has agreed to make any payment to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with that loan insurance or guarantee.

§227.105 Definitions.

For purposes of this part:

(a) Agency, as defined in 5 U.S.C. 552(f), includes Federal executive departments and agencies as well as independent regulatory commissions and Government corporations, as defined in 31 U.S.C. 9101(1).

(b) Covered Federal action means any of the following Federal actions:

(1) The awarding of any Federal contract;
(2) The making of any Federal grant;
(3) The making of any Federal loan;
(4) The entering into of any cooperative agreement; and,
(5) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

Covered Federal action does not include receiving from an agency a commitment providing for the United States to insure or guarantee a loan. Loan guarantees and loan insurance are addressed independently within this part.

(c) Federal contract means an acquisition contract awarded by an agency, including those subject to the Federal Acquisition Regulation (FAR), and any other acquisition contract for real or personal property or services not subject to the FAR.

(d) Federal cooperative agreement means a cooperative agreement entered into by an agency.

(e) Federal grant means an award of financial assistance in the form of money, or property in lieu of money, by the Federal Government or a direct appropriation made by law to any person. The term does not include technical assistance which provides services instead of money, or other assistance in the form of revenue sharing, loans, loan guarantees, loan insurance, interest subsidies, insurance, or direct United States cash assistance to an individual.

(f) Federal loan means a loan made by an agency. The term does not include loan guarantee or loan insurance.

(g) Indian tribe and tribal organization have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B). Alaskan Natives are included under the definitions of Indian tribes in that Act.

(h) Influencing or attempting to influence means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

(i) Loan guarantee and loan insurance mean an agency's guarantee or insurance of a loan made by a person.

(j) Local government means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

(k) Officer or employee of an agency includes the following individuals who are employed by an agency:

(1) An individual who is appointed to a position in the Government under title 5, U.S. Code, including a position under a temporary appointment:

(2) A member of the uniformed services as defined in section 101(3), title 37, U.S. Code;

(3) A special Government employee as defined in section 202, title 18, U.S. Code; and,

(4) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, title 5, U.S. Code appendix 2.

(l) Person means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

(m) Reasonable compensation means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

(n) Reasonable payment means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

(o) Recipient includes all contractors, subcontractors at any tier, and sub grantees at any tier of the recipient of funds received in connection with a Federal contract, grant, loan, or cooperative agreement. The term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

(p) Regularly employed means, with respect to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement or a commitment providing for the United States to insure or guarantee a loan, an officer or employee who is employed by such person for at least 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract, grant, loan, cooperative agreement, loan insurance commitment, or loan guarantee commitment. An officer or employee who is employed by such person for less than 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

(q) State means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and a multi-State, regional, or interstate entity having governmental duties and powers.

§227.110 Certification and Disclosure.

(a) Each person shall file a certification, and a disclosure form, if required, with each submission that initiates agency consideration of such person for:

(1) Award of a Federal contract, grant, or cooperative agreement exceeding $100,000; or

(2) An award of a Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding $150,000.

(b) Each person shall file a certification, and a disclosure form, if required, upon receipt by such person of:

(1) A Federal contract, grant, or cooperative agreement exceeding $100,000; or

(2) A Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding $150,000, unless such person previously filed a certification, and a disclosure form, if required, under paragraph (a) of this section.

(c) Each person shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under paragraphs (a) or (b) of this section. An event that materially affects the accuracy of the information reported includes:

(1) A cumulative increase of $25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or

(2) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or,

(3) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.

(d) Any person who requests or receives from a person referred to in paragraphs (a) or (b) of this section:

(1) A subcontract exceeding $100,000 at any tier under a Federal contract;

(2) A sub grant, contract, or subcontract exceeding $100,000 at any tier under a Federal grant:

(3) A contract or subcontract exceeding $100,000 at any tier under a Federal loan exceeding $150,000; or,

(4) A contract or subcontract exceeding $100,000 at any tier under a Federal cooperative agreement, shall file a certification, and a disclosure form, if required, to the next tier above.

(e) All disclosure forms, but not certifications, shall be forwarded from tier to tier until received by the person referred to in paragraphs (a) or (b) of this section. That person shall forward all disclosure forms to the agency.

(f) Any certification or disclosure form filed under paragraph (e) shall be treated as a material representation of fact upon which all receiving tiers shall rely. All liability arising from an erroneous representation shall be borne solely by the tier filing that representation and shall not be shared by any tier to which the erroneous representation is forwarded. Submitting an erroneous certification or disclosure constitutes a failure to file the required certification or disclosure, respectively. If a person fails to file a required certification or disclosure, the United States may pursue all available remedies, including those authorized by section 1352, title 31, U.S. Code.

(g) For awards and commitments in process prior to December 23, 1989, but not made before that date, certifications shall be required at award or commitment, covering activities occurring between December 23, 1989, and the date of award or commitment. However, for awards and commitments in process prior to the December 23, 1989 effective date of these provisions, but not made before December 23, 1989, disclosure forms shall not be required at time of award or commitment but shall be filed within 30 days.

(h) No reporting is required for an activity paid for with appropriated funds if that activity is allowable under either Subpart B or C.

Subpart B - Activities by Own Employees

§227.200 Agency and legislative liaison.

(a) The prohibition on the use of appropriated funds, in §227.100(a), does not apply in the case of a payment of reasonable compensation made to an officer or employee -of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.

(b) For purposes of paragraph (a) of this section, providing any information specifically requested by an agency or Congress is allowable at any time.

(c) For purposes of paragraph (a) of this section, the following agency and legislative liaison activities are allowable at any time only where they are not related to a specific solicitation for any covered Federal action:

(1) Discussing with an agency (including individual demonstrations) the qualities and characteristics of the person's products or services, conditions or terms of sale, and service capabilities; and,

(2) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(d) For purposes of paragraph (a) of this section, the following agencies and legislative liaison activities are allowable only where they are prior to formal solicitation of any covered Federal action:

(1) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

(2) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and,

(3) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Public Law 95-507 and other subsequent amendments.

(e) Only those activities expressly authorized by this section are allowable under this section.

§227.205 Professional and technical services.

(a) The prohibition on the use of appropriated funds, in §227.100(a), does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement or an extension, continuation, renewal, amendment, or modification of a Federal contract, grant, loan, or cooperative agreement if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal contract, grant, loan, or cooperative agreement or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal contract, grant, loan, or cooperative agreement.

(b) For purposes of paragraph (a) of this section, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline. For example drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior

to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

(c) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.

(d) Only those services expressly authorized by this section are allowable under this section.

§227.210 Reporting.

No reporting is required with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

Subpart C - Activities by Other than Own Employees

§227.300 Professional and technical services.

(a) The prohibition on the use of appropriated funds, in §227.100 (a), does not apply in the case of any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action, if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal contract, grant, loan, or cooperative agreement or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal contract, grant, loan, or cooperative agreement.

(b The reporting requirements in §227.110 (a) and (b) regarding filing a disclosure form by each person, if required, shall not apply with respect to professional or technical services rendered directly in the preparation, submission, or negotiation of any commitment providing for the United States to insure or guarantee a loan.

(c) For purposes of paragraph (a) of this section, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting or a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered

Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

(d) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.

(e) Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(f) Only those services expressly authorized by this section are allowable under this section.

Subpart D - Penalties and Enforcement

§227.400 Penalties.

(a) Any person who makes an expenditure prohibited herein shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such expenditure.

(b) Any person who fails to file or amend the disclosure form (see Appendix B) to be filed or amended if required herein, shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

(c) A filing or amended filing on or after the date on which an administrative action for the imposition of a civil penalty is commenced does not prevent the imposition of such civil penalty for a failure occurring before that date. An administrative action is commenced with respect to a failure when an investigating official determines in writing to commence an investigation of an allegation of such failure.

(d) In determining whether to impose a civil penalty, and the amount of any such penalty, by reason of a violation by any person, the agency shall consider the nature, circumstances, extent, and gravity of the violation, the effect on the ability of such person to continue in business, any prior violations by such person, the degree of culpability of such person, the ability of the person to pay the penalty, and such other matters as may be appropriate.

(e) First offenders under paragraphs (a) or (b) of this section shall be subject to a civil penalty of $10,000, absent aggravating circumstances. Second and subsequent offenses by persons shall be subject to an appropriate civil penalty between $10,000 and S100,000, as determined by the agency head or his or her designee.

(f) An imposition of a civil penalty under this section does not prevent the United States from seeking any other remedy that may apply to the same conduct that is the basis for the imposition of such civil penalty.

§227.405 Penalty procedures.

Agencies shall impose and collect civil penalties pursuant to the provisions of the Program Fraud and Civil Remedies Act, 31 U.S.C. sections 3803 (except subsection (c)), 3804, 3805, 3806, 3807, 3808, and 3812, in sofar as these provisions are not inconsistent with the requirements herein.

§227.410 Enforcement.

The head of each agency shall take such actions as are necessary to ensure that the provisions herein are vigorously implemented and enforced in that agency.

Subpart E - Exemptions

§227.500 Secretary of Defense.

(a) The Secretary of Defense may exempt, on case-by-case basis, a covered Federal action from the prohibition whenever the Secretary determines, in writing, that such an exemption is in the national interest. The Secretary shall transmit a copy of each such written exemption to Congress immediately after making such a determination.

(b) The Department of Defense may issue supplemental regulations to implement paragraph (a) of this section.

Subpart F - Agency Reports

§227.600 Semi-annual compilation.

(a) The head of each agency shall collect and compile the disclosure reports (see Appendix B) and, on May 31 and November 30 of each year, submit to the Secretary of the Senate and the Clerk of the House of Representatives a report containing a compilation of the information contained in the disclosure reports received during the six-month period ending on March 31 or September 30, respectively, of that year.

(b) The report, including the compilation, shall be available for public inspection 30 days after receipt of the report by the Secretary and the Clerk.

(c) Information that involves intelligence matters shall be reported only to the Select Committee on Intelligence of the Senate, the Permanent Select Committee on Intelligence of the House of Representatives, and the Committees on Appropriations of the Senate and the House of Representatives in accordance with procedures agreed to by such committees. Such information shall not be available for public inspection.

(d) Information that is classified under Executive Order 12356 or any successor order shall be reported only to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives or the Committees on Armed Services of the Senate and the House of Representatives (whichever such committees have jurisdiction of matters involving such information) and to the Committees on Appropriations of the Senate and the House of Representatives in accordance with procedures agreed to by such committees. Such information shall not be available for public inspection.

(e) The first semi-annual compilation shall be submitted on May 31, 1990, and shall contain a compilation of the disclosure reports received from December 23; 1989 to March 31, 1990.

(f) Major agencies, designated by the Office of Management and Budget (OMB), are required to provide machine-readable compilations to the Secretary of the Senate and the Clerk of the House of Representatives no later than with the compilations due on May 31, 1991. OMB shall provide detailed specifications in a memorandum to these agencies.

(g) Non-major agencies are requested to provide machine-readable compilations to the Secretary of the Senate and the Clerk of the House of Representatives.

(h) Agencies shall keep the originals of all disclosure reports in the official files of the agency.

§227.605 Inspector General report.

(a) The Inspector General, or other official as specified in paragraph (b) of this section, of each agency shall prepare and submit to Congress each year, commencing with submission of the President's Budget in 1991, an evaluation of the compliance of that agency with, and the effectiveness of, the requirements herein. The evaluation may include any recommended changes that may be necessary to strengthen or improve the requirements.

(b) In the case of an agency that does not have an Inspector General, the agency official comparable to an Inspector General shall prepare and submit the annual report, or, if there is no such comparable official, the head of the agency shall prepare and submit the annual report.

(c) The annual report shall be submitted at the same time the agency submits its annual budget justifications to Congress.

(d) The annual report shall include the following: All alleged violations relating to the agency's covered Federal actions during the year covered by the report, the actions taken by the head of the agency in the year covered by the report with respect to those alleged violations and alleged violations in previous years, and the amounts of civil penalties imposed by the agency in the year covered by the report.

Appendix A to Part 227 - Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all sub recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Appendix B to Part 227 - Disclosure Form to Report Lobbying.
[See attached.]

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:
☐ a. contract
b. grant
c. cooperative agreement
d. loan
e. loan guarantee
f. loan insurance

2. Status of Federal Action:
☐ a. bid/offer/application
b. initial award
c. post-award

3. Report Type:
☐ a. initial filing
b. material change
For Material Change Only:
year _____ quarter _____
date of last report _____

4. Name and Address of Reporting Entity:
☐ Prime ☐ Subawardee
Tier _____, *if known*:

Congressional District, *if known*:

5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:

Congressional District, *if known*:

6. Federal Department/Agency:

7. Federal Program Name/Description:

CFDA Number, *if applicable*: _____

8. Federal Action Number, *if known*:

9. Award Amount, *if known*:
$

10. a. Name and Address of Lobbying Entity *(if individual, last name, first name, MI)*:

b. Individuals Performing Services *(including address if different from No. 10a) (last name, first name, MI)*:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment *(check all that apply)*:
$ _____ ☐ actual ☐ planned

12. Form of Payment *(check all that apply)*:
☐ a. cash
☐ b. in-kind; specify: nature _____
value _____

13. Type of Payment *(check all that apply)*:
☐ a. retainer
☐ b. one-time fee
☐ c. commission
☐ d. contingent fee
☐ e. deferred
☐ f. other; specify: _____

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____
Print Name: _____
Title: _____
Telephone No.: _____ **Date:** _____

Federal Use Only:

Authorized for Local Reproduction
Standard Form - LLL

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.

13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 mintues per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Approved by OMB
0348-0046

Reporting Entity: _____ **Page** _____ **of** _____

APPENDIX 3C

ASSURANCE OF COMPLIANCE WITH LAWS AND REGULATIONS
GOVERNING NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS

_____(hereinafter called the "Applicant")
(Name of Applicant)

hereby assures that no person in the United States shall, on the bases set forth below, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under, any problem of activity receiving financial assistance from AID, and that with respect to the grant for which application is being made, it will comply with the requirements of:

(1) Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352, 42 U.S.C. 2000-d) which prohibits discrimination on the basis of race, color or national origin, in programs and activities receiving Federal financial assistance,

(2) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), which prohibits discrimination on the basis of handicap in programs and activities receiving Federal financial assistance,

(3) The Age Discrimination Act of 1975, as amended (Pub. L. 95-478), which prohibits discrimination based on age in the delivery of services and benefits supported with Federal funds,

(4) Title IX of the Education Amendments of 1972 (20 U.S.C. 1681, et. seq.) which prohibits discrimination on the basis of sex in education programs and activities receiving Federal financial assistance (whether or not the programs or activities are offered or sponsored by an educational institution); and

(5) AID regulations implementing the above nondiscrimination laws, set forth in Chapter II of Title 22 of the Code of Federal Regulations.

If the Applicant is an institution of higher education, the Assurances given herein extend to admission practices and to all other practices relating to the treatment of students or clients of the institution, or relating to the opportunity to participate in the provision of services or other benefits to such individuals, and shall be applicable to the entire institution unless the Applicant establishes to the satisfaction of the AID Administrator that the institution's practices in designated parts or programs of the institution will in no way affect its practices in the program of the institution for which financial assistance is sought, or the beneficiaries of or participants in such program.

This assurance is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property, discounts or other Federal financial assistance extended after the date hereof to the Applicant by the Agency, including installment payments after such date on account of applications for Federal financial assistance which were approved before such date. The Applicant recognizes and agrees that such Federal financial assistance will be extended in reliance on the representations and agreements made in this Assurance, and that the United States shall have the right to seek judicial enforcement of this Assurance. This Assurance is binding on the Applicant, its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this Assurance on behalf of the Applicant.

_____
(Applicant)

BY (Signature) _____ TITLE _____

TYPED NAME _____ DATE _____

CHAPTER 4

SPECIFIC SUPPORT GRANTS

4A. Purpose

1. Definition

A specific support grant is a grant which supports all of or a portion of a discrete program proposed by an organization or an individual. A cooperative agreement may be used in lieu of a grant if it meets the requirements in Chapter 6.

2. Characteristics

a. Program Description

A specific support grant clearly defines the activities constituting the program supported by grant funds. The grantee justifies in advance the proposed costs for each element of the program. The program may cover a short period of time such as three months to support a conference or a longer period such as a two year program. The program description of any specific support grant should clearly state the purpose of the program, its implementation plan specifically identifying each element of the program, and its duration.

b. Budget Review

(1) Before entering into a specific support grant, each element of the program is reviewed for reasonableness and allowability of cost in accordance with the applicable cost principles. Prior agreement is reached as to precisely what is to be an allowable cost for which the grantee can be reimbursed. This is made possible because of the clear understanding required of each element of the program.

(2) Paragraph 4H sets forth requirements applicable to grants which require cost sharing/matching by the grantee or grants where the AID funds represent partial funding of the program along with other donor funds. The Agency should be assured that the grantee has sufficient financial capability to contribute its share of the funds necessary for successful completion of the program, as provided for in Paragraphs 1J, 1K, and 1L of this handbook.

c. Administration

(1) The goals of the grant and the planning and implementation to reach those goals should be contained in the program description of the grant agreement. The Agency's role in administration is to measure and evaluate the grantee's progress in achieving those goals, rather than to manage the implementation of the program.

4A2c

(2) Measuring and evaluating progress is normally undertaken through periodic program reports and evaluation reviews, visits, an fiscal reports. The grant agreement should spell out the form and content of any reports as required by Paragraphs 1M and 1N of this handbook.

d. Accountability Concepts

A specific support grant provides AID funding in whole or in part for a specific program conducted by the grantee. Under this type * of financial arrangement, the program objectives must be clearly stated in the grant and the grantee must, in accordance with Paragraph 1L of this handbook, accumulate and segregate costs applicable to the AID funded program or portion of a program from other activities conducted by the grantee.

e. Determination of Funding Level

The methods for negotiating the costs of a specific support grant parallel those for a cost-reimbursement type contract. The Agency must exercise its duty of fiscal accountability during the negotiation of costs. The costs associated with a specific support grant must be identified prior to the initiation of the program. Items such as salaries, travel, and other direct costs that are to be reimbursed should be clearly defined and supported as the analysis of the cost items will result in a determination of the amount of funding needed to fund the program. Revisions to a grantee's financial plan shall be made in accordance with Paragraph 1P of this handbook.

f. Eligible Recipients

(1) Under the terms of this Chapter, specific support grants may be made to nonprofit organizations including private voluntary organizations, higher educational institutions and hospitals, individuals, and for-profit organizations. AID occasionally provides grants to state or local government organizations; in such cases, the U.S.-Government common rules for state and local government grants (based on OMB Circular A-102) would be applicable.

(2) For the purposes of this Handbook, the term "nonprofit organization" means any corporation, trust, association, cooperative, or other organization which (a) is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest; (b) is not organized primarily for profit; and (c) uses its net proceeds to maintain, improve, and/or expand its operations. *

4B. PIO/Ts

* 1. The specific support grant PIO/T should contain a clear and complete program description, definitive reporting requirements, and any special provisions desired by the technical office. The PIO/T should reserve sufficient funds to cover all costs to be reimbursed by the Agency and set the dates during which the grantee may charge costs incurred to the grant. In AID/W, the PIO/T is prepared and transmitted to the Office of Financial Management (FA/FM), for recording the reservation of funds prior to being sent to the grant officer for action.

2. Any waivers (e.g., procurement source) should be attached to the PIO/T.

3. If an Invitation for Applications is not to be issued, a noncompetitive justification prepared in accordance with Chapter 2, paragraph 2.B.4 of this Handbook, shall be attached to the PIO/T.

4. If the grant is based on noncompetitive procedures or limited competition, and the technical office has received a copy of the application, the original copy of the application or grant proposal shall be attached to the PIO/T.

4C. Application Documentation:

Documentation to be obtained from an applicant must include:

1. Application

a. The potential recipient shall develop an application which, for purposes of good management, will provide a clear summary of what is to be accomplished, the resources and steps required to meet objectives in an identifiable period of time, a realistic financing scheme, and benchmark measures of progress toward the objectives.

b. The application shall include the basic rationale for the projected activities, important assumptions, and a description of the groups and individuals to be involved.

c. The application shall identify a system which enables the recipient, normally on a quarterly basis, to assess the means by which it pursues established objectives, the relevance of those means to the attainment of the objectives, and the adequacy of inputs toward the objectives, the extent to which objectives have been accomplished and necessary remedial actions taken. *

2. Financial Plan and supporting data.

4C

3. Background information on the applicant, including copies of its financial reports for the previous 3-year period, which have been audited by a certified public accountant or other auditor satisfactory to AID. Applicants shall submit projected budget, cash flow, and organization chart. Applicants that have never received a grant, cooperative agreement, or contract from the U.S. Government are required to submit a copy of their accounting manual. If a copy has already been submitted to the U.S. Government, recipient should advise which Federal Office has a copy.

* 4. (a) A signed copy of the "Assurance of Compliance with Laws and Regulations Governing Nondiscrimination in Federally Assisted Programs" (See Appendix 3C of this handbook).

(b) A signed copy of the "Certification Regarding Debarment, Suspension, and Other Responsibility Matters - Primary Covered Transaction" (See Appendix 3A, Annex 1).

(c) A signed copy of the "Certification Regarding Debarment Suspension and Other Responsibility Matters - Lower Tier Covered Transactions" from all prospective lower tier participants (See Appendix 3A, Annex 1).

(d) A signed copy of the "Certification Regarding Drug Free Workplace Requirements" (See Appendix 3A, Annex 2).

(e) A signed copy of the "Certification Regarding Lobbying" and a completed "Disclosure of Lobbying Activities," as required (See Appendix 3B).

5. A list of <u>all</u> contracts, grants or cooperative agreements involving similar or related programs over the past three years. The list must include the name and address of the organization or agency which funded the programs or for whom services were performed, the current telephone number of a responsible technical representative of that organization or agency, the number, if any, of each contract, grant or cooperative agreement; and a brief description of the program. (See Paragraph 2C4 of this handbook.)

6. Personnel and travel policies, if required by paragraph 4D4 below.

7. Procurement and property management policies if procurement is likely to be a significant element of the grant or cooperative agreement. *

* REVISED

*4D. Review of Managerial and Technical Capability Criteria for Assistance Recipients

1. To be eligible to receive a grant, a potential recipient must satisfy AID that it possesses, or has the ability to obtain, the necessary management competence in planning and carrying out assistance programs and that it will practice mutually agreed upon methods of accountability for funds and other assets provided by AID

2. The recipient must demonstrate potential or actual management ability and the capacity to plan and implement a program in the field of the recipient's expertise.

3. The recipient's accounting, recordkeeping and overall financial management system must meet the standards set forth in Paragraphs 1I, 1J, 1L and 1M of this handbook.

4. Personnel and Travel Policies

a. Prior to awarding an assistance instrument to a recipient which has never received an award from the U.S. Government, the Overhead, Special Costs, and Contract Closeout Branch shall review and approve the applicant's personnel and travel policies and procedures. The purpose of the review is to determine that the policies reflect a system which is adequate to ensure that the resulting costs will not be unreasonable in accordance with the applicable cost principles. If these personnel and travel policies have been approved by another U.S. government agency, AID will generally accept that approval. *

b. Personnel policies: To be considered adequate, the policies must be in writing, applicable to all employees of the organization, be subject to review and approval at a high enough organizational level to assure its uniform enforcement, and result in costs which are reasonable and allowable in accordance with the applicable cost principles.

c. Travel policies: To be considered adequate the policies must be in writing, be applied uniformly to both federally financed and other activities of the organization, and result in costs which are reasonable and allowable in accordance with the applicable cost principles.

d. Once the policies have been reviewed and found to be acceptable, only subsequent major changes to the policies must be approved.

4D4

e. When an assistance instrument is to be awarded to an educational institution, the Office of Procurement's Overhead and Special Costs and Contract Closeout Branch (FA/OP/PS/OCC) will determine, in accordance with the requirements of OMB Circular A-88 entitled "Indirect Cost Rates, Audit and Audit Followup at Educational Institutions," whether the recipient's travel and personnel policies have been reviewed, and if not, will coordinate such review with the cognizant agency.

f. Depending upon the total estimated dollar value and the nature of the agreement, (e.g., small dollar, short duration) FA/OP/PS/OCC might elect to review only portions of the recipient's policies.

5. Preaward Evaluation

a. Before making an award, the grant officer must determine whether the recipient is able to meet the standards discussed in this Section 4D. To make this determination, the grant officer will conduct an informal or desk survey, or will establish a formal survey team consisting of a representative of the cognizant Regional Inspector General Audit (RIG/A), a representative of the sponsoring technical office (including, as appropriate, an individual from the program review or management office of the Bureau or Mission in which the sponsoring technical office is located), and a representative of the grant office. A formal survey team should normally be established if:

(1) Either the grant officer or the technical officer is uncertain about the prospective recipient's capacity to perform technically or financially;

(2) The prospective recipient has never had an AID grant, cooperative agreement or contract before,

(3) The prospective recipient has not received a Federal award in the last five years (even if a formal survey team is not established in this instance, the grant officer shall, at a minimum, request an audit to be conducted by RIG/A, or an independent audit firm under contract, or if the grant officer determines it to be appropriate, by the Controller's staff), or

(4) The grant officer otherwise determines it to be in the best interest of the Government.

b. Whether by means of a formal selection survey, or through an informal or desk survey, the grant officer shall, before awarding any grant:

(1) Review the proposed program description and financial plan for sufficiency.

4D5b

(2) If applicable, request FA/OP/PS/OCC to review and approve recipient's personnel and travel policies to determine reasonableness, in accordance with the applicable cost principles (see paragraph 4D4 above).

(3) Make a determination of the prospective recipient's responsibility to the effect that the prospective recipient has:

(a) Adequate financial resources, or the ability to obtain such resources as required during the performance of the grant.

(b) The ability to comply with the grant conditions taking into consideration all existing prospective recipient commitments, nongovernmental and governmental.

(c) A satisfactory record of performance. Prospective recipients who are or have been deficient in current or recent performance (when the number of grants, contracts and cooperative agreements and the extent of the deficiency of each are considered), in the absence of evidence to the contrary of circumstances properly beyond the control of the prospective recipient, shall be presumed to be unable to meet this requirement. Past unsatisfactory performance will ordinarily be sufficient to justify a finding of nonresponsibility, unless there is clear evidence of subsequent satisfactory performance. The grant officer will collect and evaluate data on the past performance of applicants using information on past programs provided in accordance with paragraph 2C4 of Chapter 2 of this handbook.

(d) A satisfactory record of integrity and business ethics; and

(e) Is otherwise qualified to receive a grant under applicable laws and regulations (this includes meeting the standards discussed in the following paragraph).

c. When an audit is conducted, the representative of the cognizant RIG/A (or other auditor) shall review and report on the following:

(1) If the prospective recipient's accounting, recordkeeping, and overall financial management systems meet the standards set forth in paragraphs 1I, 1J, 1L, and 1M of this handbook.

(2) If the prospective recipient's system of internal controls is considered adequate.

4D5c

(3) If the prospective recipient's property management system, if applicable, meets the standards set forth in paragraph 1T of this handbook. Audit findings regarding grantee nonconformance to system standards shall be referred to FA/OP/PS/OCC for resolution.

(4) If the prospective recipient's procurement system meets the standards set forth in paragraph 1U of this handbook. Applicable only if the procurement element is either more than 50% of the agreement or worth over $250,000. Audit findings regarding grantee nonconformance to system standards shall be referred to FA/OP/PS/OCC for resolution.

* d. The representative of the technical office shall be requested to advise the grant officer concerning the professional and technical experience and competence of the prospective recipient; the consistency of the prospective recipient's program with the objectives of the Foreign Assistance Act; and the conformity of the recipient's program to AID's program criteria.

e. If the prospective grantee will be acquiring, shipping or distributing pharmaceuticals, the Office of Procurement, Contracts and Commodities (OP/CC) shall be notified by the grant officer as part of the responsibility determination of the prospective grantee. OP/CC may approve the grantee's procurement system for U.S. source pharmaceuticals by making a determination that the grantee maintains adequate internal controls and procedural safeguards. If such approval is granted by OP/CC, then approval of individual procurements and/or shipments of U.S. source pharmaceuticals is not required under the grant. Non-U.S. source procurements will still be subject to case-by-case approval.

f. Written Report

(1) Each office involved in the survey team evaluation will make a written report of its findings. The report will contain a recommendation and any stipulations by each office. The grant officer shall include a certification as to the responsibility of the prospective recipient. The reports will be sent to the grant officer for retention in the official file, and if there are negative recommendations, the grant officer will develop a summary report and send the summary and all individual office recommendations to the head of the sponsoring technical office for final decision. The head of the sponsoring technical office will make a written decision and will include reasons for overriding any adverse recommendations of the survey team. Either office may then appeal the decision to the AA of the Bureau within which the sponsoring technical office is located. *

4D5f

(2) The grant officer will also make a recommendation as to whether or not a grant is the proper instrument to be used in accordance with Chapter 25 of Handbook 1, Supplement B. If the grant officer and the technical officer do not agree as to the proper instrument, after consultation with their legal advisor, written arguments will be submitted to DA/FAA for determination as to the proper instrument. *

4E. Grant Negotiation, Drafting, and Processing

1. Grant Negotiation

a. When the review process required by paragraph 4D of this handbook is completed and the completed certificates of compliance per 4C4 have been received, negotiation of program changes, terms, and conditions will be conducted. The negotiations will include the grant officer, the sponsoring technical office representative and the prospective recipient's representative. At the completion of the negotiations all parties must agree on the program description, the grant budget (including method of payment) and all terms and conditions before the grant is signed by the grant officer. If a letter of credit method of payment is to be used, an oral clearance will be obtained from the appropriate official in FM/CMP. *

b. The technical office and the grant office, subsequent to the execution of the agreement, shall keep each other up-to-date by sending other offices a copy of each piece of correspondence sent to or received from the prospective recipient.

2. Grant Drafting

a. The grant document consists of a letter obligating the funds and attachments to the letter prescribing the terms and conditions of the grant. (See Appendixes 4A through 4D.)

b. The grant letter (Appendix 4A) will set out the purpose of the grant, the amount of the grant, and the conditions of the grant.

c. Normally the first attachment in a specific support grant is the schedule (Appendix 4B), which will include the program description, evaluation indicators, reporting requirements, and the financial plan.

d. The grant budget will set out expenditures to be incurred by program categories (i.e., objectives, outputs, activities, etc.). The grant budget should be illustrative and the grantee should be allowed flexibility within the total obligated amount. The grant budget will set forth the funding provided for the whole program, showing those costs borne by the Agency, and those borne by the grantee and other donors. The grant budget should show the dates during which the obligated funds are to be available. Funding revisions will be considered in the event of significant changes in the grant budget and/or level of activity contemplated (see paragraph 1P of this handbook).

4E2

e. The last attachment contains the standard provisions (Appendix 4C or Appendix 4D).

3. Payment Procedures

a. Federal policy endorses extending advances in reasonable amounts to nonprofit educational or research institutions for experimental, developmental or research work. AID extends this policy to all nonprofit organizations, including U.S. or international private voluntary organizations, U.S. educational and research institutions and international research institutions. This policy assures that nonprofit organizations will not be forced to utilize their own working capital or earmarked funds to finance programs carried out under agreements with AID. Department of the Treasury policy, however, requires AID to monitor the cash management practices of these institutions to insure that Federal cash is not maintained in excess of that required for the grantee's immediate disbursement needs.

b. For specific requirements for choice of payment procedure, see paragraph 1.0 of this handbook.

* 4. Grant Processing

a. When agreement has been reached on all terms and conditions, the grant is put into final form and signed by the grant officer, thereby obligating the funds. The grant is then sent to the grantee for acknowledgement of receipt.

b. The grant and a copy of the PIO/T are sent to the Office of Financial Management (FA/FM/A, cc: FA/FM/CMP) or the Mission Controller, to be recorded in the accounting records.

5. File Documentation *

Details on file documentation requirements are set forth in paragraph 1V of this Handbook.

6. Amendments and Termination

a. Funded Amendments - This type of amendment should follow the same basic process used in writing a new grant, except for the grantee selection, management, and technical capability review procedures.

b. Nonfunded Amendments - If any changes are required in the grant, the cognizant technical office should prepare a PIO/T authorizing the grant officer to make such a change.

c. Termination for Convenience or Cause - (See paragraph 1R of this handbook.)

* REVISED

4F. Standard Provisions

1. Use of appropriate standard provisions as set forth in either Appendix 4C (U.S. grantees) or Appendix 4D (non-U.S. grantees) is mandatory.

2. The use of a standard provision which differs from any of those set forth in the appropriate Appendix, or deletion of a mandatory and applicable standard provision, requires a deviation approved in accordance with paragraph 1E of this handbook.

* 3. A special provision within the schedule of the grant (see Appendix 4B) shall be used to modify standard provisions, or add any standard provisions.

4G. Grant Administration

1. AID's role in administration is first to select an organization which is capable and competent to carry out the agreed upon program and meet the stated goals of the grant and then to measure and evaluate the grantee's progress to assure that the purposes of the grant are being effectively achieved and that the assumptions under which the grantee was selected are still valid. The grant program is not managed by AID. The grantee establishes the goals for the program which are approved by AID and included in the grant and is responsible for planning and implementation to achieve those goals. The Agency's role in agreeing to support the program is to measure and evaluate the grantee's progress in achieving those goals. This is accomplished by use of program and fiscal reports and through the contact maintained by the technical officer.

2. The roles of the grant officer and technical officer in grant administration are described in detail in paragraph 1B3 of Chapter 1 of this Handbook.

a. Informal relationships with the grantee are generally carried out by the technical officer, and consist primarily of coordination of the grant program with on-going AID direct programs, information exchange, and guidance in AID reporting and evaluation requirements.

b. Unless otherwise specified in the grant, all required approvals, interpretation of grant terms and conditions, and changes to the grant shall be made only by the grant officer. In no event will changes in the funds available under the grant be made by anyone other than the cognizant grant officer. *

4G2

* c. Technical officers should take great care to avoid any situation in which a grantee may assume or infer authorization to overrun grant or budget ceilings without approval by the grant officer. Assurances of additional funding through new grants or amendments to existing grants should not be made by technical officers without such approval.

3. Reports are required at the intervals specified in the schedule of the grant.

a. The Financial Statement Report (SF 269 dated 9-76) shall be prepared by the grantee in accordance with paragraph 1M of this handbook. Expenditures should be reported by program input costs. The grant must have a clear definition of expenditures as related to the grantee's accounting system. The fiscal report should provide a useful quantification of program achievements. For grant programs having subprograms, the grantee will include information on disbursements to subprograms, reported subprogram expenditures, audited expenditures and pipeline. For Mission funded grants under a letter of credit, a copy of the SF-269 report is sent to the appropriate Mission accounting station.

b. At a minimum, the annual report should consist of both narrative and tabular detail on each program (see paragraph 1N of this handbook) plus headquarters costs. The narrative should be a brief discussion of progress against program objectives in the past calendar year, significant program developments anticipated during the current year and a statement of projected accomplishments for the coming year. Past, current, and budget year information should be presented tabularly by program input costs.

4. As covered in paragraph 1L4 of this handbook, U.S. grantees are required to conduct audits usually annually, but not less often than every two years in accordance with the requirements in OMB Circular A-133. These examinations are intended to ascertain the effectiveness of the financial management systems and internal procedures that have been established to meet the terms and conditions of the grants. In accordance with the standard provision in Appendix 4C, "Accounting, Audit, and Records," the grantee is to provide a copy of each such audit to the grant officer. The grant officer, in turn, shall provide a copy to the Regional Inspector General for Audit and to the appropriate technical office. AID may also conduct audits to determine whether the grantee has expended the grant funds in accordance with the terms and conditions of the grant and whether program performance and accomplishments were realized as intended. Non-U.S. grantees shall perform annual audits, if required, in accordance with the Standard Provision in Appendix 4D, "Accounting, Audit and Records." *

4G

5. Close out. (See paragraph 1Q of this handbook.)

6. Property Management. (See paragraph 1T of this handbook.)

7. Procurement Management. (See paragraph 1U of this handbook.)

4H. Cost Sharing/Matching Grants

1. Definition: Cost sharing/matching is a required contribution by the grantee from non-Federal sources toward the total cost of the program, either in cash or in-kind, usually described as a percentage of total costs.

2. The determination as to the requirement for a level of cost sharing/matching is the responsibility of the cognizant program officer. All grants designated by the program office as matching or cost sharing grants will contain the Standard Provision entitled "Cost Sharing/Matching."

3. Criteria and procedures for the allowability of cash and in-kind contributions made by grantees to satisfy cost sharing/matching requirements are set forth in paragraph 1K of this handbook. Except for these requirements, no other requirements set forth in the standard provisions are applicable to costs incurred by the grantee from non-Federal funds.

4. Cost sharing/matching percentages will be applied to the total cost of the grant program. Cost principles applicable to grants prohibit the accomplishment of cost sharing/matching through arbitrary limitations on individual cost elements. This is particularly important in the area of indirect costs (overhead). When a negotiated overhead rate agreement is in effect between AID or another cognizant agency and a grantee organization, the negotiated rate will be applied to the agreed upon direct costs to determine the total cost of the program, and the cost sharing/matching percentage will be applied to the total cost.

5. Unless otherwise specified in the schedule of the grant, verification that the cost sharing/matching requirement has been met will be made at the end of each funding period or on an annual basis as determined by the cognizant program office. Verification is based on expenditures. Individual expenditures do not have to be shared or matched provided that the total expenditures incurred during the designated funding period or year are shared or matched.

6. The grantee must account for the AID funds in accordance with the standard provision entitled "Accounting, Audit and Records." However, in the event of disallowances of expenditures from AID grant funds, the grantee may substitute expenditures made with funds provided from non-Federal sources, provided they are otherwise eligible in accordance with paragraph 1K of this handbook.

APPENDIX 4A

SAMPLE FORMAT

Mr. John Doe
President
XYZ, Organization
Anywhere, U.S.A.

Subject: Grant No. _____

Dear Mr. Doe:

Pursuant to the authority contained in the Foreign Assistance Act of 1961, as amended, the Agency for International Development (hereinafter referred to as "AID" or "Grantor") hereby grants to the XYZ Organization (herein after referred to as "XYZ" or "Grantee"), the sum of $_____ to provide support for a program in _____, as described in the Schedule of this grant and the Attachment 2, entitled "Program Description."

This grant is effective and obligation is made as of the date of this letter and shall apply to commitments made by the Grantee in furtherance of program objectives during the period beginning with the effective date and ending _____.

This grant is made to the XYZ, on condition that the funds will be administered in accordance with the terms and conditions as set forth in Attachment 1, entitled the Schedule, Attachment 2, entitled "Program Description," and Attachment 3 entitled "Standard Provisions," which have been agreed to by your organization.

Please sign the original and each copy of this letter to acknowledge your receipt of the grant, and return the original and all but one copy to the Grant Officer.

Sincerely yours,

_____

Grant Officer

Attachments:

1. Schedule
2. Program Description
3. Standard Provisions

ACKNOWLEDGED:

XYZ Organization

BY: _____

Title: _____

Date: _____

FISCAL DATA

Allocation: _____
Appropriation: _____
Budget Plan Code: _____
PIO/T No.: _____
Project No.: _____
Total Estimated Amount: _____
Total Obligated Amount: _____
CEC No.: _____
IRS Employer Identification Number: _____

Funding Source: AID/W USAID

APPENDIX 4B

SAMPLE FORMAT
SCHEDULE

A. Purpose of Grant

The purpose of this Grant is to provide support for [state title of program or project], as more specifically described in Attachment 2 to this Grant entitled "Program Description."

B. Period of Grant

* 1. The effective date of this Grant is _____. The estimated completion date of this Grant is _____. *

(For incrementally funded grants add the following sentence:)

2. Funds obligated hereunder are available for program expenditures for the estimated period _____ to _____ as shown in the Grant budget below.

C. Amount of Grant and Payment

(For fully funded grants use the following:)

1. AID hereby obligates the amount of $ _____ for purposes of this Grant.

2. Payment shall be made to the Grantee in accordance with procedures set forth in Attachment 3 - Standard Provision _____, entitled "Payment _____." [Select a method of payment in accordance with the applicability requirements set forth in the Standard Provisions, i.e., letter of credit, advance payment, or reimbursement.]

- or -

(For incrementally funded grants use the following in lieu of the above:)

1. The total estimated amount of this Grant for the period shown in B.1 above is $ _____.

2. AID hereby obligates the amount of $ _____ for program expenditures during the period set forth in B.2. above and as shown in the Financial Plan below.

3. Payment shall be made to the Grantee in accordance with procedures set forth in Attachment 3, Standard Provision _____, entitled "Payment _____." [Select a method of payment in accordance with the applicability requirements set forth in the Standard Provisions; i.e., letter of credit, advance payment, or reimbursement.]

4. Additional funds up to the total amount of the grant shown in C.1 above may be obligated by AID subject to the availability of funds, and to the requirements of the Standard Provision of the Grant, entitled "Revision of Financial Plans."

D. Financial Plan

(The items included in the Financial Plan, including local cost financing items, should relate to the activities or functions described * in Attachment 2 - Program Description.) *

The following is the Grant Budget, including local cost financing items, if authorized. Revisions to this budget shall be made in accordance with Standard Provision of this Grant, entitled "Revision of Grant Budget."

Cost Element	From** $U.S.	to** Local Currency	From** $U.S.	to** Local Currency	Total* From** $U.S.	to** Local Currency
1.						
2.						
3.						
4. Training						
5. Procurement						
6. Indirect Costs overhead	____	_____	_____	_____	_____	_____
Total $	____	_____	_____	_____	_____	_____

* Use all three columns for incrementally funded grants, otherwise use only this column.

** Insert effective and expiration dates of grant or obligation/funding dates.

E. Reporting and Evaluation

(Describe both fiscal and technical reporting requirements and evaluation criteria and schedules. See paragraphs 1M, "Financial Reporting Requirements," and 1N, "Monitoring and Reporting Program Performance," of Handbook 13, Grants. Specify the address to which each report is to be delivered.)

F. Special Provisions

(Use this paragraph to delete inapplicable Standard Provisions and to add provisions of special applicability as authorized. Included should be waivers, including authorized local cost financing, and any alterations to the Standard Provisions which have been approved as deviations for the specific grant or grant program.)

G. Indirect Cost Rate

(Set forth the applicable indirect cost rate(s), base(s) on which they apply, and the Grantee's accounting period(s) they cover, as provided in the appropriate Standard Provision. If an Indirect Cost Rate Agreement has been executed by AID or a cognizant Federal agency, such rate(s) are required to be incorporated herein if such costs are covered by the grant.) The most current overhead information should be obtained from the Overhead and Special Costs and Contract Close-Out Branch (FA/OP/PS/OCC).

H. Title to Property

(Specify to whom title will vest for property, by category if appropriate.)

(For grants having a procurement element greater than $250,000, add the following:)

I. Authorized Geographic Code

The authorized geographic code for procurement of goods and services under this grant is _____.

APPENDIX 4C

MANDATORY STANDARD PROVISIONS FOR U.S., NONGOVERNMENTAL GRANTEES[1]

INDEX OF
MANDATORY STANDARD PROVISIONS

1. Allowable Costs
2. Accounting, Audit, and Records
3. Refunds
4. Revision of Grant Budget
5. Termination and Suspension
6. Disputes
7. Ineligible Countries
8. Debarment, Suspension, and other Responsibility Matters
9. Nondiscrimination
10. U.S. Officials Not to Benefit
11. Nonliability
12. Amendment
13. Notices
14. Metric System of Measurement *

*

1. ALLOWABLE COSTS (NOVEMBER 1985)

The grantee shall be reimbursed for costs incurred in carrying out the purposes of this grant which are determined by the grant officer to be reasonable, allocable, and allowable in accordance with the terms of this grant, any negotiated advance understanding on particular cost items, and the applicable* cost principles in effect on the date of this grant.

* NOTE: For Educational Institutions use OMB Circular A-21; for all other non-profits use OMB Circular A-122; and for profit making firms use FAR 31.2. and AIDAR 731.2.

2. ACCOUNTING, AUDIT, AND RECORDS (AUGUST 1992)

(a) The grantee shall maintain books, records, documents, and other evidence in accordance with the grantee's usual accounting procedures to sufficiently substantiate charges to the grant. The grantee's financial management system shall provide for the following:

(1) Accurate, current, and complete disclosure for each AID-sponsored project or program in accordance with the reporting requirements of this grant. While AID requires reporting on an accrual basis, the grantee shall not be required to establish an accrual accounting system but shall develop such accrual data for its reports on the basis of an analysis of the documentation on hand.

---

[1]When these Standard Provisions are used for cooperative agreements, the following terms apply: "Grantee" means "Recipient," "Grant" means "Cooperative Agreement," and "AID Grant Officer" means "AID Agreement Officer."

(2) Records that identify adequately the source and application of funds for AID-sponsored activities. These records shall contain information pertaining to Federal awards, authorizations, obligations, unobligated balances, assets, outlays, and income.

(3) Effective control over and accountability for all funds, property, and other assets. Grantee shall adequately safeguard all such assets and shall ensure that they are used solely for authorized purposes.

(4) Comparison of actual outlays with budget amounts for each grant. Financial information should be related to performance and unit-cost data whenever appropriate.

(5) Procedures to minimize the time elapsing between the transfer of funds from the U.S. Treasury and the disbursement by the recipient, whenever funds are advanced by the Federal Government.

(6) Procedures for determining the reasonableness, allowability, and allocability of costs in accordance with the provisions of the applicable Federal cost principles and the terms of the grant.

(7) Accounting records that are supported by documentation that at a minimum will identify, segregate, accumulate, and record all costs incurred under a grant and which fully disclose (i) the amount and disposition by the grantee of the proceeds of such assistance, (ii) the total cost of the project or undertaking in connection with which such assistance is given or used, (iii) the amount of that portion of the cost of the project or undertaking supplied by other sources, and (iv) such other records as will facilitate an effective audit.

* (8) A systematic method to ensure timely and appropriate resolution of audit findings and recommendations.

(b) The grantee shall require subrecipients to adopt the standards in paragraph (a) above except that portion of subparagraph (a)(1) that would require specific financial reporting forms and frequencies in accordance with the payment provisions of this grant.

(c) If the grantee is a nonprofit institution, it shall conduct audits in accordance with the requirements of OMB Circular A-133, "Audits of Institutions of Higher Education and Other Nonprofit Institutions" and shall ensure that nonprofit subrecipients conduct audits and submit them to the grantee in accordance with the Circular.

(d) The grantee shall preserve and make available such records for examination and audit by AID and the Comptroller General of the United States, or their authorized representatives: *

* REVISED

* (1) until the expiration of three years from the date of termination of the grant;*

(2) for such longer period, if any, as is required to complete an audit to resolve all questions concerning expenditures unless written approval has been obtained from the grant officer to dispose of the records. AID follows generally accepted accounting practices in determining that there has been proper accounting and use of grant funds. The grantee agrees to make available any further information requested by AID with respect to any questions arising as a result of the audit; and

(3) If any litigation, claim, or audit is started before the expiration of the three year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.

(e) The grantee shall insert paragraph (d) above in all subagreements.

3. REFUNDS (SEPTEMBER 1990) *

(a) The grantee shall remit to AID all interest earned on funds provided by AID at least quarterly, except that interest amounts up to $100 per year may be retained by the grantee for administrative expense.

(b) Funds obligated by AID but not disbursed to the grantee at the time the grant expires or is terminated shall revert to AID, except for such funds encumbered by the grantee by a legally binding transaction applicable to this grant. Any funds advanced to but not expended by the grantee and not encumbered by a legally binding transaction applicable to this grant at the time of expiration or termination of the grant shall be refunded to AID.

(c) AID reserves the right to require refund by the grantee of any amount which AID determines to have been expended for purposes not in accordance with the terms and conditions of this grant, including but not limited to costs which are not allowable in accordance with the applicable Federal cost principles or other terms and conditions of this grant. In the event that a final audit has not been performed prior to the closeout of this grant, AID retains the refund right until all claims which may result from the final audit have been resolved between AID and the grantee.

* REVISED

4. REVISION OF GRANT BUDGET (NOVEMBER 1985)

(a) The approved grant budget is the financial expression of the grantee's program as approved during the grant award process.

(b) The grantee shall immediately request approval from the grant officer when there is reason to believe that within the next 30 calendar days a revision of the approved grant budget will be necessary for the following reasons:

(1) Changes in the scope or the objectives of the program and/or revisions in the funding allocated among program objectives.

(2) The need for additional funding.

(3) The grantee expects the amount of AID authorized funds to exceed its needs by more than $5,000 or five percent of the AID award, whichever is greater.

(4) The grantee plans to transfer funds budgeted for indirect costs to absorb increases in direct costs or vice versa.

(5) The grantee intends to contract or subgrant any of the substantive programmatic work under this grant, and such contracts or subgrants were not included in the approved grant budget.

(6) The grantee plans to incur an expenditure which would require advance approval in accordance with the applicable Federal cost principles and was not included in the approved grant budget.

(7) The grantee plans to transfer funds allotted for training allowances to other categories of expense.

(c) When requesting approval for budget revisions, the grantee shall use the budget formats that were used in the application unless a letter request will suffice.

(d) Within 30 calendar days from the date of the receipt of the request for budget revisions, the grant officer shall review the request and notify the grantee whether the budget revisions have been approved. If the revisions are still under consideration at the end of 30 calendar days, the grant officer shall inform the grantee in writing of the date hen the grantee may expect the decision. The grant officer shall obtain the project officer's clearance on all such requests prior to communication with the grantee.

(e) If the requested budget revision requires the obligation of additional funding, and if, after notification pursuant to this standard provision, AID determines not to provide additional funds, the AID grant officer will, upon written request of the grantee, terminate this grant pursuant to the standard provision of this grant, entitled "Termination and Suspension."

(f) Except as required by other provisions of this grant specifically stated to be an exception from this provision, the Government shall not be obligated to reimburse the grantee for costs incurred in excess of the total amount obligated under the grant. The grantee shall not be obligated to continue performance under the grant (including actions under the "Termination and Suspension" provision) or otherwise to incur costs in excess of the amount obligated under the grant, unless and until the grant officer has notified the grantee in writing that such obligated amount has been increased and has specified in such notice the new obligated grant total amount.

5. TERMINATION AND SUSPENSION (AUGUST 1992)

* (a) For Cause. The grant officer may terminate this grant for cause at any time, in whole or in part, upon written notice to the grantee, whenever it is determined that the grantee has failed to comply with the terms and conditions of the grant.

(b) For Convenience. This grant may be terminated for convenience at any time by either party, in whole or in part, if both parties agree that the continuation of the grant would not produce beneficial results commensurate with the further expenditure of funds. Both parties shall agree upon termination conditions, including the effective date and, in the case of partial terminations, the portion to be terminated. The agreement to terminate shall be set forth in a letter from the grant officer to the grantee.

(c) Suspension or Termination for Changed Circumstances. If at any time AID determines that continuation of all or part of the funding for a program should be suspended or terminated because such assistance would not be in the national interest of the United States or would be in violation of an applicable law, then AID may, following notice to the grantee, suspend or terminate this grant in whole or in part and prohibit the grantee from incurring additional obligations chargeable to this grant other than those costs specified in the notice of suspension during the period of suspension. If the situation causing the suspension continues for 60 days or more, then AID may terminate this grant on written notice to the grantee and cancel that portion of this grant which has not been disbursed or irrevocably committed to third parties. *

(d) Termination Procedures. Upon receipt of and in accordance with a termination notice as specified in either paragraph (a) or (b) above, the grantee shall take immediate action to minimize all expenditures and obligations financed by this grant and shall cancel such unliquidated obligations whenever possible. Except as provided below, no further reimbursement shall be made after the effective date of termination. The grantee shall within 30 calendar days after the effective date of such termination repay to the Government all unexpended AID funds which are not otherwise obligated by a legally binding transaction applicable to this grant. Should the funds paid by the Government to the grantee prior to the effective date of the termination of this grant be insufficient to cover the grantee's obligations in the legally binding transaction, the grantee may submit to the Government within 90 calendar days after the effective date of such termination a written claim covering such obligations. The grant officer shall determine the amount(s) to be paid by the Government to the grantee under such claim in accordance with the applicable cost principles.

6. DISPUTES (AUGUST 1992)

* (a) Any dispute under this grant shall be decided by the AID grant officer. The grant officer shall furnish the grantee a written copy of the decision.

(b) Decisions of the AID grant officer shall be final unless, within 30 days of receipt of the decision of the grant officer, the grantee appeals the decision to AID's Deputy Associate Administrator for Finance and Administration. Any appeal made under this provision shall be in writing and addressed to the Deputy Associate Administrator for Finance and Administration, Agency for International Development, Washington, D.C. 20523. A copy of the appeal shall be concurrently furnished to the grant officer.

(c) In order to facilitate review on the record by the Deputy Associate Administrator for Finance and Administration, the grantee shall be given an opportunity to submit written evidence in support of its appeal. No hearing will be provided.

(d) A decision under this provision by the Deputy Associate Administrator for Finance and Administration shall be final. *

7. INELIGIBLE COUNTRIES (MAY 1986)

Unless otherwise approved by the AID grant 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.

*8. DEBARMENT, SUSPENSION, AND RELATED MATTERS (AUGUST 1992)

(a) As a condition of receiving this grant, the grantee has submitted the certifications required by AID Regulation 8 (22 CFR Part 208) both for itself and any prospective lower tier participants identified up to the date of award of the grant, The grantee also agrees to secure required certifications from lower tier participants identified after the date of the award, to notify AID in the event of changed circumstances affecting the validity of its certifications, to require lower tier participants to notify the grantee in the event of changed circumstances affecting the validity of their certifications, and to otherwise comply with AID Regulation 8 in all respects.

(b) In addition to the above, the grantee agrees that, unless authorized by the grant officer, it will not knowingly enter into any subagreements or contracts under this grant with a person or entity included on the "Lists of Parties excluded from Federal Procurement or Nonprocurement Programs." The grantee further agrees to include the following provision in any subagreements or contracts entered into under this grant:

> DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION (MARCH 1989)
>
> The recipient/contractor certifies that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

*

9. 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 grant on the basis of race, color, national origin, age, handicap, or sex.

10. U.S OFFICIALS NOT TO BENEFIT (NOVEMBER 1985)

No member of or delegate to the U.S. Congress or resident U.S. Commissioner shall be admitted to any share or part of this grant or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this grant if made with a corporation for its general benefit.

11. NONLIABILITY (NOVEMBER 1985)

AID does not assume liability for any third party claims for damages arising out of this grant.

12. AMENDMENT (NOVEMBER 1985)

The grant may be amended by formal modifications to the basic grant document or by means of an exchange of letters between the grant officer and an appropriate official of the grantee.

13. NOTICES (NOVEMBER 1985)

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

To the AID grant officer, at the address specified in the grant.

To grantee, at grantee's address shown in the grant or to such other address designated within the grant.

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

* 14. METRIC SYSTEM OF MEASUREMENT (AUGUST 1992)

Wherever measurements are required or authorized, they shall be made, computed, and recorded in metric system units of measurement, unless otherwise authorized by the grant officer in writing when it has found that such usage is impractical or is likely to cause U.S. firms to experience significant inefficiencies or the loss of markets. Where the metric system is not the predominant standard for a particular application, measurements may be expressed in both the metric and the traditional equivalent units, provided the metric units are listed first. *

(END OF MANDATORY STANDARD PROVISIONS)

* REVISED

OPTIONAL STANDARD PROVISIONS FOR U.S., NONGOVERNMENTAL GRANTEES

The following standard provisions are required to be used when applicable. Applicability statements are contained in the parenthetical statement preceding the standard provision. When a standard provision is determined to be applicable in accordance with the applicability statement, the use of such standard provision is mandatory unless a deviation has been approved in accordance with Paragraph 1E of Chapter 1 of Handbook 13. Each grant is required to have a payment provision. Check off the optional standard provisions which are included in the grant. Only those standard provisions which have been checked off are included physically within this grant.

		Page No.	
* 1.	OMB Approval Under the Paperwork Reduction Act	4C-10	_____
2.	Payment - Letter of Credit	4C-11	_____
3.	Payment - Periodic Advance	4C-13	_____
4.	Payment - Cost Reimbursement	4C-15	_____
5.	Air Travel and Transportation	4C-16	_____
6.	Ocean Shipment of Goods	4C-20	_____
7.	Procurement of Goods and Services	4C-21	_____
8.	AID Eligibility Rules for Goods and Services	4C-27	_____
9.	Subagreements	4C-31	_____
10.	Local Cost Financing	4C-33	_____
11.	Patent Rights	4C-35	_____
12.	Publications	4C-42	_____
13.	Negotiated Indirect Cost Rates - Predetermined	4C-43	_____
14.	Negotiated Indirect Cost Rates - Provisional (Nonprofits)	4C-44	_____
15.	Negotiated Indirect Cost Rates - Provisional (For-profits)	4C-46	_____
16.	Regulations Governing Employees	4C-47	_____
17.	Participant Training	4C-48	_____
18.	Voluntary Population Planning	4C-49	_____
19.	Protection of the Individual as a Research Subject	4C-56	_____
20.	Care of Laboratory Animals	4C-57	_____
21.	Title to and Use of Property (Grantee Title)	4C-58	_____
22.	Title to and Care of Property (U.S. Government Title)	4C-63	_____
23.	Title to and Care of Property (Cooperating Country Title)	4C-67	_____
24.	Cost Sharing (Matching)	4C-71	_____
25.	Use of Pouch Facilities	4C-75	_____
26.	Conversion of United States Dollars to Local Currency	4C-77	_____
27.	Public Notice	4C-78	_____
28.	Rights in Data	4C-79	_____ *

(INCLUDE THIS PAGE IN THE GRANT)

* REVISED

* 1. OMB APPROVAL UNDER THE PAPERWORK REDUCTION ACT (AUGUST 1992)

(This provision is applicable whenever any of the nine provisions below containing an information collection requirement is included in the grant.)

Information collection requirements imposed by this grant are covered by OMB approval number 0412-0510; the current expiration date is 7/31/94. 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
5	Air Travel and Transportation	1 (hour)
6	Ocean Shipment of Goods	.5
7	Procurement of Goods and Services	1
11	Patent Rights	.5
12	Publications	.5
13/14	Negotiated Indirect Cost Rates - Predetermined and Provisional	1
18	Voluntary Population Planning	.5
19	Protection of the Individual as a Research Subject	1
21	Title to and Use of Property (Grantee Title)	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 Procurement Policy and Evaluation Staff (FA/PPE), Agency for International Development, Washington, DC 20523-1435 and to the Office of Management and Budget, Paperwork Reduction Project (0412-0510), Washington, DC 20503. *

* REVISED

2. PAYMENT - LETTER OF CREDIT (AUGUST 1992)

* (This provision is applicable only when the following conditions are met: (i) the total advances under all the grantee's cost-reimbursement contracts and assistance instruments with AID equal or exceed $50,000 per annum, (ii) AID has, or expects to have, a continuing relationship with the grantee for at least one year; (iii) the grantee has the ability to maintain procedures that will minimize the time elapsing between the transfer of funds and the disbursement thereof; (iv) the grantee's financial management system meets the standards for fund control and accountability required under the standard provision of this grant, entitled "Accounting, Audit, and Records" and, either (v) the foreign currency portion of the total advance under this grant is less than 50% or (vi) the foreign currency portion of the total advance under this grant is more than 50% but more than one foreign currency country is involved.)

(a) Payment under this grant shall be by means of a Letter of Credit (LOC) in accordance with the terms and conditions of the LOC and any instructions issued by AID's Office of Financial Management, Cash Management and Payment Division (FA/FM/CMP).

(b) As long as the LOC is in effect, the terms and conditions of the LOC and any instructions issued by FA/FM/CMP constitute payment conditions of this grant, superseding and taking precedence over any other provision of this grant concerning payment.

(c) Reporting:

(1) A "Financial Status Report" SF-269, shall be prepared on an accrual basis and submitted quarterly no later than 30 days after the end of the period, in an original and two copies to AID/FA/FM/CMP, Washington, D.C. 20523-0209. If the grantee's accounting records are not normally kept on the accrual basis, the grantee shall not be required to convert its accounting system, but shall develop such accrual information through best estimates based on an analysis of the documentation on hand. The final report must be submitted within 90 days after the conclusion of the grant to FA/FM/CMP. In cases where grants are Mission funded, the Grantee will forward an information copy to the AID Mission accounting station at the same time the original is mailed to FA/FM/CMP, AID/Washington.

(2) The grantee shall submit an original and one copy of SF-272, "Federal Cash Transactions Report," within 15 working days following the end of each quarter to FA/FM/CMP. Grantees receiving advances totaling more than $1 million per year shall submit the SF-272 on a monthly basis within 15 working days following the close of the month. Grantees shall report all cash advances in the remarks section of SF-272. Those cash advances in excess of immediate disbursement requirements in the hands of subrecipients or the grantee's field organizations shall be supported by short narrative explanations of actions taken by the grantee to reduce the excess balances. Interest earned shall be reported in Section 13a of the report and shall be paid to AID on a quarterly basis, unless under $100.00 per annum. *

* (d) If during the term of the grant, FA/FM/CMP believes that the LOC should be revoked, FA/FM/CMP may, after consultation with the Grant Officer and GC, revoke the LOC by written notification to the grantee. FA/FM/CMP shall provide the grant officer a copy of the revocation notice and recommendation for an alternative method of payment (periodic advance or cost reimbursement) based upon the reasons for the revocation. The grant officer shall immediately amend this agreement to provide for an appropriate alternative method of payment.

(e) Notwithstanding the foregoing, the letter of credit shall be revoked one year after the completion date of the latest grant.

*

(END OF STANDARD PROVISION)

* REVISED

3. PAYMENT - PERIODIC ADVANCE (JANUARY 1988)

(This provision is applicable when the conditions for use of letter of credit cannot be met (including those pertaining to mixed dollar and local currency advances) and when the grantee meets the requirements of paragraph 1.0.6 of Handbook 13.)

(a) Periodic advances shall be limited to the minimum amounts needed to meet current disbursement needs and shall be scheduled so that the funds are available to the grantee as close as is administratively feasible to the actual disbursements by the grantee for program costs. Cash advances made by the grantee to secondary recipient organizations or the grantee's field organizations shall conform substantially to the same standards of timing and amount as apply to cash advances by AID to the grantee.

(b) Grantees shall maintain advances in interest bearing accounts. Advances of AID funds to subgrantees shall be maintained in interest bearing accounts.

(c) Grantees shall submit requests for advances at least monthly on SF-270, "Request for Advance or Reimbursement," in an original and two copies, to the address specified in the Schedule of this grant.

(d) The grantee shall submit one copy of SF-272, "Federal Cash Transactions Report," 15 working days following the end of each quarter to the payment office address specified in the schedule. Grantees receiving advances totaling more than $1 million per year shall submit SF-272 on a monthly basis within 15 working days following the close of the month. Grantees shall report in the Remarks section of SF-272 the amount of cash advances in excess of thirty days requirement in the hands of subrecipients or the grantee's overseas field organizations and shall provide short narrative explanations of actions taken by the grantee to reduce the excess balances.

(e) A "Financial Status Report," SF-269, shall be prepared on an accrual basis by the grantee and submitted quarterly no later than 30 days after the end of the period in an original and two copies to the payment office specified in the schedule. If the grantee's accounting records are not normally kept on the accrual basis, the grantee shall not be required to convert its accounting system, but shall develop such accrual information through best estimates based on an analysis of the documentation on hand. The final SF-269 must be submitted to the payment office within 90 days after the conclusion of the grant.

(f) If at any time, the AID Controller determines that the grantee has demonstrated an unwillingness or inability to: (1) establish procedures that will minimize the time elapsing between cash advances and the disbursement thereof, (2) timely report cash disbursements and balances as required by the terms of the grant, and (3) impose the same standards of timing of advances and reporting on any subrecipient or any of the grantee's overseas field organizations; the AID Controller shall advise the grant officer who may suspend or revoke the advance payment procedure.

(END OF STANDARD PROVISION)

4. PAYMENT - COST REIMBURSEMENT (AUGUST 1992)

(This provision is applicable to grants for construction, or to grants where the grantee does not meet the conditions for either a letter of credit or periodic advance payment.)

(a) At the end of each month of this grant, the grantee shall submit an original and two copies of SF-270, "Request for Advance or Reimbursement," to the payment office address specified in the schedule of this grant.

(b) A final SF-270, shall be submitted within 60 days after the conclusion of the grant to the payment office.

* (c) The reports will be prepared on an accrual basis. However, if the grantee's accounting records are not normally kept on an accrual basis, the grantee shall not be required to convert its accounting system to meet this requirement. *

(d) Assignment of Claims (otherwise known as assignment of proceeds) is authorized under this grant and will be processed by the payment office.

(END OF STANDARD PROVISION)

5. AIR TRAVEL AND TRANSPORTATION (AUGUST 1992)

(This provision is applicable when any costs for air travel or transportation are included in the budget.)

* (a) The grantee is required to notify the project officer of the proposed itinerary for each planned international trip financed by this grant, by providing the name of the traveller, purpose of the trip, origin/destination (and intervening stops), and dates of travel, as far in advance of the proposed travel as possible, but at least three weeks before travel is planned to commence. International travel, as provided for in the grant, is authorized unless otherwise disapproved by the project officer in writing prior to the commencement of travel. At least one week prior to departure, the grantee shall notify the cognizant U.S. Mission or Embassy, with a copy to the project officer of planned travel, identifying the travellers and dates and times of arrival. *

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

(c) All air travel and shipments under this grant are required to be made on U.S. flag air carriers to the extent service by such carriers is available. A U.S. flag air carrier is defined as an air carrier which has a certificate of public convenience and necessity issued by the U.S. Civil Aeronautics Board authorizing operations between the United States and/or its territories and one or more foreign countries.

(d) Use of foreign air carrier service may be deemed necessary if a U.S. flag air carrier otherwise available cannot provide the foreign air transportation needed, or if use of such service will not accomplish the agency's mission. Travel and transportation on non-free world air carriers are not reimburseable under this grant.

(e) U.S. flag air carrier service is considered available even though:

(1) Comparable or a different kind of service can be provided at less cost by a foreign air carrier;

(2) Foreign air carrier service is preferred by or is more convenient for the agency or traveler; or

(3) Service by a foreign air carrier can be paid for in excess foreign currency, unless U.S. flag air carriers decline to accept excess or near excess foreign currencies for transportation payable only out of such monies.

(f) Except as provided in paragraph b. of this section, U.S. flag air carrier service must be used for all Government-financed commercial foreign air travel if service provided by such carriers is available. In determining availability of a U.S flag air carrier, the following scheduling principles should be followed unless their application results in the last or first leg of travel to or from the United States being performed by foreign air carrier:

(1) U.S. flag air carrier service available at point of origin should be used to destination or in the absence of direct or through service to the farthest interchange point on a usually traveled route;

(2) Where an origin or interchange point is not served by U.S flag air carrier, foreign air carrier service should be used only to the nearest interchange point on a usually traveled route to connect with U.S. flag air carrier service; or

(3) Where a U.S. flag air carrier involuntarily reroutes the traveler via a foreign air carrier the foreign air carrier may be used notwithstanding the availability of alternative U.S. flag air carrier service.

(g) For travel between a gateway airport in the United States (the last U.S. airport from which the traveler's flight departs or the first U.S. airport at which the traveler's flight arrives) and a gateway airport abroad (that airport from which the traveler last embarks enroute to the U.S. or at which the traveler first debarks incident to travel from the U.S.), passenger service by U.S. flag air carrier will not be considered available:

(1) Where the gateway airport abroad is the traveler's origin or destination airport, and the use of U.S. flag air carrier service would extend the time in a travel status, including delay at origin and accelerated arrival at destination, by at least 24 hours more than travel by foreign air carrier:

(2) Where the gateway airport abroad is an interchange point, and the use of U.S. flag air carrier service would require the traveler to wait six hours or more to make connections at that point, or delayed departure from or accelerated arrival at the gateway airport in the U.S. would extend the time in a travel status by at least six hours more than travel by foreign air carrier.

(h) For travel between two points outside the U.S. the rules in paragraphs (d) through (f) of this section will be applicable, but passenger service by U.S. flag air carrier will not be considered to be reasonably available:

(1) If travel by foreign air carrier would eliminate two or more aircraft changes enroute;

(2) Where one of the two points abroad is the gateway airport (as defined in paragraph (g) of this section) enroute to or from the United States, if the use of a U.S. flag air carrier would extend the time in a travel status by at least six hours more than travel by foreign air carrier including accelerated arrival at the overseas destination or delayed departure from the overseas origin as well as delay at the gateway airport or other interchange point abroad; or

(3) Where the travel is not part of a trip to or from the United States, if the use of a U.S. flag air carrier would extend the time in a travel status by at least six hours more than travel by foreign air carrier including delay at origin, delay enroute and accelerated arrival at destination.

(i) When travel under either paragraph (g) or (h) of this section involves three hours or less between origin and destination by a foreign air carrier, U.S. flag air carrier service will not be considered available when it involves twice such travel time or more.

(j) Nothing in the above guidelines shall preclude and no penalty shall attend the use of a foreign air carrier which provides transportation under an air transport agreement between the United States and a foreign government, the terms of which are consistent with the international aviation policy goals set forth at 49 U.S.C. 1502(b) and provide reciprocal rights and benefits.

(k) Where U.S. Government funds are used to reimburse the grantee's use of other than U.S. flag air carriers for international transportation, the grantee will include a certification on vouchers involving such transportation which is essentially as follows:

"CERTIFICATION OF UNAVAILABILITY OF U.S. FLAG AIR CARRIERS. I hereby certify that the transportation service for personnel (and their personal effects) or property by certificated air carrier was unavailable for the following reason(s)." (State appropriate reason(s) as set forth above).

(l) <u>International Travel</u>

(1) As used herein, the term "international travel" means travel
* to all countries other than those within the home country of the traveler.

*

* REVISED

(2) The grantee will be reimbursed for travel and the reasonable cost of subsistence, post differentials and other allowances paid to employees in an international travel status in accordance with the grantee's established policies and practices which are uniformly applied to federally financed and other activities of the grantee. The standard for determining the reasonableness of reimbursement for overseas allowance is 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 grant officer.

(m) This provision will be included in all subgrants and contracts which require air travel and transportation under this grant.

(END OF STANDARD PROVISION)

6. OCEAN SHIPMENT OF GOODS (AUGUST 1992)

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

(a) At least 50% of the gross tonnage of all goods purchased under this grant 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 for such vessels.

(b) At least 50% of the gross freight revenue generated by shipments of goods purchased under this grant 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 grantee may request a determination of non-availability from the AID Transportation Division, Office of Procurement, Washington, D.C. 20523, giving the basis for the request which will relieve the grantee 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 reimburseable under this grant.

(d) Vouchers submitted for reimbursement which include ocean shipment costs shall contain a certification essentially as follows:

> "I hereby certify that a copy of each ocean bill of lading concerned has been submitted to the U.S. Department of Transportation, Maritime Administration, Division of National Cargo, 400 7th Street, S.W., Washington, D.C. 20590, and that such bills of lading state all of the carrier's charges including the basis for calculation such as weight or cubic measurement."

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

(f) Shipments financed under this grant must meet applicable eligibility requirements set out in Handbook 1, Supplement B, Chapter 7.

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

(END OF STANDARD PROVISION)

* REVISED

7. PROCUREMENT OF GOODS AND SERVICES (NOVEMBER 1985)

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

The grantee may use its own procurement policies and practices for the procurement of goods and services under this grant, provided they conform to all of AID's requirements listed below and the standard provision entitled "AID Eligibility Rules for Goods and Services."

(a) General Requirements:

(1) The grantee shall maintain a code or standards of conduct that shall govern the performance of its officers, employees or agents engaged in the awarding and administration of contracts using AID funds. No employee, officer or agent shall participate in the selection, award or administration of a contract in which AID funds are used, where, to that individual's knowledge, the individual or the individual's immediate family, partners, or organization in which the individual or the individual's immediate family or partners has a financial interest or with whom that individual is negotiating or has any arrangement concerning prospective employment. The grantee's officers, employees or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors or potential contractors. Such standards shall provide for disciplinary actions to be applied for violations of such standards by the grantees' officers, employees or agents.

(2) All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. The grantee should be alert to organizational conflicts of interest or noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids and/or requests for proposals should be excluded from competing for such procurements. Awards shall be made to the bidder/offeror whose bid/offer is responsive/responsible to the solicitation and is most advantageous to the grantee, price and other factors considered. Solicitations shall clearly set forth all requirements that the bidder/offeror must fulfill in order to be evaluated by the grantee. Any and all bids/offers may be rejected when it is in the grantee's interest to do so.

(3) All grantees shall establish procurement procedures that provide for, at a minimum, the following procedural requirements:

(i) Proposed procurement actions shall follow a procedure to assure the avoidance of purchasing unnecessary or duplicative items. Where appropriate, an analysis shall be made of lease and purchase alternatives to determine which would be the most economical practical procurement.

(ii) Solicitations for goods and services shall be based upon a clear and accurate description of the technical requirements for the material, product or service to be procured. Such a description shall not, in competitive procurements, contain features which unduly restrict competition. "Brand-name or equal" descriptions may be used as a means to define the performance of other salient requirements of a procurement and when so used the specific features of the named brand which must be met by bidders/offerors shall be clearly specified.

(iii) Positive efforts shall be made by the grantee to utilize small business and minority-owned business sources of supplies and services. Such efforts should allow these sources the maximum feasible opportunity to compete for contracts utilizing AID funds. To permit AID, in accordance with the small business provisions of the Foreign Assistance Act of 1961, as amended, to give United States small business firms an opportunity to participate in supplying commodities and services procured under this grant, the grantee shall to the maximum extent possible provide the following information to the Office of Small Disadvantaged Business Utilization, AID, Washington, D.C. 20523, at least 45 days prior (except where a shorter time is requested of and granted by the Office of Small and Disadvantaged Business Utilization) to placing any order or contract in excess of $25,000:

(A) Brief general description and quantity of goods or services;

(B) Closing date for receiving quotations, proposals, or bids; and

(C) Address where solicitations or specifications can be obtained.

(iv) The type of procuring instruments used, e.g. fixed price contracts, cost reimbursable contracts, purchase orders, incentive contracts, shall be determined by the grantee but must be appropriate for the particular procurement and for promoting the best interest of the program involved. The "cost-plus-a-percentage-of-cost" method of contracting shall <u>not</u> be used.

(v) Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources or accessibility to other necessary resources.

(vi) All proposed sole source contracts or where only one bid or proposal is received in which the aggregate expenditure is expected to exceed $5,000 shall be subject to prior approval by an appropriate official within the grantee's organization.

(vii) Some form of price or cost analysis should be made in connection with every procurement action. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indicia, together with discounts. Cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability and allowability.

(viii) Procurement records and files for purchases in excess of $10,000 shall include the following:

(A) Basis for contractor selection;

(B) Justification for lack of competition when competitive bids or offers are not obtained;

(C) Basis for award cost or price.

(ix) A system for contract administration shall be maintained to ensure contractor conformance with terms, conditions and specifications of the contract, and to ensure adequate and timely followup of all purchases.

(b) Each contract shall contain, in addition to provisions to define a sound and complete contract, the following contract provisions, if applicable, as well as any provision within this grant which requires such inclusion of that provision. Whenever a provision is required to be inserted in a contract under this grant, the grantee shall insert a statement in the contract that in all instances where the U.S. Government or AID is mentioned the grantee's name shall be substituted.

(1) Contracts in excess of $10,000 shall contain contractual provisions or conditions that will allow for administrative, contractual or legal remedies in instances in which contractors violate or breach contract terms, and provide for such remedial actions as may be appropriate.

(2) All contracts in excess of $10,000 shall contain suitable provisions for termination by the grantee including the manner by which termination will be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(3) In all contracts for construction or facility improvement awarded for more than $100,000, grantees shall observe generally accepted bonding requirements.

(4) All contracts awarded by the grantee or subgrantee to be performed in the United States having a value of more than $10,000, shall contain a provision requiring compliance with Executive Order 11246, entitled "Equal Employment Opportunity," as amended, and as supplemented in Department of Labor Regulations (41 CFR Part 60).

(5) All contracts and subgrants in excess of $2,000 for construction or repair to be performed in the United States awarded by the grantee or subgrantee shall include a provision for compliance with the Copeland "Anti-Kick Back" Act (18 U.S.C. 874) as supplemented in Department of Labor Regulations (29 CFR Part 3). This Act provides that each contractor or subgrantee shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which that individual is otherwise entitled. The grantee shall report all suspected or reported violations to AID.

(6) When required by the Federal program legislation, all construction contracts to be performed in the United States awarded by the grantee or subgrantee of more than $2,000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) as supplemented by Department of Labor Regulations (29 CFR Part 5). Under this Act, contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a week. The grantee shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The grantee shall report all suspected or reported violations to AID.

(7) Where applicable, all contracts awarded by the grantee or subgrantees in excess of $2,000 for construction contracts to be performed in the United States and its territories and in excess of $2,500 for other contracts that involve the employment of mechanics or laborers, shall include a provision for compliance with sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor Regulations (29 CFR Part 5). Under section 103 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work day of 8 hours and a standard workweek of 40 hours. Work in excess of the standard workday or workweek is permissible provided that the worker is compensated at a rate of not less than 1 1/2 times the basic rate of pay for all hours worked in excess of 8 hours in any calendar day or 40 hours in the workweek. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions that are unsanitary, hazardous, or dangerous to the worker's health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor. These requirements do not apply to the purchases of supplies of materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(8) Contracts, the principal purpose of which is to create, develop or improve products, processes or methods; or for exploration into fields that directly concern public health, safety or welfare; or contracts in the fields of science or technology in which there has been little significant experience outside of work funded by Federal assistance, shall contain a notice to the effect that matters regarding rights to inventions and materials generated under the contract are subject to the regulations included in these grant provisions. The contractor shall be advised as to the source of additional information regarding these matters.

(9) All negotiated contracts over $10,000 awarded by the grantee shall include a provision to the effect that the grantee, AID, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the contractor which are directly pertinent to the specific program for the purpose of making audits, examinations, excerpts and transcriptions.

(10) Contracts in excess of $100,000 to be performed in the United States shall contain a provision that requires the contractor to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act of 1970 (42 U.S.C. 7401) and the Federal Water Pollution Control Act (33 U.S.C. 1251, et seq.) as amended. Violations shall be reported to AID and the Regional Office of the Environmental Protection Agency. *

(11) Contracts which require performance outside the United States shall contain a provision requiring Workmen's Compensation Insurance (42 U.S.C. 1651, et seq.). As a general rule, Department of Labor waivers will be obtained for persons employed outside the United States who are not United States citizens or residents provided adequate protection will be given such persons. The grantee should refer questions on this subject to the AID grant officer.

(END OF STANDARD PROVISION)

8. AID ELIGIBILITY RULES FOR GOODS AND SERVICES (AUGUST 1992)

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

(a) Ineligible and Restricted Goods and Services: If AID determines that the grantee has procured any of the restricted or ineligible goods and services specified below, or has procured goods and services from unauthorized sources, and has received reimbursement for such purpose without the prior written authorization of the grant officer, the grantee agrees to refund to AID the entire amount of the reimbursement. AID's policy on ineligible and restricted goods and services is contained in Chapter 4 of AID Handbook 1, Supplement B, entitled "Procurement Policies".

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

(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 grant shall not be used to procure any goods or services furnished by any firms or individuals whose name appears on the "Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs." AID will provide the grantee with a copy of these lists upon request. *

3. Restricted Goods. The grantee shall not procure any of the following goods and services without the prior written authorization of the grant officer:

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

* REVISED

* (b) Source and Nationality: The eligibility rules for goods and services based on source and nationality are divided into two categories. One applies when the total procurement element during the life of the grant is over $250,000, and the other applies when the total procurement element during the life of the grant is not over $250,000, or the grant 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 grant officer. AID policies and definitions on source (including origin and componentry) and nationality are contained in Chapter 5 of AID Handbook 1, Supplement B, entitled "Procurement Policies."

(1) For DFA funded grants or when the total procurement element during the life of this grant 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 grant is AID Geographic Code 935, "Special Free World," and such goods and services must meet the source (including origin and componentry) and nationality requirements set forth in Handbook 1, Supp. B, Chapter 5 in accordance with the following order of preference: *

(A) The United States (AID Geographic Code 000),
(B) The Cooperating Country,
(C) "Selected Free World" countries (AID Geographic Code 941), and
(D) "Special Free World" countries (AID Geographic Code 935).

(ii) Application of order of preference: When the grantee procures goods and services from other than U.S. sources, under the order of preference in paragraph (b)(1)(i) above, the grantee 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 grantee'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 grant.

(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 grant officer, all goods and services financed with U.S. dollars, which will be reimbursed under this grant must meet the source (including origin and componentry) and nationality requirements set forth in Handbook 1, Supp B, Chapter 5 for the authorized geographic code specified in the schedule of this grant. If none is specified, the authorized source is Code 000, the United States. *

(c) Marine Insurance: The eligibility of marine insurance is determined by the country in which it is placed. Insurance is placed in a country if payment of the insurance premium is made to, and the insurance policy is issued by an insurance company located in that country. Eligible countries for placement are governed by the authorized geographic code, except that if Code 941 is authorized, the Cooperating Country is also eligible. Section 604(d) of the Foreign Assistance Act requires that if a recipient country discriminates by statute, decree, rule, or practice with respect to AID-financed procurement against any marine insurance company authorized to do business in the U. S., then any AID-financed commodity shipped to that country shall be insured against marine risk and the insurance shall be placed in the U. S. with a company or companies authorized to do marine insurance business in the U. S.

(d) Ocean and air transportation shall be in accordance with the applicable provisions contained within this grant.

(e) 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 AID 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 (AID Geographic Code 000),
(2) The Cooperating Country,
(3) "Selected Free World" countries (AID Geographic Code 941), and
(4) "Special Free World" countries (AID Geographic Code 899).

(f) Special Restrictions on the Procurement of Construction or Engineering Services: Section 604(g) of the Foreign Assistance Act provides that AID funds may not be used for "procurement of construction or engineering services from advanced developing countries, eligible under Geographic Code 941, which have attained a competitive capability in international markets for construction services or engineering services." In order to insure eligibility of a Code 941 contractor for construction or engineering services, the grantee shall obtain the grant officer's prior approval for any such contract.

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

(END OF STANDARD PROVISION)

* REVISED

9. SUBAGREEMENTS (AUGUST 1992)

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

* (a) Funds provided under this grant shall not be used to support any subrecipient whose name appears on the "Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs." AID will provide the grantee with a copy of these lists upon request.

(b) All subagreements shall as a minimum contain, in addition to provisions to define a sound and complete agreement, the following provisions as well as any that are specifically required by any other provision in this grant. Whenever a provision within this grant is required to be inserted in a subagreement, the grantee shall insert a statement in the subagreement that in all instances where the U.S. Government is mentioned, the grantee's name will be substituted.

(1) Subagreements in excess of $10,000 shall contain provisions or conditions that will allow for administrative or legal remedies in instances where subrecipients violate subagreement terms and provide for such remedial action as may be appropriate.

(2) All subagreements in excess of $10,000 shall contain suitable provisions for termination by the recipient including the manner by which termination will be effected and the basis for settlement. In addition, such subagreements shall describe conditions under which the subagreement may be terminated for default as well as conditions where the subagreement may be terminated because of circumstances beyond the control of the subrecipient.

(3) Subagreements, the principal purpose of which is to create, develop or improve products, processes or methods; or for exploration into fields that directly concern public health, safety or welfare; or subagreements in the field of science or technology in which there has been little significant experience outside of work funded by Federal assistance, shall contain a notice to the effect that matters regarding rights to inventions and materials generated under the subagreement are subject to the regulations contained in the provisions of this grant. The subrecipient shall be advised as to the source of additional information regarding these matters.

(4) A grantee that receives an AID grant and provides $25,000 or more of it during its fiscal year to a sub-recipient shall follow the guidelines of OMB Circular A-133. The grantee shall ensure that: *

* (i) the nonprofit institution sub-recipients that receive $25,000 or more have met the audit requirements of OMB Circular A-133, and that sub-recipients subject to OMB Circular A-128 have met the audit requirements of that Circular;

(ii) appropriate corrective action is taken within six months after receipt of the sub-recipient audit report in instances of noncompliance with Federal laws and regulations;

(iii)they consider whether sub-recipients audits necessitate adjustment of the grantee's own records; and

(iv) each sub-recipient is required to permit independent auditors to have access to the records and financial statements as necessary for the grantee to comply with OMB Circular A-133.

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(END OF STANDARD PROVISION)

* 10. LOCAL COST FINANCING (AUGUST 1992)

This provision is applicable when the total estimated procurement element for the life of the grant is valued over $250,000 and the grant is not funded under DFA.

(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.

(b) All locally financed procurements must be covered by source and nationality waivers as set forth in AID Handbook 1, Supplement B, Chapter 5 with the following exceptions:

(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) 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) All procurements under grants financed with DFA funds and grants with procurement elements of $250,000 or less are subject to the guidance provided under standard provision "AID Eligibility Rules for Goods and Services."

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* REVISED

(d) Ineligible Goods and Services: Under no circumstances shall the grantee procure any of the following under this grant:

(1) Military equipment,

(2) Surveillance equipment,

(3) Commodities and services for support of police or other law enforcement activities,

(4) Abortion equipment and services,

(5) Luxury goods and gambling equipment, or

(6) Weather modification equipment.

* (e) Ineligible Suppliers: Funds provided under this grant 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." AID will provide the grantee with these lists upon request.

(f) Restricted Goods: The grantee shall not procure any of the following goods and services without the prior written authorization of the grant officer:

(1) Agricultural commodities,

(2) Motor vehicles,

(3) Pharmaceuticals,

(4) Pesticides,

(5) Rubber compounding chemicals and plasticizers,

(6) Used equipment,

(7) U.S. Government-owned excess property, or

(8) Fertilizer.

(g) If AID determines that the grantee has procured any of the restricted or ineligible goods and services specified in subparagraphs c. through e. above, or has received reimbursement for such purpose without the prior written authorization of the grant officer, the grantee agrees to refund to AID the entire amount of the reimbursement.

(h) This provision will be included in all subagreements where local procurement of goods or services will be required. *

(END OF STANDARD PROVISION)

* REVISED

11. PATENT RIGHTS (AUGUST 1992)

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

(a) Definitions.

(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 grantee 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 domestic small business concern as defined at Section 2 of Public Law 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, 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, shall be used.

(6) Nonprofit organization means a domestic university or other institution of higher education or an organization of the type described in Section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under Section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)) or any domestic nonprofit scientific or any educational organization qualified under a state nonprofit organization statute.

(b) Allocation of Principal Rights: The grantee 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 grantee 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 United States the subject invention throughout the world.

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

(1) The grantee shall disclose each subject invention to AID within two months after the inventor discloses it in writing to grantee personnel responsible for patent matters. The disclosure to AID shall be in the form of a written report and shall identify the grant 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 AID the grantee shall promptly notify AID of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the grantee.

(2) The grantee shall elect in writing whether or not to retain title to any such invention by notifying AID within two years of disclosure to AID. 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 AID to a date that is no more than 60 days prior to the end of the statutory period.

(3) The grantee shall file its initial patent application on a subject invention to which it elects to retain title within 1 year after election of title or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The grantee shall file patent applications in additional countries within either ten months of the corresponding initial patent application or six months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(4) Requests for extension of the time for disclosure to AID, election, and filing may, at the discretion of AID, be granted.

(d) Conditions When the Government May Obtain Title:
The grantee shall convey to AID upon written request, title to any subject invention: *

* (1) If the grantee fails to disclose or elect the subject invention within the times specified in (c) above, or elects not to retain title. AID may only request title within sixty days after learning of the grantee's failure to report or elect within the specified times.

(2) In those countries in which the grantee fails to file patent applications within the times specified in (c) above; provided, however, that if the grantee has filed a patent application in a country after the times specified in (c) above, but prior to its receipt of the written request of AID the grantee shall continue to retain title in that country.

(3) In any country in which the grantee decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on a patent on a subject invention.

(e) Minimum Rights to Grantee:

(1) The grantee shall retain a nonexclusive, royalty-free license throughout the world in each subject invention to which the Government obtains title except if the grantee fails to disclose the subject invention within the times specified in (c) above. The grantee's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the grantee is a party and includes the right to grant sublicenses of the same scope to the extent the grantee was legally obligated to do so at the time the grant was awarded. The license is transferable only with the approval of AID except when transferred to the successor of that part of the grantee's business to which the invention pertains.

(2) The grantee's domestic license may be revoked or modified by AID to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions in 37 CFR Part 4 and agency licensing regulations (if any). This license shall not be revoked in that field of use or the geographical areas in which the grantee has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of AID to the extent the grantee, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country. *

* (3) Before revocation or modification of the license, AID will furnish the grantee written notice of its intention to revoke or modify the license, and the grantee shall be allowed thirty days (or such other time as may be authorized by AID for good cause shown by the grantee) after the notice to show cause why the license should not be revoked or modified. The grantee has the right to appeal, in accordance with applicable regulations in 37 CFR Part 404 and agency regulations, if any, concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of its license.

(f) Grantee Action to Protect the Government's Interest:

(1) The grantee agrees to execute or to have executed and promptly deliver to AID all instruments necessary to (a) establish or conform the rights the Government has throughout the world in those subject inventions to which the grantee elects to retain title, and (b) convey title to AID when requested under paragraph d. above, and to enable the Government to obtain patent protection throughout the world in that subject invention.

(2) The grantee agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the grantee each subject invention made under agreement in order that the grantee can comply with the disclosure provisions of paragraph (c) above, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by (c)(1) above. The grantee shall instruct such employees through employee agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) The grantee shall notify AID of any decision not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than 30 days before the expiration of the response period required by the relevant patent office.

(4) The grantee agrees to include, within the specification of any United States patent application and any patent issuing thereon covering a subject invention, the following statement: "This invention was made with Government support under (identify the grant awarded by AID). The Government has certain rights in this invention." *

* (g) Subagreements and Contracts: The grantee shall include this standard provision suitably modified to identify the parties, in all subagreements and contracts, regardless of tier, for experimental, developmental, or research work to be performed by a small business firm or nonprofit organization. The subrecipient or contractor shall retain all rights provided for the grantee in this standard provision, and the grantee shall not, as part of the consideration for awarding the contract or subagreement, obtain rights in the contractor's or subrecipient's subject inventions.

(h) Reporting Utilization of Subject Inventions:
The grantee agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the grantee or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the grantee, and such other data and information as AID may reasonably specify. The grantee also agrees to provide additional reports as may be requested by AID in connection with any march-in proceedings undertaken by AID in accordance with paragraph (j) of this provision. As required by 35 USC 202(c)(5), AID agrees that, to the extent permitted by law, it shall not disclose such information to persons outside the Government.

(i) Preference for United States Industry:
Notwithstanding any other provision of this clause, the grantee agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any products embodying the subject invention shall be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by AID upon a showing by the grantee or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(j) March-in Rights: The grantee agrees that with respect to any subject invention in which it has acquired title, AID has the right in accordance with the procedures in 37 CFR 401.6 and any supplemental agency regulations, to require the grantee, an assignee or exclusive licensee of a subject invention to grant a non-exclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the grantee, assignee, or exclusive licensee refuses such a request, AID has the right to grant such a license itself if AID determines that: *

* (1) Such action is necessary because the grantee or assignee has not taken or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;

(2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the grantee, assignee, or their licensees;

(3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the grantee, assignee, or licensees; or

(4) Such action is necessary because the agreement required by paragraph (i) of this clause has not been obtained or waived or because a license of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

(k) Special Provisions for Grants with Nonprofit Organizations: If the grantee is a nonprofit organization, it agrees that:

(1) Rights to a subject invention in the United States may not be assigned without the approval of AID, except where such assignment is made to an organization which has as one of its primary functions the management of inventions; provided that such assignee shall be subject to the same provisions as the grantee.

(2) The grantee shall share royalties collected on a subject invention with the inventor including Federal employee coinventors, when AID deems it appropriate when the subject invention is assigned in accordance with 35 U.S.C. 202(e) and 37 CFR 401.10;

(3) The balance of any royalties or income earned by the grantee with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions, shall be utilized for the support of scientific research or education.

(4) It will make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business firms, and it will give preference to a small business firm when licensing a subject invention if the grantee determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided, that the grantee is also satisfied that the small business firm has the capability and resources *

* to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the grantee. However, the grantee agrees that the Secretary of Commerce may review the grantee's licensing program and decisions regarding small business applicants, and the grantee shall negotiate changes to its licensing policies, procedures, or practices with the Secretary of Commerce when the Secretary's review discloses that the grantee could take reasonable steps to more effectively implement the requirements of this subparagraph (k)(4). *

(l) Communications: Communications concerning this provision shall be addressed to the grant officer at the address shown in this grant.

(END OF STANDARD PROVISION)

* REVISED

12. PUBLICATIONS (AUGUST 1992)

(This provision is applicable when publications are financed under the grant.)

* (a) AID shall be prominently acknowledged in all publications, videos or other information/media products funded or partially funded through this grant, and the product shall state that the views expressed by the author(s) do not necessarily reflect those of AID. Acknowledgements should identify the sponsoring AID 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 Grant 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 grantee is instructed otherwise by the cognizant technical office, publications, videos or other information/media products funded under this grant and intended for general readership or other general use will be marked with the AID 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 grantee shall provide the AID project officer and POL/CDIE, Room 215, SA-18, Washington, DC 20523-1802, with one copy each of all published works developed under the grant and with lists of other written work produced under the grant. *

(d) In the event grant 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 grant unless the schedule of the grant has identified the profits or royalties as program income.

(e) Except as otherwise provided in the terms and conditions of the grant, the author or the recipient is free to copyright any books, publications, or other copyrightable materials developed in the course of or under this grant, but AID 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.

(END OF STANDARD PROVISION)

* REVISED

13. NEGOTIATED INDIRECT COST RATES - PREDETERMINED (AUGUST 1992)

* (This provision is applicable to educational or nonprofit institutions whose indirect cost rate(s) under this grant are on a predetermined basis.)

(a) The allowable indirect costs under this grant shall be obtained by applying predetermined indirect cost rate(s) to the base(s) agreed upon by the parties, as specified in the schedule of this grant.

(b) Not later than 13 months after the close of the grantee's fiscal year, the grantee shall submit to the cognizant Government Audit Activity the required OMB Circular A-133 audit, a proposed predetermined indirect cost rate(s), and supporting cost data. In the event AID is the cognizant agency or no cognizant agency has been designated, the grantee shall submit a copy of the proposed predetermined indirect cost rate(s) and supporting cost data to the AID Inspector General, Washington, DC 20523, and to the Overhead and Special Costs - Contract Closeout Branch, Office of Procurement, Washington, DC 20523. The proposed rate(s) shall be based on the grantee's actual cost experience during that fiscal year. Negotiations of predetermined indirect cost rate(s) shall begin as soon as practical after receipt of the grantee's proposal. *

(c) Allowability of costs and acceptability of cost allocation methods shall be determined in accordance with the provisions of the applicable cost principles in effect on the date of this grant.

(d) Rates for subsequent periods shall be negotiated and the results of each negotiation shall be set forth in a written indirect cost rate agreement executed by both parties. Such agreement shall be automatically incorporated into this grant upon execution and shall specify (1) the agreed upon predetermined rate(s), (2) the base(s) to which the rate(s) apply, (3) the fiscal year (unless the parties agree to a different period) for which the rate(s) apply, and (4) the specific items treated as direct costs or any changes in the items previously agreed to be direct costs. The indirect cost rate agreement shall not change any monetary ceiling, grant obligation, or specific cost allowance or disallowance provided for in this grant.

(e) Pending establishment of predetermined indirect costs rate(s) for any fiscal year or different period agreed to by the parties, the grantee shall be reimbursed either at the rate(s) fixed for the previous fiscal year or other period or at billing rate(s) acceptable to the AID grant officer subject to appropriate adjustment when the final rate(s) for the fiscal year or other period are established.

14. NEGOTIATED INDIRECT COST RATES - PROVISIONAL (AUGUST 1992)

* (This provision is applicable to any EDUCATIONAL OR NONPROFIT INSTITUTION which does not have predetermined indirect cost rate(s); however, it shall also be included when the NEGOTIATED INDIRECT COST RATES - PREDETERMINED standard provision is used.)

(a) A provisional indirect cost rate(s) shall be established for each of the grantee's accounting periods during the term of this grant. Pending establishment of a final rate(s), the parties have agreed that provisional payments on account of allowable indirect costs shall be at the rate(s), on the base(s), and for the periods shown in the schedule of this grant.

(b) Not later than 13 months after the close of the grantee's fiscal year, the grantee shall submit to the cognizant Government Audit Activity, in accordance with the requirements of OMB Circular A-133, an audit report along with proposed final indirect cost rate(s) and supporting cost data. In the event AID is the cognizant agency or no cognizant agency has been designated, the grantee shall submit seven copies of the OMB Circular A-133 audit along with the proposed final indirect cost rate(s) and supporting cost data to the AID Inspector General, Washington, DC 20523, and a copy to the Overhead and Special Costs - Contract Closeout Branch, Office of Procurement, Washington, DC 20523. The proposed rate(s) shall be based on the grantee's actual cost experience during that fiscal year. Negotiations of final indirect cost rate(s) shall begin as soon as practical after receipt of the grantee's proposal. *

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

(d) The results of each negotiation shall be set forth in a written indirect cost rate agreement executed by both parties. Such agreement shall specify (1) the agreed upon final rate(s), (2) the base(s) to which the rate(s) apply, and (3) the period for which the rate(s) apply. The indirect cost rate agreement shall not change any monetary ceiling, grant obligation, or specific cost allowance or disallowance provided for in this grant.

(e) Pending establishment of final indirect cost rate(s) for any period, the grantee shall be reimbursed either at negotiated provisional rate(s) as provided above or at billing rate(s) acceptable to the grant officer, subject to appropriate adjustment when the final rate(s) for that period are established. To prevent substantial over or under payment, the provisional or billing rate(s) may, at the request of either party, be revised by mutual agreement, either retroactively or prospectively. Any such revision of negotiated provisional rate(s) provided in this standard provision shall be set forth in a modification to this grant.

* REVISED

(f) Any failure by the parties to agree on final rate(s) under this standard provision shall be considered a dispute within the meaning of the standard provision of this grant entitled "Dispute" and shall be disposed of in accordance therewith.

(END OF STANDARD PROVISION)

15. NEGOTIATED INDIRECT COST RATE - PROVISIONAL (AUGUST 1992)

*

(This provision is applicable to FOR-PROFIT organizations whose indirect cost rate(s) under this grant are on a provisional basis.)

(a) Until final annual indirect cost rate(s) are established for any period, the grantee shall be reimbursed either at the provisional rate(s) for the previous fiscal year or other period, or at billing rates acceptable to the AID grant officer subject to appropriate adjustment when the final rate(s) for the fiscal year or other period are established, depending on the availability of funds.

(b) The allowable indirect costs under this grant shall be obtained by applying final indirect cost rate(s) to the base(s) agreed upon by the parties, as specified in the schedule of this grant.

(c) Final annual indirect cost rate(s) and the appropriate bases shall be established in accordance with Subpart 42.7 of the Federal Acquisition Regulation (48 CFR Ch.1) in effect for the period covered by the indirect cost rate proposal.

(d) Not later than 90 days after the close of the grantee's fiscal year, the grantee shall submit to the cognizant Government Audit Activity proposed final indirect cost rate(s) and supporting cost data. In the event AID is the cognizant agency or no cognizant agency has been designated, the grantee shall submit a copy of the proposed final indirect cost rate(s) and supporting cost data to the AID Inspector General, Washington, DC 20523, and to the Overhead and Special Costs - Contract Closeout Branch, Office of Procurement, Washington, DC 20523. The proposed rate(s) shall be based on the grantee's actual cost experience during that fiscal year. Negotiations of final indirect cost rate(s) shall begin as soon as practical after receipt of the grantee's proposal.

(e) Allowability of costs and acceptability of cost allocation methods shall be determined in accordance with the provisions of the applicable cost principles in effect on the date of this grant.

(f) Rates for subsequent periods shall be negotiated and the results of each negotiation shall be set forth in a written indirect cost rate agreement executed by both parties. The agreement shall specify (1) the agreed upon final annual indirect cost rate(s), (2) the basis to which the rate(s) apply, (3) the periods for which the rates apply, and (4) any specific items treated as direct costs or any changes in the items previously agreed to be direct costs. The final indirect cost rate agreement shall not change any monetary ceiling, grant obligation, or specific cost allowance or disallowance provided for in this grant.

(g) Any failure by the parties to agree on any final indirect cost rate(s) under this provision shall be a dispute within the meaning of the Disputes provision.

*

(END OF STANDARD PROVISION)

* REVISED

16. REGULATIONS GOVERNING EMPLOYEES (AUGUST 1992)

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

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

* (b) The sale of personal property or automobiles by grantee 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 AID 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 grant for which an employee is assigned by the grantee, no employee of the grantee 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 grantee's employees, while in a foreign country, are expected to show respect for its conventions, 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 grantee employee is not in accordance with the preceding paragraphs, the grantee's chief of party shall consult with the AID Mission Director and the employee involved and shall recommend to the grantee 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 grant 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 grantee shall use its best efforts to cause the return of such employee to the United States, or point of origin, as appropriate.

(END OF STANDARD PROVISION)

*17. PARTICIPANT TRAINING (AUGUST 1992)

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

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

(b) Application of Handbook 10: Participant training under this grant shall comply with the policies established in AID Handbook 10, Participant Training, except to the extent that specific exceptions to Handbook 10 have been provided in this grant with the concurrence of the Office of International Training. (Handbook 10 may be obtained by submitting a request to the Office of International Training (R&D/OIT), Agency for International Development, Washington, D.C. 20523.)

(c) Orientation: In addition to the mandatory requirements in Handbook 10, grantees are strongly encouraged to provide, in collaboration with the Mission training officer, predeparture orientation (see Chapter 13 of Handbook 10) and orientation in Washington at the Washington International Center (see Chapter 18D of Handbook 10). The latter orientation program also provides the opportunity to arrange for home hospitality in Washington and elsewhere in the United States 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 grant officer, who will transmit the request to NCIV through R&D/OIT.

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(END OF STANDARD PROVISION)

18. VOLUNTARY POPULATION PLANNING (AUGUST 1986)

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

(a) Voluntary Participation:

(1) The grantee agrees to take any steps necessary to ensure that funds made available under this grant 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 grantee 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 agreement, 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) Voluntary Participation Requirements For Sterilization Programs:

(1) None of the funds made available under this grant 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 person to practice sterilization.

(2) The grantee shall ensure that any surgical sterilization procedures supported in whole or in part by funds from this grant are performed only after the individual has voluntarily gone to 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 grantee 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 the oral explanation shall be acknowledged by the patient's mark on the certification and by the signature or mark of a witness who shall be of the same sex and speak the same language as the patient.

(4) Copies of informed consent forms and certification documents for each voluntary sterilization procedure must be retained by the grantee for a period of three years after performance of the sterilization procedure.

(c) Prohibition on Abortion-Related Activities:

(1) No funds made available under this grant will 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 them to have abortions; (iii) payments to persons to perform abortions or to solicit persons 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 grant will be used to pay for any biomedical research which relates, in whole or in part, to methods of, or the 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.

(d) Ineligibility of Foreign Nongovernmental Organizations That Perform or Actively Promote Abortion As A Method of Family Planning:

(1) The grantee agrees that it will not furnish assistance for family planning under this grant to any foreign nongovernmental organization which performs or actively promotes abortion as a method of family planning in AID-recipient countries or which provides financial support to any other foreign nongovernmental organization that conducts such activities. For purposes of this paragraph d., a foreign nongovernmental organization is a nongovernmental organization which is not organized under the laws of any State of the United States, the District of Columbia or the Commonwealth of Puerto Rico.

(2) Prior to furnishing funds provided under this grant to another nongovernmental organization organized under the laws of any State of the United States, the District of Columbia, or the Commonwealth of Puerto Rico, the grantee shall obtain the written agreement of such organization that the organization shall not furnish assistance for family planning under this grant to any foreign nongovernmental organization except under the conditions and requirements that are applicable to the grantee as set forth in this paragraph (d).

(3) The grantee may not furnish assistance for family planning under this grant to a foreign nongovernmental organization (the subrecipient) unless;

(i) the subrecipient certifies in writing that it does not perform or actively promote abortion as a method of family planning in AID-recipient countries and does not provide financial support to any other foreign nongovernmental organization that conducts such activities, and

(ii) the grantee obtains the written agreement of the subrecipient containing the undertakings described in subparagraph 4., below.

(4) Prior to furnishing assistance for family planning under this grant to a subrecipient, the subrecipient must agree in writing that:

(i) The subrecipient will not, while receiving assistance under this grant, perform or actively promote abortion as a method of family planning in AID-recipient countries or provide financial support to other foreign nongovernmental organizations that conduct such activities.

(ii) The grantee and authorized representatives of AID may, at any reasonable time, (A) inspect the documents and materials maintained or prepared by the subrecipient in the usual course of its operations that describe the family planning activities of the subrecipient, including reports, brochures and service statistics; (B) observe the family planning activity conducted by the subrecipient; (C) consult with family planning personnel of the subrecipient; and (D) obtain a copy of the audited financial statement or report of the subrecipient, if there is one.

(iii)In the event the grantee or AID has reasonable cause to believe that a subrecipient may have violated its undertaking not to perform or actively promote abortion as a method of family planning, the grantee shall review the family planning program of the subrecipient to determine whether a violation of the undertaking has occurred. The subrecipient shall make available to the grantee such books and records and other information as may be reasonably requested in order to conduct the review. AID may also review the family planning program of the subrecipient under these circumstances, and AID shall have access to such books and records and information for inspection upon request.

(iv) The subrecipient shall refund to the grantee the entire amount of assistance for family planning furnished to the subrecipient under this grant in the event it is determined that the certification provided by the subrecipient under subparagraph (3), above, is false.

(v) Assistance for family planning provided to the subrecipient under this grant shall be terminated if the subrecipient violates any undertaking in the agreement required by subparagraphs (3) and (4), and the subrecipient shall refund to the grantee the value of any assistance furnished under this grant that is used to perform or actively promote abortion as a method of family planning.

(vi) The subrecipient may furnish assistance for family planning under this grant to another foreign nongovernmental organization (the sub-subrecipient) only if (A) the sub-subrecipient certifies in writing that it does not perform or actively promote abortion as a method of family planning in AID-recipient countries and does not provide financial support to any other foreign nongovernmental organization that conducts such activities and (B) the subrecipient obtains the written agreement of the sub-subrecipient that contains the same undertakings and obligations to the subrecipient as those provided by the subrecipient to the grantee as described in subparagraphs (4)(i)-(v), above.

(5) Agreements with subrecipients and sub-subrecipients required under subparagraphs (3) and (4) shall contain the definitions set forth in subparagraph (10) of this paragraph (d).

(6) The grantee shall be liable to AID for a refund for a violation of any requirement of this paragraph (d) only if (i) the grantee knowingly furnishes assistance for family planning to a subrecipient who performs or actively promotes abortion as a method of family planning, or (ii) the certification provided by a subrecipient is false and the grantee failed to make reasonable efforts to verify the validity of the certification prior to furnishing assistance to the subrecipient, or (iii) the grantee knows or has reason to know, by virtue of the monitoring which the grantee is required to perform under the terms of this grant, that a subrecipient has violated any of the undertakings required under subparagraph (4) and the grantee fails to terminate assistance for family planning to the subrecipient, or fails to require the subrecipient to terminate such assistance to a sub-subrecipient which violates any undertaking of the agreement required under subparagraph (4)(vi), above. If the grantee finds, in exercising its monitoring responsibility under this grant, that a subrecipient or sub-subrecipient receives frequent requests for the information described in subparagraph (10)(iii)(A)(II), below, the grantee shall verify that this information is being provided properly in accordance with subparagraph (10)(iii)(A)(II) and shall describe to AID the reasons for reaching its conclusion.

(7) In submitting a request to AID for approval of a grantee's decision to furnish assistance for family planning to a subrecipient, the grantee shall include a description of the efforts made by the grantee to verify the validity of the certification provided by the subrecipient. AID may request the grantee to make additional efforts to verify the validity of the certification. AID will inform the grantee in writing when AID is satisfied that reasonable efforts have been made. If AID concludes that these efforts are reasonable within the meaning of subparagraph (6) above, the grantee shall not be liable to AID for a refund in the event the subrecipient's certification is false unless the grantee knew the certification to be false or misrepresented to AID the efforts made by the grantee to verify the validity of the certification.

(8) It is understood that AID also may make independent inquiries, in the community served by a subrecipient or sub-subrecipient, regarding whether it performs or actively promotes abortion as a method of family planning.

(9) A subrecipient must provide the certification required under subparagraph (3) and a sub-subrecipient must provide the certification required under subparagraph (4)(vi) each time a new agreement is executed with the subrecipient or sub-subrecipient furnishing assistance for family planning under the grant.

(10) The following definitions apply for purposes of this paragraph (d):

(i) Abortion is a method of family planning when it is for the purpose of spacing births. This includes, but is not limited to, abortions performed for the physical or mental health of the mother but does not include abortions performed if the life of the mother would be endangered if the fetus were carried to term or abortions performed following rape or incest (since abortion under these circumstances is not a family planning act).

(ii) To perform abortions means to operate a facility where abortions are performed as a method of family planning. Excluded from this definition are clinics or hospitals which do not include abortion in their family planning programs.

(iii) To actively promote abortion means for an organization to commit resources, financial or other, in a substantial or continuing effort to increase the availability or use of abortion as a method of family planning.

(A) This includes, but is not limited to, the following:

(I) Operating a family planning counseling service that includes, as part of the regular program, providing advice and information regarding the benefits and availability of abortion as a method of family planning;

(II) Providing advice that abortion is an available option in the event other methods of family planning are not used or are not successful or encouraging women to consider abortion (passively responding to a question regarding where a safe, legal abortion may be obtained is not considered active promotion if the question is specifically asked by a woman who is already pregnant, the woman clearly states that she has already decided to have a legal abortion, and the family planning counselor reasonably believes that the ethics of the medical profession in the country require a response regarding where it may be obtained safely);

(III) Lobbying a foreign government to legalize or make available abortion as a method of family planning or lobbying such a government to continue the legality of abortion as a method of family planning;

(IV) Conducting a public information campaign in AID-recipient countries regarding the benefits and/or availability of abortion as a method of family planning.

(B) Excluded from the definition of active promotion of abortion as a method of family planning are referrals for abortion as a result of rape, incest or if the life of the mother would be endangered if the fetus were carried to term.

(C) Action by an individual acting in the individual's capacity shall not be attributed to an organization with which the individual is associated, provided that the organization neither endorses nor provides financial support for the action and takes reasonable steps to ensure that the individual does not improperly represent that the individual is acting on behalf of the organization.

(iv) To furnish assistance to a foreign nongovernmental organization means to provide financial support under this grant to the family planning program of the organization, and includes the transfer of funds made available under this grant or goods or services financed with such funds, but does not include the purchase of goods or services from an organization or the participation of an individual in the general training programs of the grantee, subrecipient or sub-subrecipient.

(v) To control an organization means the possession of the power to direct or cause the direction of the management and policies of an organization.

(11) In determining whether a foreign nongovernmental organization is eligible to be a subrecipient or sub-subrecipient of assistance for family planning under this grant, the action of separate nongovernmental organizations shall not be imputed to the subrecipient or sub-subrecipient, unless, in the judgment of AID, a separate nongovernmental organization is being used as a sham to avoid the restrictions of this paragraph (d). Separate nongovernmental organizations are those that have distinct legal existence in accordance with the laws of the countries in which they are organized. Foreign organizations that are separately organized shall not be considered separate, however, if one is controlled by the other. The grantee may request AID's approval to treat as separate the family planning activities of two or more organizations, which would not be considered separate under the preceding sentence, if the grantee believes, and provides a written justification to AID therefor, that the family planning activities of the organizations are sufficiently distinct as to warrant not imputing the activity of one to the other.

(12) Assistance for family planning may be furnished under this grant by a grantee, subrecipient or sub-subrecipient to a foreign government even though the government includes abortion in its family planning program, provided that no assistance may be furnished in support of the abortion activity of the government and any funds transferred to the government shall be placed in a segregated account to ensure that such funds may not be used to support the abortion activity of the government.

(13) The requirements of this paragraph are not applicable to family planning assistance furnished to a foreign nongovernmental organization which is engaged primarily in providing health services if the objective of the assistance is to finance integrated health care services to mothers and children and birth spacing or family planning is one of several health care services being provided by the organization as part of an integrated system of health service delivery.

(e) The grantee shall insert paragraphs (a), (b), (c), and (e) of this provision in all subsequent subagreements and contracts involving family planning or population activities which will be supported in whole or part from funds under this grant. Paragraph (d) shall be inserted in subagreements and sub-subagreements in accordance with the terms of paragraph (d). The term subagreement means subgrants and subcooperative agreements.

(END OF STANDARD PROVISION)

19. PROTECTION OF THE INDIVIDUAL AS A RESEARCH SUBJECT (AUGUST 1992)

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

* (a) Safeguarding the rights and welfare of human subjects involved in research supported by AID is the responsibility of the grantee. It is the policy of AID that no work shall be initiated under any grant for the support of research involving human subjects unless the research is given initial and continuing review and approval by an appropriate committee of the grantee. This review shall assure that (1) the rights and welfare of the individuals involved are adequately protected, (2) the methods used to obtain informed consent are adequate and appropriate, and (3) the risks and potential medical benefits of the investigation are assessed.

(b) The grantee must provide written assurance to AID that it will abide by this policy for all research involving human subjects supported by AID This assurance shall consist of a written statement of compliance with the requirements regarding initial and continuing review of research involving human subjects and a description of the organization's review committee structure, its review procedures, and the facilities and personnel available to protect the health and safety of human subjects. In addition to providing the assurance, the grantee must also certify to AID for each proposal involving human subjects that its committee has reviewed and approved the proposed research before any work may be initiated.

(c) Since the welfare of the subject individual is a matter of concern to AID as well as to the grantee; AID advisory groups, consultants, and staff may independently review all research involving human subjects, and prohibit research which presents unacceptable hazards. This provision, however, shall not derogate in any manner from the responsibility of the grantee set forth herein.

(d) All of the above provisions apply to any research involving human subjects conducted outside of the United States and, in addition, such overseas research will conform to legal and other requirements governing human research in the country where they are conducted.

(e) In addition to the procedures set forth above, studies with unmarketed drugs will be carried out in accordance with provisions applicable in the country where the study is conducted. In the United States, the regulations of the Food and Drug Administration will be followed and evidence of such compliance provided to AID.

(f) Guidance on procedures to safeguard human subjects involved in research is found in 45 CFR Part 46 as well as the AID-specific regulations in 22 CFR Part 225. Compliance with these procedures, except as modified above, is required. *

(END OF STANDARD PROVISION)

20. 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 grant.)

(a) Before undertaking performance of any grant involving the use of laboratory animals, the grantee 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 grantee shall furnish evidence of such registration to the grant officer.

(b) The grantee shall acquire animals used in research under this grant 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 grantee 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 grantee's reports on portions of the grant 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 grantee may request registration of the grantee'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 grantee'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.

(END OF STANDARD PROVISION)

21. TITLE TO AND USE OF PROPERTY (GRANTEE TITLE) (NOVEMBER 1985)

(This provision is applicable when the Government vests title to property in the grantee only.)

Title to all property financed under this grant shall vest in the grantee, subject to the following conditions:

(a) The grantee shall not charge for any depreciation, amortization, or use of any property, title to which remains in the grantee under this provision under this grant or any other U.S. Government agreement, subagreement, contract, or subcontract.

(b) The grantee agrees to use and maintain the property for the purpose of the grant in accordance with the requirements of paragraphs (c), (d), (e), and (f) below.

(c) Real Property:

(1) Real property means land, including land improvements, structures and appurtenances thereto, but excluding movable machinery and equipment.

(2) Use of Real Property:

(i) The grantee shall use the real property for the authorized purpose of the project, as long as it is needed.

(ii) The grantee shall obtain approval from AID for the use of real property in other projects when the grantee determines that the property is no longer needed for the purpose of the original program. Use in other programs shall be limited to those under other federally sponsored programs (i.e., grants or other agreements) that have purposes consistent with those authorized for support by AID

(3) Disposition of Real Property: When the real property is no longer needed as provided in (2) above, the grantee shall request disposition instructions from AID or its successor Federal sponsoring agency. AID or the successor Federal sponsoring agency shall observe the following rules in the disposition instructions:

(i) The grantee may be permitted to retain title after it compensates the Federal Government in an amount computed by applying the Federal percentage of participation in the cost of the original program to the fair market value of the property.

(ii) The grantee may be directed to sell the property under guidelines provided by the Federal sponsoring agency and pay the Federal Government an amount computed by applying the Federal percentage of participation in the cost of the original program to the proceeds from sale (after deducting actual and reasonable selling and fix-up expenses, if any, from the sales proceeds). When the grantee is authorized or required to sell the property, proper sales procedures shall be established that provide for competition to the extent practicable and result in the highest possible return.

(iii) The grantee may be directed to transfer title to the property to the Federal Government provided that in such cases the grantee shall be entitled to compensation computed by applying the grantee's percentage of participation in the cost of the program to the current fair market value of the property.

(d) Nonexpendable Property:

(1) Nonexpendable personal property means tangible personal property having a useful life of more than two years and an acquisition cost of $500 or more per unit.

(2) Use of Nonexpendable Personal Property:

(i) The grantee shall use the property in the program for which it was acquired as long as needed, whether or not the program continues to be supported by Federal funds. When no longer needed for the original program, the grantee shall use the property in connection with its other federally sponsored activities in the following order of priority:

(A) Activities sponsored by AID

(B) Activities sponsored by other Federal agencies.

(ii) Shared use - During the time that nonexempt nonexpendable personal property is held for use on the program for which it was acquired the grantee shall make it available for use on other programs if such other use will not interfere with the work on the program for which the property was originally acquired. First preference for such other use shall be given to other programs sponsored by AID; second preference shall be given to programs sponsored by other Federal agencies. User charges should be considered if appropriate.

(3) Disposition Of Nonexpendable Personal Property - With A Unit Acquisition Cost Of Less Than $1,000: The grantee may use the property for other activities without reimbursement to the Federal Government or sell the property and retain the proceeds.

(4) Disposition Of Nonexpendable Personal Property With A Unit Acquisition Cost Of $1,000 Or More:

(i) The grantee agrees to report such items to the grant officer from time to time as they are acquired and to maintain a control system which will permit their ready identification and location.

(ii) The grantee may retain the property for other uses provided that compensation is made to AID or its successor. The amount of compensation shall be computed by applying the percentage of Federal participation in the cost of the original program to the current fair market value of the property. If the grantee has no need for the property and the property has further use value, the grantee shall request disposition instructions from AID

(iii) AID shall determine whether the property can be used to meet AID requirements. If no requirement exists within AID the availability of the property shall be reported to the General Services Administration by AID to determine whether a requirement for the property exists in other Federal agencies. AID shall issue instructions to the grantee no later than 120 days after the grantee's request and the following procedures shall govern:

(A) If so instructed or if disposition instructions are not issued within 120 calendar days after the grantee's request, the grantee shall sell the property and reimburse AID an amount computed by applying to the sales proceeds that percentage of Federal participation in the cost of the original program. However, the grantee shall be permitted to deduct and retain from the Federal share $100 or ten percent of the proceeds, whichever is greater, for the grantee's selling and handling expenses.

(B) If the grantee is instructed to ship the property elsewhere, the grantee shall be reimbursed by the benefiting Federal agency with an amount which is computed by applying the percentage of the grantee's participation in the cost of the original grant program to the current fair market value of the property, plus any reasonable shipping or interim storage costs incurred.

(C) If the grantee is instructed to otherwise dispose of the property, the grantee shall be reimbursed by AID for such costs incurred in its disposition.

(e) Expendable Personal Property:

(1) Expendable personal property means all tangible personal property other than nonexpendable property.

(2) The grantee shall use the expendable personal property for the authorized purpose of the grant program, as long as it is needed.

(3) If there is a residual inventory of such property exceeding $1,000 in total aggregate fair market value, upon termination or completion of the grant and the property is not needed for any other federally sponsored program, the grantee shall retain the property for use on nonfederally sponsored activities, or sell it, but must in either case, compensate the Federal Government for its share. The amount of compensation shall be computed in the same manner as nonexpendable personal property.

(f) The grantee's property management standards for nonexpendable personal property shall include the following procedural requirements:

(1) Property records shall be maintained accurately and shall include:

(i) A description of the property.

(ii) Manufacturer's serial number, model number, Federal stock number, national stock number, or other identification number.

(iii)Source of the property, including grant or other agreement number.

(iv) Whether title vests in the grantee or the Federal Government.

(v) Acquisition date and cost.

(vi) Percentage (at the end of the budget year) of Federal participation in the cost of the project or program for which the property was acquired.

(vii)Location, use, and condition of the property and the date the information was reported.

(viii) Unit acquisition cost.

(ix) Ultimate disposition data, including date of disposal and sales price or the method used to determine current fair market value where the grantee compensates AID for its share.

(2) A physical inventory of property shall be taken and the results reconciled with the property records at least once every two years. Any differences between quantities determined by the physical inspection and those shown in the accounting records shall be investigated to determine the causes of the difference. The grantee shall in connection with the inventory, verify the existence, current utilization, and continued need for the property. The inventory listing shall be retained as documentation in accordance with the standard provision of this grant entitled "Accounting, Audit, and Records."

(3) A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft of nonexpendable property shall be investigated and fully documented.

(4) Adequate maintenance procedures shall be implemented to keep the property in good condition.

(5) Where the grantee is authorized or required to sell the property, proper sales procedures shall be established which would provide for competition to the extent practicable and result in the highest possible return.

(END OF STANDARD PROVISION)

22. TITLE TO AND CARE OF PROPERTY (U.S. GOVERNMENT TITLE) (NOVEMBER 1985)

(This provision is applicable when title to property is vested in the U.S. Government.)

(a) Property, title to which vests in the Government under this grant, whether furnished by the Government or acquired by the grantee, is subject to this provision and is hereinafter collectively referred to as "Government property." Title to Government property shall not be affected by the incorporation or attachment thereof to any property not owned by the Government, nor shall such Government property, or any part thereof, be or become a fixture or lose its identity as personal property by reason of affixation to any real property.

(b) Use of Government Property: Government property shall, unless otherwise provided herein or approved by the grant officer, be used only for the performance of this grant.

(c) Control, Maintenance and Repair of Government Property:

(1) The grantee shall maintain and administer in accordance with sound business practice a program for the maintenance, repair, protection, and preservation of Government property so as to assure its full availability and usefulness for the performance of this grant. The grantee shall take all reasonable steps to comply with all appropriate directions or instructions which the grant officer may prescribe as reasonably necessary for the protection of the Government property.

(2) The grantee shall submit, for review and written approval of the grant officer, a records system for property control and a program for orderly maintenance of Government property; however, if the grantee's property control and maintenance system has been reviewed and approved by another Federal department or agency pursuant to Attachment N of OMB Circular No. A-110, the grantee shall furnish the grant officer proof of such approval in lieu of another approval submission.

(3) Property Control: The property control system shall include but not be limited to the following:

(i) Identification of each item of Government property acquired or furnished under the grant by a serially controlled identification number and by description of item. Each item must be clearly marked "Property of U.S. Government."

(ii) The price of each item of property acquired or furnished under this grant.

(iii) The location of each item of property acquired or furnished under this grant.

(iv) A record of any usable components which are permanently removed from items of Government property as a result of modification or otherwise.

(v) A record of disposition of each item acquired or furnished under the grant.

(vii) Date of order and receipt of any item acquired or furnished under the grant.

(viii) The official property control records shall be kept in such condition that at any stage of completion of the work under this grant, the status of property acquired or furnished under this grant may be readily ascertained. A report of current status of all items of property acquired or furnished under the grant shall be submitted yearly concurrently with the annual report.

(4) Maintenance Program: The grantee's maintenance program shall be consistent with sound business practice, the terms of the grant, and provide for:

(i) disclosure of need for and the performance of preventive maintenance,

(ii) disclosure and reporting of need for capital type rehabilitation, and

(iii) recording of work accomplished under the program:

(A) Preventive maintenance - Preventive maintenance is maintenance generally performed on a regularly scheduled basis to prevent the occurrence of defects and to detect and correct minor defects before they result in serious consequences.

(B) Records of maintenance - The grantee's maintenance program shall provide for records sufficient to disclose the maintenance actions performed and deficiencies discovered as a result of inspections.

(C) A report of status of maintenance of Government property shall be submitted annually concurrently with the annual report.

(d) Risk of Loss:

(1) The grantee shall not be liable for any loss of or damage to the Government property, or for expenses incidental to such loss or damage except that the grantee shall be responsible for any such loss or damage (including expenses incidental thereto):

(i) Which results from willful misconduct or lack of good faith on the part of any of the grantee's directors or officers, or on the part of any of its managers, superintendents, or other equivalent representatives, who have supervision or direction of all or substantially all of the grantee's business, or all or substantially all of the grantee's operation at any one plant, laboratory, or separate location in which this grant is being performed;

(ii) Which results from a failure on the part of the grantee, due to the willful misconduct or lack of good faith on the part of any of its directors, officers, or other representatives mentioned in (i) above:

(A) to maintain and administer, in accordance with sound business practice, the program for maintenance, repair, protection, and preservation of Government property as required by (a) above, or

(B) to take all reasonable steps to comply with any appropriate written directions of the grant officer under (c) above;

(iii) For which the grantee is otherwise responsible under the express terms designated in the schedule of this grant;

(iv) Which results from a risk expressly required to be insured under some other provision of this grant, but only to the extent of the insurance so required to be procured and maintained, or to the extent of insurance actually procured and maintained, whichever is greater; or

(v) Which results from a risk which is in fact covered by insurance or for which the grantee is otherwise reimbursed, but only to the extent of such insurance or reimbursement;

(vi) Provided, that, if more than one of the above exceptions shall be applicable in any case, the grantee's liability under any one exception shall not be limited by any other exception.

(2) The grantee shall not be reimbursed for, and shall not include as an item of overhead, the cost of insurance, or any provision for a reserve, covering the risk of loss of or damage to the Government property, except to the extent that the Government may have required the grantee to carry such insurance under any other provision of this grant.

(3) Upon the happening of loss or destruction of or damage to the Government property, the grantee shall notify the grant officer thereof, shall take all reasonable steps to protect the Government property from further damage, separate the damaged and undamaged Government property, put all the Government property in the best possible order, and furnish to the grant officer a statement of:

(i) The lost, destroyed, or damaged Government property;

(ii) The time and origin of the loss, destruction, or damage;

(iii) All known interests in commingled property of which the Government property is a part; and

(iv) The insurance, if any, covering any part of or interest in such commingled property.

(4) The grantee shall make repairs and renovations of the damaged Government property or take such other action as the grant officer directs.

(5) In the event the grantee is indemnified, reimbursed, or otherwise compensated for any loss or destruction of or damage to the Government property, it shall use the proceeds to repair, renovate or replace the Government property involved, or shall credit such proceeds against the cost of the work covered by the grant, or shall otherwise reimburse the Government, as directed by the grant officer. The grantee shall do nothing to prejudice the Government's right to recover against third parties for any such loss, destruction, or damage, and upon the request of the grant officer, shall, at the Governments expense, furnish to the Government all reasonable assistance and cooperation (including assistance in the prosecution of suits and the execution of instruments or assignments in favor of the Government) in obtaining recovery.

(e) Access: The Government, and any persons designated by it, shall at all reasonable times have access to the premises wherein any Government property is located, for the purpose of inspecting the Government property.

(f) Final Accounting and Disposition of Government Property: Upon completion of this grant, or at such earlier dates as may be fixed by the grant officer, the grantee shall submit, in a form acceptable to the grant officer, inventory schedules covering all items of Government property not consumed in the performance of this grant or not theretofore delivered to the Government, and shall prepare, deliver, or make such other disposition of the Government property as may be directed or authorized by the grant officer.

(g) Communications: All communications issued pursuant to this provision shall be in writing.

(END OF STANDARD PROVISION)

23. TITLE TO AND CARE OF PROPERTY (COOPERATING COUNTRY TITLE) (NOVEMBER 1985)

(This provision is applicable to property titled in the name of the cooperating country or such public or private agency as the cooperating country government may designate.)

(a) Except as modified by the schedule of this grant, title to all equipment, materials and supplies, the cost of which is reimbursable to the grantee by AID or by the cooperating country, shall at all times be in the name of the cooperating country or such public or private agency as the cooperating country may designate, unless title to specified types or classes of equipment is reserved to AID under provisions set forth in the schedule of this grant. All such property shall be under the custody and control of grantee until the owner of title directs otherwise or completion of work under this grant or its termination, at which time custody and control shall be turned over to the owner of title or disposed of in accordance with its instructions. All performance guarantees and warranties obtained from suppliers shall be taken in the name of the title owner.

(b) The grantee shall maintain and administer in accordance with sound business practice a program for the maintenance, repair, protection, and preservation of Government property so as to assure its full availability and usefulness for the performance of this grant. The grantee shall take all reasonable steps to comply with all appropriate directions or instructions which the grant officer may prescribe as reasonably necessary for the protection of the Government property.

(c) The grantee shall prepare and establish a program, to be approved by the appropriate AID Mission, for the receipt, use, maintenance, protection, custody and care of equipment, materials and supplies for which it has custodial responsibility, including the establishment of reasonable controls to enforce such program. The grantee shall be guided by the following requirements:

(1) Property Control: The property control system shall include but not be limited to the following:

(i) Identification of each item of cooperating country property acquired or furnished under the grant by a serially controlled identification number and by description of item. Each item must be clearly marked "Property of (insert name of cooperating country)."

(ii) The price of each item of property acquired or furnished under this grant.

(iii) The location of each item of property acquired or furnished under this grant.

(iv) A record of any usable components which are permanently removed from items of cooperating country property as a result of modification or otherwise.

(v) A record of disposition of each item acquired or furnished under the grant.

(vi) Date of order and receipt of any item acquired or furnished under the grant.

(vii) The official property control records shall be kept in such condition that at any stage of completion of the work under this grant, the status of property acquired or furnished under this grant may be readily ascertained. A report of current status of all items of property acquired or furnished under the grant shall be submitted yearly concurrently with the annual report.

(2) Maintenance Program: The grantee's maintenance program shall be consistent with sound business practice, the terms of the grant, and provide for:

(i) disclosure of need for and the performance of preventive maintenance,

(ii) disclosure and reporting of need for capital type rehabilitation, and

(iii) recording of work accomplished under the program:

(A) Preventive maintenance - Preventive maintenance is maintenance generally performed on a regularly scheduled basis to prevent the occurrence of defects and to detect and correct minor defects before they result in serious consequences.

(B) Records of maintenance - The grantee's maintenance program shall provide for records sufficient to disclose the maintenance actions performed and deficiencies discovered as a result of inspections.

(C) A report of status of maintenance of cooperating country property shall be submitted annually concurrently with the annual report.

(d) Risk of Loss:

(1) The grantee shall not be liable for any loss of or damage to the cooperating country property, or for expenses incidental to such loss or damage except that the grantee shall be responsible for any such loss or damage (including expenses incidental thereto):

(i) Which results from willful misconduct or lack of good faith on the part of any of the grantee's directors or officers, or on the part of any of its managers, superintendents, or other equivalent representatives, who have supervision or direction of all or substantially all of the grantee's business, or all or substantially all of the grantee's operation at any one plant, laboratory, or separate location in which this grant is being performed;

(ii) Which results from a failure on the part of the grantee, due to the willful misconduct or lack of good faith on the part of any of its directors, officers, or other representatives mentioned in (i) above:

(A) to maintain and administer, in accordance with sound business practice, the program for maintenance, repair, protection, and preservation of cooperating country property as required by (i) above, or

(B) to take all reasonable steps to comply with any appropriate written directions of the grant officer under (b) above;

(iii) For which the grantee is otherwise responsible under the express terms designated in the schedule of this grant;

(vi) Which results from a risk expressly required to be insured under some other provision of this grant, but only to the extent of the insurance so required to be procured and maintained, or to the extent of insurance actually procured and maintained, whichever is greater; or

(v) Which results from a risk which is in fact covered by insurance or for which the grantee is otherwise reimbursed, but only to the extent of such insurance or reimbursement;

(vi) Provided, that, if more than one of the above exceptions shall be applicable in any case, the grantee's liability under any one exception shall not be limited by any other exception.

(2) The grantee shall not be reimbursed for, and shall not include as an item of overhead, the cost of insurance, or any provision for a reserve, covering the risk of loss of or damage to the cooperating country property, except to the extent that AID may have required the grantee to carry such insurance under any other provision of this grant.

(3) Upon the happening of loss or destruction of or damage to the cooperating country property, the grantee shall notify the grant officer thereof, shall take all reasonable steps to protect the cooperating country property from further damage, separate the damaged and undamaged cooperating country property, put all the cooperating country property in the best possible order, and furnish to the grant officer a statement of:

(i) The lost, destroyed, or damaged cooperating country property;

(ii) The time and origin of the loss, destruction, or damage;

(iii) All known interests in commingled property of which the cooperating country property is a part; and

(iv) The insurance, if any, covering any part of or interest in such commingled property.

(4) The grantee shall make repairs and renovations of the damaged cooperating country property or take such other action as the grant officer directs.

(5) In the event the grantee is indemnified, reimbursed, or otherwise compensated for any loss or destruction of or damage to the cooperating country property, it shall use the proceeds to repair, renovate or replace the cooperating country property involved, or shall credit such proceeds against the cost of the work covered by the grant, or shall otherwise reimburse AID, as directed by the grant officer. The grantee shall do nothing to prejudice AID's right to recover against third parties for any such loss, destruction, or damage, and upon the request of the grant officer, shall, at the Governments expense, furnish to AID all reasonable assistance and cooperation (including assistance in the prosecution of suits and the execution of instruments or assignments in favor of the Government) in obtaining recovery.

(e) Access: AID, and any persons designated by it, shall at all reasonable times have access to the premises wherein any cooperating country property is located, for the purpose of inspecting the cooperating country property.

(f) Final Accounting and Disposition of Cooperating Country Property: Within 90 days after completion of this grant, or at such other date as may be fixed by the grant officer, the grantee shall submit to the grant officer an inventory schedule covering all items of equipment, materials and supplies under the grantee's custody, title to which is in the cooperating country or public or private agency designated by the cooperating country, which have not been consumed in the performance of this grant. The grantee shall also indicate what disposition has been made of such property.

(g) Communications: All communications issued pursuant to this provision shall be in writing.

(END OF STANDARD PROVISION)

24. COST SHARING (MATCHING) (AUGUST 1992)

(This provision is applicable when the grantee is required to cost share or provide a matching share.)

* (a) For each year (or funding period) under this grant, the grantee agrees to expend from non-Federal funds an amount at least equal to the amount or percentage of the total expenditures under this grant as specified in the schedule of the grant. The schedule of this grant may also contain restrictions on the application of cost sharing (matching) funds. The schedule takes precedence over the terms of this provision. *

(b) Eligibility of non-Federal funds applied to satisfy cost sharing (matching) requirements under this grant are set forth below:

(1) Charges incurred by the grantee as project costs. Not all charges require cash outlays by the grantee during the project period; examples are depreciation and use charges for buildings and equipment.

(2) Project costs financed with cash contributed or donated to the grantee by other non-Federal public agencies (may include public international organizations or foreign governments) and institutions, and private organizations and individuals, and

(3) Project costs represented by services and real and personal property, or use thereof, donated by other non-Federal public agencies and institutions, and private organizations and individuals.

(c) All contributions, both cash and in-kind, shall be accepted as part of the grantee's cost sharing (matching) when such contributions meet all of the following criteria:

(1) Are verifiable from the grantee's records;

(2) Are not included as contributions for any other Federally assisted program;

(3) Are necessary and reasonable for proper and efficient accomplishment of project objectives;

(4) Are types of charges that would be allowable under the applicable Federal cost principles;

(5) Are not paid by the Federal Government under another grant or agreement (unless the grant or agreement is authorized by Federal law to be used for cost sharing or matching);

(6) Are provided for in the approved budget when required by AID; and

(7) Conform to other provisions of this paragraph.

(d) Values for grantee in-kind contributions will be established in accordance with the applicable Federal cost principles.

(e) Specific procedures for the grantee in establishing the value of in-kind contributions from non-Federal third parties are set forth below:

(1) Valuation of volunteer services: Volunteer services may be furnished by professional and technical personnel, consultants, and other skilled and unskilled labor. Volunteer services may be counted as cost sharing or matching if the service is an integral and necessary part of an approved program:

(i) Rates for volunteer services: Rates for volunteers should be consistent with those paid for similar work in the grantee's organization. In those instances in which the required skills are not found in the grantee's organization, rates should be consistent with those paid for similar work in the labor market in which the grantee competes for the kind of services involved.

(ii) Volunteers employed by other organizations: When an employer other than the grantee furnishes the services of an employee, these services shall be valued at the employee's regular rate of pay (exclusive of fringe benefits and overhead costs) provided these services are of the same skill for which the employee is normally paid.

(2) Valuation of donated expendable personal property: Donated expendable personal property includes such items as expendable equipment, office supplies, laboratory supplies or workshop and classroom supplies. Value assessed to expendable personal property included in the cost share (match) should be reasonable and should not exceed the market value of the property at the time of the donation.

(3) Valuation of donated nonexpendable personal property, buildings, and land or use thereof:

(i) The method used for charging cost sharing or matching for donated nonexpendable personal property, buildings and land may differ according to the purpose of the grant as follows:

(A) If the purpose of the grant is to assist the grantee in the acquisition of equipment, buildings or land, the total value of the donated property may be claimed as cost sharing or matching.

(B) If the purpose of the grant is to support activities that require the use of equipment, buildings, or land; depreciation or use charges for equipment and buildings may be made. The full value of equipment or other capital assets and fair rental charges for land may be allowed provided that AID has approved the charges.

(ii) The value of donated property will be determined in accordance with the usual accounting policies of the grantee with the following qualifications:

(A) Land and buildings: The value of donated land and buildings may not exceed its fair market value, at the time of donation to the grantee as established by an independent appraiser; and certified by a responsible official of the grantee.

(B) Nonexpendable personal property: The value of donated nonexpendable personal property shall not exceed the fair market value of equipment and property of the same age and condition at the time of donation.

(C) Use of space: The value of donated space shall not exceed the fair rental value of comparable space as established by an independent appraisal of comparable space and facilities in a privately owned building in the same locality.

(D) Borrowed equipment: The value of borrowed equipment shall not exceed its fair rental value.

(f) The following requirements pertain to the grantee's supporting records for in-kind contributions from non-Federal third parties:

(1) Volunteer services must be documented and, to the extent feasible, supported by the same methods used by the grantee for its employees.

(2) The basis for determining the valuation for personal services, material, equipment, buildings and land must be documented.

* (g) Individual expenditures do not have to be shared or matched provided that the total expenditures incurred during the year (or funding period) are shared or matched in accordance with the agreed upon amount or percentage as set forth in the schedule of the grant.

(h) If at the end of any year (or funding period) hereunder, the grantee has expended an amount of non-Federal funds less than the agreed upon amount or percentage of total expenditures, the difference may be applied to reduce the amount of AID funding the following year (or funding period), or, if this grant has expired or been terminated, the difference shall be refunded to AID. *

* REVISED

(i) Failure to meet the cost sharing (matching) requirements set forth in paragraph (a) above shall be considered sufficient reasons for termination of this grant for cause in accordance with paragraph (a) entitled "For Cause" of the standard provision of this grant entitled "Termination and Suspension".

* (j) The restrictions on the use of AID funds set forth in the standard provisions of this grant are applicable to expenditures incurred with AID funds provided under this grant. Except for the requirements of this standard provision, the restrictions set forth in the standard provisions of this grant are not applicable to costs incurred by the grantee from non-Federal funds. The grantee will account for the AID funds in accordance with the standard provision of this grant entitled "Accounting, Audit, and Records"; however, in the event of disallowances of expenditures from AID grant funds, the grantee may substitute expenditures made with funds provided from non-Federal sources, provided they are eligible in accordance with all the standard provisions of this grant.

(k) Notwithstanding paragraph (c) of the standard provision of this grant entitled "Refunds", the parties agree that in the event of any disallowance of expenditures from AID grant funds provided hereunder, the grantee may substitute expenditures made with funds provided from non-Federal sources provided they are otherwise eligible in accordance with paragraph (b) of this provision. *

(END OF STANDARD PROVISION)

* REVISED

25. USE OF POUCH FACILITIES (AUGUST 1992)

(This provision is applicable when activities under the grant will take place outside of the United States.)

(a) Use of diplomatic pouch is controlled by the Department of State. The Department of State has authorized the use of pouch facilities for AID grantees 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 AID Mission. In consideration of the use of pouch facilities, the grantee and its employees agree to indemnify and hold harmless, the Department of State and AID for loss or damage occurring in pouch transmission:

* (1) Grantees 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) AID grantee 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 grantee 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 AID Mission.

(END OF STANDARD PROVISION)

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

(This provision is applicable when activities under the grant will take place outside of the United States.)

Upon arrival in the Cooperating Country, and from time to time as appropriate, the grantee's chief of party shall consult with the Mission Director who shall provide, in writing, the procedure the grantee 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.

(END OF STANDARD PROVISION)

* 27. PUBLIC NOTICES (AUGUST 1992)

It is AID's policy to inform the public as fully as possible of its programs and activities. The grantee is encouraged to give public notice of the receipt of this grant 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 grantee may call on AID's Office of External Affairs for advice regarding public notices. The grantee is requested to provide copies of notices or announcements to the cognizant technical officer and to AID's Office of External Affairs as far in advance of release as possible.

(END OF STANDARD PROVISION) *

* NEW MATERIAL

* 28. PROVISION ON RIGHTS IN DATA (AUGUST 1992)

(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 grant 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 Grantee, 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. *

* NEW MATERIAL

* "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 Grant;
(ii) Form, fit and function data delivered under this Grant;
(iii)Data delivered under this Grant (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 Grant; and
(iv) All other data delivered under this Grant unless provided otherwise for limited rights data or restricted computer software in accordance with paragraph (d) of this provision.

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

(i) Use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Grantee in the performance of this Grant;
(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 Grant to the extent provided in subparagraph (c) of this provision.

(c) Copyright

(1) Data first produced in the performance of this Grant. The Grantee may establish, without prior approval of AID, claim to copyright subsisting in scientific and technical articles based on or containing data first produced in the performance of this Grant and published in academic, technical or professional journals, symposia proceedings or similar works. The prior express written permission of AID is required to establish claim to copyright subsisting in all other data first produced in performance of this Grant. For computer software and other data the Grantee grants 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 Grantee shall not, without prior written permission of AID incorporate in data delivered under this Grant any data not first produced in the performance under this Grant and which contains the copyright notice of 17 U.S.C. 401 or 402, unless the grantee identifies such data and grants 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 Grant 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 Grant and qualify as either limited rights data or restricted computer software, if the Grantee desires to continue protection of such data, the Grantee shall withhold such data and not furnish them to the Government under this Grant. As a condition to this withholding, the Grantee shall identify the data being withheld and furnish form, fit, and function data in lieu thereof.

(e) Subagreements

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

(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.

(END OF STANDARD PROVISION) *

*NEW MATERIAL

OMB Control No. 0412-0510
Expiration Date: 12/31/89

APPENDIX 4D
MANDATORY STANDARD PROVISIONS FOR NON-U.S., NONGOVERNMENTAL GRANTEES[2]

1. Allowable Costs
2. Accounting, Audit, and Records
3. Refunds
4. Revision of Grant Budget
5. Termination and Suspension
6. Disputes
7. Ineligible Countries
8. Debarment, Suspension, and Other Responsibility Matters
9. U.S. Officials Not to Benefit
10. Nonliability
11. Amendment
12. Notices

1. ALLOWABLE COSTS (MAY 1986)

(a) The grantee shall be reimbursed for costs incurred in carrying out the purposes of this grant which are determined by the grant officer to be reasonable, allocable, and allowable in accordance with the terms of this grant and the applicable* cost principles in effect on the date of this grant, which are attached.

(1) Reasonable. Shall mean those costs that do not exceed those which would be incurred by an ordinarily prudent person in the conduct of normal business.

(2) Allocable Costs. Shall mean those costs which must are necessary to the grant.

(3) Allowable Costs. Shall mean those costs which must conform to any limitations set forth in this grant.

*NOTE: For educational institutions use OMB Circular A-21; for all other non-profit organizations use OMB Circular A-122; and for profit making firms use Federal Acquisition Regulation 31.2 and AID Acquisition Regulation 731.2.

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[2]When these Standard Provisions are used for cooperative agreements, the following terms apply: "Grantee" means "Recipient" "Grant" means "Coopertive Agreement," and "AID Grant Officer" means "AID Agreement Officer."

(4) Unallowable costs, direct or indirect, include but are not limited to the following examples: Advertising, bad debts, contingencies, entertainment, fines and penalties, interest, fund raising, investment management costs, losses on other awards, taxes, first class air fare unless specifically approved. Additionally, public information service costs are unallowable as indirect costs.

(b) Prior to incurring a questionable or unique cost, the grantee should obtain the grant officer's written determination as to whether the cost will be allowable.

* 2. ACCOUNTING, AUDIT, AND RECORDS (MAY 1991)

(a) The grantee shall maintain books, records, documents, and other evidence relating to the AID-sponsored project or program in accordance with generally accepted accounting principles formally prescribed by the U.S., the cooperating country, or the International Accounting Standards Committee (an affiliate of the International Federation of Accountants) to sufficiently substantive charges to this grant. Accounting records that are supported by documentation will as a minimum be adequate to show all costs incurred under the grant, receipt and use of goods and services acquired under the grant, the costs of the program supplied from other sources, and the overall progress of the program. The grantee records and subgrantee records which pertain to this grant shall be retained for a period of three years from the date of expiration of this grants and may be audited by AID and/or its representatives. The grantee shall insert this paragraph (a) in all subgrants valued in excess of $10,000.

(b) If the grantee receives $25,000 per year or more under this grant, the grantee agrees that it shall have an audit made of the funds provided under this grant and of the financial statements of the organization as a whole. The grantee shall select an independent auditor in accordance with the "Guidelines for Financial Audits Contracted by Foreign Recipients" issued by the AID Inspector General. The audit shall be a financial audit performed in accordance with such guidelines and in accordance with generally accepted government auditing standards issued by the Comptroller General of the United States. Audits shall be performed annually.

(c) The audit report shall be submitted to AID within 30 days after completion of the audit, but the audit shall be completed and the report submitted not later that 13 months after the close of the grantee's fiscal year. The AID Inspector General will review this report to determine whether it complies with the audit requirements of this grant. No audit costs may be charged to this grant if audits have not been made in accordance with the terms of this provision. In cases of continued inability or unwillingness to have an audit performed in accordance with the terms of this provision, AID will consider appropriate sanctions which may include suspension of all or a percentage of disbursements until the audit is satisfactorily completed. *

* Revised

* (d) The grantee shall require subgrantees that receive $25,000 or more per year under this grant to have audits performed in accordance with the requirements of this provision. The subgrantee's audit report shall be submitted to the grantee within 30 days after completion of the audit, but the audit shall be completed and the report submitted not later than 13 months after the close of the subgrantee's fiscal year. The grantee shall ensure that appropriate corrective actions are taken on the recommendations contained in subgrantees' audit reports; consider whether subgrantees' audits necessitate adjustment of its own records; and require each subgrantee to permit independent auditors to have access to records and financial statements as necessary. *

3. REFUNDS (SEPTEMBER 1990)

(a) The grantee shall remit to AID all interest earned on funds provided by AID.

(b) Funds obligated by AID but not disbursed to the grantee at the time the grant expires or is terminated shall revert to AID, except for such funds encumbered by the grantee by a legally binding transaction applicable to this grant. Any funds advanced to but not expended by the grantee at the time of expiration or termination of the grant shall be refunded to AID except for such funds encumbered by the grantee by a legally binding transaction applicable to this grant.

(c) AID reserves the right to require refund by the grantee of any amount which AID determines to have been expended for purposes not in accordance with the terms and conditions of this grant, including but not limited to costs which are not allowable in accordance with the applicable Federal cost principles or other terms and conditions of this grant. In the event that a final audit has not been performed prior to the closeout of this grant, AID retains the refund right until all claims which may result from the final audit have been resolved between AID and the grantee.

4. REVISION OF GRANT BUDGET (MAY 1986)

(a) The approved grant budget is the financial expression of the grantee's program as approved during the grant award process.

(b) The grantee shall immediately request approval from the grant officer when there is reason to believe that within the next 30 calendar days a revision of the approved grant budget will be necessary for any of the following reasons:

(1) To change the scope or the objectives of the project and/or revise the funding allocated among project objectives.

(2) Additional funding is needed.

(3) The grantee expects the amount of AID authorized funds to exceed its needs by more than $5,000 or five percent of the AID award, whichever is greater.

* Revised

(4) The grantee plans to transfer funds budgeted for indirect costs to absorb increases in direct costs or vice versa.

(5) The grantee intends to contract or subgrant any of the work under this grant, and such contracts or subgrants were not included in the approved grant budget.

(c) Except as required by other provisions of this grant specifically stated to be an exception from this provision, the Government shall not be obligated to reimburse the grantee for costs incurred in excess of the total amount obligated under the grant. The grantee shall not be obligated to continue performance under the grant (including action under the "Termination and Suspension" provision) or otherwise to incur costs in excess of the amount obligated under the grant, unless and until the grant officer has notified the grantee in writing that such obligated amount has been increased and has specified the new grant total amount.

5. TERMINATION AND SUSPENSION (MAY 1986)

(a) For Cause. This grant may be terminated for cause at any time, in whole or in part, by the grant officer upon written notice to the grantee, whenever it is determined that the grantee has failed to comply with the conditions of the grant.

(b) For Convenience. This grant may be terminated for convenience at any time by either party, in whole or in part, if both parties agree that the continuation of the grant would not produce beneficial results commensurate with the further expenditure of funds. Both parties shall agree upon termination conditions, including the effective date and, in the case of partial terminations, the portion to be terminated. The agreement to terminate shall be set forth in a letter from the grant officer to the grantee.

(c) Suspension: Termination for Changed Circumstances. If at any time AID determines that continuation of funding for a program should be suspended or terminated because such assistance is not in the national interest of the United States or that it would be in violation of an applicable law, then AID may, following notice to the grantee, suspend this grant and prohibit the grantee from incurring additional obligations chargeable to this grant other than necessary and proper costs in accordance with the terms of this grant during the period of suspension. If the situation causing the suspension continues for 60 days or more, then AID may terminate this grant on written notice to the grantee and cancel that portion of this grant which has not been disbursed or irrevocably committed to third parties.

(d) Termination Procedures. Upon receipt of and in accordance with a termination notice as specified in either paragraph (a) or (b) above, the grantee shall take immediate action to minimize all expenditures and obligations financed by this grant and shall cancel such unliquidated obligations whenever possible. Except as provided below, no further reimbursement shall be made after the effective date of termination. The grantee shall within 30 calendar days after the effective date of such termination repay to the Government all unexpended AID funds which are not otherwise obligated by a legally binding transaction applicable to this grant. Should the funds paid by the Government to the grantee prior to the effective date of the termination of this grant be insufficient to cover the grantee's obligations in the legally binding transaction, the grantee may submit to the Government within 90 calendar days after the effective date of such termination a written claim covering such obligations. The grant officer shall determine the amount(s) to be paid by the Government to the grantee under such claim in accordance with the applicable cost principles.

6. DISPUTES (NOVEMBER 1985)

(a) Any dispute under this grant shall be decided by the AID grant officer. The grant officer shall furnish the grantee a written copy of the decision.

(b) Decisions of the AID grant officer shall be final unless, within 30 days of receipt of the decision of the grant officer, the grantee appeals the decision to AID's Deputy Assistant to the Administrator for Management Services. Any appeal made under this provision shall be in writing and addressed to the Deputy Assistant to the Administrator for Management Services, Agency for International Development, Washington, D.C. 20523. A copy of the appeal shall be concurrently furnished to the grant officer.

(c) In order to facilitate review on the record by the Deputy Assistant to the Administrator for Management Services, the grantee shall be given an opportunity to submit written evidence in support of its appeal. No hearing will be provided.

(d) A decision under this provision by the Deputy Assistant to the Administrator for Management services shall be final.

7. INELIGIBLE COUNTRIES (MAY 1986)

Unless otherwise approved by the AID grant 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.

8. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS (MARCH 1989)

(1) The grantee certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/propsal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) The grantee agrees that, unless authorized by the Grant Officer, it will not knowingly enter into any subagreements or contracts under this grant with a person or entity that is included on the "Lists of Parties Excluded from Federal Procurement or Nonprocurement Programs". The grantee further agrees to include the following provision in any subagreements or contracts entered into under this grant:

DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION (MARCH 1989)

The recipient/contractor certifies that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(3) The policies and procedures applicable to debarment, suspension and ineligiblity under AID-financed transactions are set forth in 22 CFR Part 208.

9. U.S. OFFICIALS NOT TO BENEFIT (NOVEMBER 1985)

No member of or delegate to the U.S. Congress or resident U.S. Commissioner shall be admitted to any share or part of this grant or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this grant if made with a corporation for its general benefit.

10. NONLIABILITY (NOVEMBER 1985)

AID does not assume liability for any third party claims for damages arising out of this grant.

11. AMEMDMENT (NOVEMBER 1985)

The grant may be amended by formal modifications to the basic grant document or by means of an exchange of letters between the grant officer and an appropriate official of the grantee.

12. NOTICES (NOVEMBER 1985)

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

To the AID grant officer, at the address specified in the grant.

To grantee, at grantee's address shown in the grant or to such other address designated within the grant.

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

(END OF MANDATORY STANDARD PROVISIONS)

REQUIRED AS APPLICABLE STANDARD PROVISIONS FOR NON-U.S., NONGOVERNMENTAL GRANTEES

The following standard provisions are required to be used when applicable. Applicability statements are contained in the parenthetical statement preceding the standard provision. When a standard provision is determined to be applicable in accordance with the applicability statement, the use of such standard provision is mandatory unless a deviation has been approved in accordance with Paragraph 1E of Chapter 1 of this Handbook. Each grant is required to have a payment provision. **Check off the provisions which are to be included in the grant. Only those standard provisions which have been checked off are included within the grant.**

1. Payment - Periodic Advance _____
2. Payment - Cost Reimbursement _____
3. Air Travel and Transportation _____
4. Ocean Shipment of Goods _____
5. Procurement of Goods and Services _____
6. AID Eligibility Rules for Goods and Services _____
7. Subagreements _____
8. Local Cost Financing _____
9. Patents Rights _____
10. Publications _____
11. Nondiscrimination _____
12. Regulations Governing Employees _____
13. Participant Training _____
14. Voluntary Population Planning _____
15. Protection of the Individual as a Research Subject _____
16. Negotiated Overhead Rates - Provisional _____
17. Government Furnished Excess Personal Property _____
18. Title To and Use of Property (Grantee Title) _____
19. Title To and Care of Property (U.S. Government Title) _____
20. Title To and Care of Property (Cooperating Country Title) _____
21. Cost Sharing (Matching) _____

(INCLUDE THIS PAGE IN THE GRANT)

(NEXT PAGE 4D-9)

PAYMENT - PERIODIC ADVANCE (NOVEMBER 1985)

(This provision is applicable when (1) the grantee has an acceptable accounting system (2) the grantee has the ability to maintain procedures that will minimize the time elapsing between the transfer of funds and the disbursement thereof, and (3) the grantee's financial management system meets the standards for fund control and accountability required under the standard provision of this agreement entitled "Accounting, Audit, and Records".)

(a) AID funds shall not be commingled with other grantee owned or controlled funds. The grantee shall deposit all AID cash advances in a separate bank account and shall make all disbursements for goods and services from this account.

(b) Each quarter, after the initial cash advance, the grantee shall submit to the AID Controller, identified in the schedule, voucher SF 1034 (original) and SF 1034-A (three copies), entitled "Public Voucher for Purchases and Services Other Than Personal", copies of which are attached.

(c) Each voucher shall be identified by the appropriate grant number and shall be accompanied by an original and three copies of a report in the following format:

FEDERAL CASH ADVANCE STATUS REPORT
(Report Control No. W-245)

A. Period covered by this report:

FROM (Month, day, year) _____
TO (Month, day, year) _____

Period covered by the next report:
FROM (Month, day, year) _____
TO (Month, day, year) _____

B. Cash Advance Use and Needs:

1. Cash advance on hand at the beginning of this reporting period ..... $ _____

2. U.S. Treasury check advance(s) received during this reporting period..... $ _____

3. Interest earned on cash advance during this reporting period..... $ _____

4. GROSS cash advance available during this reporting period (Lines 1, 2, & 3).....$ _____

5. LESS, interest remitted to AID during this reporting period..... $ _____

6. NET cash advance available during this reporting period (Line 4 minus Line 5)..... $ _____

7. Total disbursements during this reporting period, including subadvances (see footnote 1)..... $ _____

8. Amount of cash advances available at the end of this reporting period (Line 6 minus Line 7)..... $ _____

9. Projected disbursements, including subadvances, for the next reporting period (see footnote 2)..... $ _____

10. Additional cash advance requested for the next reporting period (Line 9 minus Line 8)..... $ _____

11. Total interest earned on cash advance from the start of the grant to the end of this reporting period, but not remitted to AID ..... $ _____

12. Total cash advances to subgrantees, if any, as of the end of this reporting period..... $ _____

FOOTNOTES:

1. The grantee shall submit a cumulative detailed report of disbursements by BUDGET line item quarterly.

2. The grantee shall attach a Summary, by BUDGET line item, of its projected disbursements for the next reporting period.

C. Certification:

The undersigned hereby certifies: (1) that the amount in paragraph B.9 above represents the best estimate of funds needed for the disbursements to be incurred over the period described, (2) that appropriate refund or credit to the grant will be made in the event of disallowance in accordance with the terms of the grant, (3) that appropriate refund or

credit to the grant will be made in the event funds are not expended, and (4) that any interest accrued on the funds made available herein will be refunded to AID.

DATE _____ BY _____

TITLE _____

(END OF STANDARD PROVISION)

(NEXT PAGE 4D-13)

PAYMENT - COST REIMBURSEMENT (MAY 1986)

(This provision is applicable to grants for construction or to grants where the grantee does not meet the conditions for periodic advance payment.)

(a) The grantee shall submit to the AID Controller an original and 3 copies of SF 1034, "Public Voucher for Purchases and Services Other Than Personal" and SF 1034A, Continuation of SF 1034, on a monthly basis and in no event no later than on a quarterly basis. Each voucher shall be identified by the grant number and shall state the total costs for which reimbursement is being requested.

(b) Copies of SF 1034 and 1034A are attached.

(END OF STANDARD PROVISION)

(NEXT PAGE 4D-15)

AIR TRAVEL AND TRANSPORTATION (MAY 1986)

(This provision is applicable when any costs for air travel or transportation are included in the budget.)

(a) The grantee is required to present to the project officer for written approval an itinerary for each planned international trip financed by this grant, which shows the name of the traveler, purpose of the trip, origin/destination (and intervening stops), and dates of travel, as far in advance of the proposed travel as possible, but in no event less than three weeks before travel is planned to commence. At least one week prior to commencement of approved international travel, the grantee shall notify the cognizant mission, with a copy to the project officer, of planned travel, identifying the travelers and the dates and times of arrival.

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

(c) All air travel and shipments under this grant are required to be made on U.S. flag air carriers to the extent service by such carriers is available. A U.S. flag air carrier is defined as an air carrier which has a certificate of public convenience and necessity issued by the U.S. Civil Aeronautics Board authorizing operations between the U.S. and/or its territories and one or more foreign countries.

(d) Use of foreign air carrier service may be deemed necessary if a U.S. flag air carrier cannot provide the foreign air transportation needed, or if use of such service will not accomplish the agency's mission. Travel and transportation on non-free world air carriers are not reimburseable under this grant.

(e) U.S. flag air carrier service is considered available even though:

(1) Comparable or a different kind of service can be provided at less cost by a foreign air carrier;

(2) Foreign air carrier service is preferred by or is more convenient for the agency or traveler; or

(3) Service by a foreign air carrier can be paid for in excess foreign currency, unless U.S. flag air carriers decline to accept excess or near excess foreign currencies for transportation payable only out of such monies.

(f) Except as provided in paragraph (b) of this section, U.S. flag air carrier service must be used for all Government-financed commercial foreign air travel if service provided by such carriers is available. In determining availability of a U.S flag air carrier, the following scheduling principles should be followed unless their application results in the last or first leg of travel to or from the U.S. being performed by a foreign air carrier:

(1) U.S. flag air carrier service available at point of origin should be used to destination or in the absence of direct or through service to the farthest interchange point on a usually traveled route;

(2) Where an origin or interchange point is not served by U.S flag air carrier, foreign air carrier service should be used only to the nearest interchange point on a usually traveled route to connect with U.S. flag air carrier service; or

(3) Where a U.S. flag air carrier involuntarily reroutes the traveler via a foreign air carrier the foreign air carrier may be used notwithstanding the availability of alternative U.S. flag air carrier service.

(g) For travel between a gateway airport in the United States (the last U.S. airport from which the traveler's flight departs or the first U.S. airport at which the traveler's flight arrives) and a gateway airport abroad (that airport from which the traveler last embarks enroute to the U.S. or at which the traveler first debarks incident to travel from the U.S.) passenger service by U.S. flag air carrier will not be considered available:

(1) Where the gateway airport abroad is the traveler's origin or destination airport, and the use of U.S. flag air carrier service would extend the time in a travel status, including delay at origin and accelerated arrival at destination, by at least 24 hours more than travel by foreign air carrier:

(2) Where the gateway airport abroad is an interchange point, and the use of U.S. flag air carrier service would require the traveler to wait six hours or more to make connections at that point, or delayed

departure from or accelerated arrival at the gateway airport in the U.S. would extend the time in a travel status by at least six hours more than travel by foreign air carrier.

(h) For travel between two points outside the U.S. the rules in paragraphs (d) through (f) of this section will be applicable, but passenger service by U.S. flag air carrier will not be considered to be reasonably available:

(1) If travel by foreign air carrier would eliminate two or more aircraft changes enroute;

(2) Where one of the two points abroad is the gateway airport (as defined in paragraph (g) of this section) enroute to or from the U.S., if the use of a U.S. flag air carrier would extend the time in a travel status by at least six hours more than travel by foreign air carrier including accelerated arrival at the overseas destination or delayed departure from the overseas origin as well as delay at the gateway airport or other interchange point abroad; or

(3) Where the travel is not part of a trip to or from the U.S.; if the use of a U.S. flag air carrier would extend the time in a travel status by at least six hours more than travel by foreign air carrier including delay at origin, delay enroute and accelerated arrival at destination.

(i) When travel under either paragraph (g) or (h) of this section involves three hours or less between origin and destination by a foreign air carrier, U.S. flag air carrier service will not be considered available when it involves twice such travel time or more.

(j) Nothing in the above guidelines shall preclude and no penalty shall attend the use of a foreign air carrier which provides transportation under an air transport agreement between the United States and a foreign government, the terms of which are consistent with the international aviation policy goals set forth at 49 U.S.C. 1502(b) and provide reciprocal rights and benefits.

(k) Where U.S. Government funds are used to reimburse the grantee's use of other than U.S. air flag carriers for international transportation, the grantee will include a certification on vouchers involving such transportation which is essentially as follows:

"CERTIFICATION OF UNAVAILABILITY OF U.S. FLAG AIR CARRIERS

I hereby certify that the transportation service for personnel (and their personal effects) or property by certificated air carrier was unavailable for the following reason(s): (State appropriate reason(s) as set forth above)."

(l) International Travel

(1) As used herein, the term "international travel" includes travel to all countries other than travel within the home country of the grantee.

(2) The grantee will be reimbursed for travel and the reasonable cost of subsistence, post differentials and other allowances paid to employees in an international travel status in accordance with the grantee's established policies and practices which are uniformly applied to federally financed and other activities of the grantee. The standard for determining the reasonableness of reimbursement for overseas allowance is 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 grant officer.

(m) This provision will be included in all subagreements and contracts which require air travel and transportation under this grant.

(END OF STANDARD PROVISION)

OCEAN SHIPMENT OF GOODS (MAY 1986)

(This provision is applicable when goods purchased with funds provided under this grant are transported to cooperating countries on ocean vessels.)

(a) At least 50% of the gross tonnage of all goods purchased under this grant 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 for such vessels.

(b) At least 50% of the gross freight revenue generated by shipments of goods purchased under this grant 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 grantee may request a determination of non-availability from the AID Transportation Support Division, Office of Procurement, Washington, D.C. 20523, giving the basis for the request which will relieve the grantee 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 reimburseable under this grant.

(d) Vouchers submitted for reimbursement which include ocean shipment costs shall contain a certification essentially as follows:

"I hereby certify that a copy of each ocean bill of lading concerned has been submitted to the U.S. Department of Transportation, Maritime Administration, Division of National Cargo, 400 7th Street, S.W., Washington, D.C. 20590, and that such bills of lading state all of the carrier's charges including the basis for calculation such as weight or cubic measurement."

(END OF STANDARD PROVISION)

(NEXT PAGE 4D-21)

PROCUREMENT OF GOODS AND SERVICES (MAY 1986)

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

The grantee may use its own procurement policies and practices for the procurement of goods and services under this grant, provided they conform to all of AID's requirements listed below and the standard provision entitled "AID Eligibility Rules For Goods and Services".

(a) General Requirements:

(1) The recipient shall maintain a code or standards of conduct that shall govern the performance of its officers, employees or agents engaged in the awarding and administration of contracts using AID funds. Conflict of interest situations involving employees, officers or agents or their immediate families shall be avoided. The recipients' officers, employees or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors or potential contractors. Such standards shall provide for disciplinary actions to be applied for violations of such standards by the recipients' officers, employees or agents.

(2) All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. The recipient should be alert to organizational conflicts of interest or noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or requests for proposals should be excluded from competing for such procurements. Awards shall be made to the offeror whose offer is responsive/responsible to the solicitation and is most advantageous to the recipient, price and other factors considered. Solicitations shall clearly set forth all requirements that the offeror must fulfill in order to be evaluated by the recipient. Any and all offers may be rejected when it is in the recipient's interest to do so.

(3) All grantees shall establish procurement procedures that provide for, at a minimum, the following procedural requirements:

(i) Proposed procurement actions shall follow a procedure to assure the avoidance of purchasing unnecessary items.

(ii) Solicitations for goods and services shall be based upon a clear and accurate description of the technical requirements for the material, product or service to be procured. Such a description shall not, in competitive procurements, contain features which unduly restrict competition.

(iii) Positive efforts shall be made by the recipients to utilize U.S. small business and minority owned business sources of supplies and services. Such efforts should allow these sources the maximum feasible opportunity to compete for contracts utilizing AID funds. The grantee shall to the maximum extent possible provide the following information to the Office of Small Disadvantaged Business Utilization, AID, Washington, D.C. 20523, at least 45 days prior (except where a shorter time is requested of and granted by the Office of Small and Disadvantaged Business Utilization) to placing any order or contract in excess of $25,000:

(A) Brief general description and quantity of goods or services;

(B) Closing date for receiving quotations or proposals; and

(C) Address where solicitations and specifications can be obtained.

(iv) The type of procuring instruments used, e.g. fixed price contracts, cost reimbursable contracts, purchase orders, incentive contracts, shall be determined by the recipient but must be appropriate for the particular procurement and for promoting the best interest of the program involved. In those instances where a cost type contract authorizes a fee, a fixed amount will be used in lieu of a percentage of cost.

(v) Contracts shall be made only to responsible contractors who possess the potential ability to perform successfully under the terms and conditions of a proposed contract. Consideration shall be given to such matters as integrity, record of past performance, financial and technical resources or accessibility to other necessary resources. Contracts shall not be made to firms or individuals whose name appears on the AID Consolidated List of Debarred, Suspended, and Ineligible Awardees. AID will provide the grantee with a copy of this list upon request.

(vi) All proposed sole source contracts or where only one proposal is received in which the aggregate expenditure is expected to exceed $10,000 shall be subject to prior approval by an appropriate official within the grantee's organization.

(vii) Some form of price or cost analysis should be made in connection with every procurement action. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, and market prices, together with discounts. Cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability and allowability.

(viii) Procurement records and files for purchases in excess of $10,000 shall include the following:

(A) Basis for contractor selection;

(B) Justification for lack of competition when competitive offers are not obtained;

(C) Basis for award: cost or price.

(ix) A system for contract administration shall be maintained to ensure contractor conformance with terms, conditions and specifications of the contract, and to ensure adequate and timely followup of all purchases.

(b) Each contract and subcontract shall contain in addition to provisions to define a sound and complete contract, the following contract provisions as well as any provision within this grant which requires such inclusion of that provision. Whenever a provision is required to be inserted in a contract under this grant, the grantee shall insert a statement in the contract that in all instances where AID is mentioned the grantee's name shall be substituted.

(1) Contracts in excess of $10,000 shall contain contractual provisions or conditions that will allow for administrative, contractual or legal remedies in instances in which contractors violate or breach contract terms, and provide for such remedial actions as may be appropriate.

(2) All contracts in excess of $10,000 shall contain suitable provisions for termination by the recipient including the manner by which termination will be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(3) All negotiated contracts over $10,000 awarded by recipients shall include a provision to the effect that **the recipient, AID or their duly authorized representatives**, shall have access to any books, documents, papers and records of the contractor which are directly pertinent to the specific program for the purpose of making audits, examinations, excerpts and transcriptions.

(4) In all contracts for construction or facility improvement awarded for more than $100,000, recipients shall observe generally accepted bonding requirements.

(5) Contracts, the principal purpose of which is to create, develop or improve products, processes or methods; or for exploration into fields that directly concern public health, safety or welfare; or contracts in the fields of science or technology in which there has been little significant experience outside of work funded by Federal assistance, shall contain a notice to the effect that matters regarding rights to inventions and materials generated under the contract are subject to the regulations included in these grant provisions. The contractor shall be advised as to the source of additional information regarding these matters.

(END OF STANDARD PROVISION)

AID ELIGIBILITY RULES FOR GOODS AND SERVICES (MAY 1986)

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

(a) Ineligible and Restricted Goods and Services: If AID determines that the grantee has procured any of the restricted or ineligible goods and services specified below, or has procured goods and services from unauthorized sources, and has received reimbursement for such purpose without the prior written authorization of the grant officer, the grantee agrees to refund to AID the entire amount of the reimbursement.

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

(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 grant shall not be used to procure any goods or services furnished by any firm or individual whose name appears on AID's Consolidated List of Debarred, Suspended or Ineligible Awardees (AID Regulation 8 (22 CFR 208)). AID will provide the grantee with this list upon request.

(3) Restricted Goods. The grantee shall not procure any of the following goods and services without the prior written authorization of the grant officer:

(i) Agricultural commodities,

(ii) Motor vehicles,

(iii) Pharmaceuticals,

(iv) Pesticides,

(v) Rubber compounding chemicals and plasticizers,

(vi) Used equipment,

(vii) U.S. Government-owned excess property, or

(viii) Fertilizer.

(b) Source, Origin, and Nationality: The eligibility rules for goods and services are based on source, origin, and nationality and are divided into the two categories. One applies when the total procurement during the life of the grant is over $250,000 and the other applies when the total procurement element during the life of the grant is not over $250,000. 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 grant officer. AID policies on source, origin, and nationality are contained in Chapters 4 and 5 of AID Handbook 1, Supplement B, (Procurement Policies).

(1) When the total procurement element during the life of this grant is valued at $250,000 or less, the following rules apply:

(i) All goods and services, the costs of which are to be reimbursed under this grant and which will be financed with U.S. dollars, shall be purchased in and shipped from only "Special Free World" countries (i.e., AID Geographic Code 935) in accordance with the following order of preference:

(A) The United States (AID Geographic code 000),

(B) The Cooperating Country,

(C) Selected Free World countries (AID Geographic Code 941),

(D) Special Free World countries (AID Geographic Code 935).

(ii) Application of Order of Preference: When the grantee procures goods and services from other than U.S. sources, under the order of preference in paragraph (b)(1)(ii) above, the grantee 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 grantee'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) Impelling 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 grant.

(2) When the total procurement element exceeds $250,000, the following rule applies: Except as may be specifically approved or directed in advance by the grant officer, all goods and services, which will be reimbursed under this grant and financed with U.S. dollars, shall be procured in and shipped from the U.S. (Code 000) and from any other countries within the authorized geographic code as specified in the schedule of this grant.

(c) Marine Insurance: The eligibility of marine insurance is determined by the country in which it is placed. Insurance is placed in a country if payment of the insurance premium is made to and the insurance policy is issued by an insurance company located in that country. Eligible countries for placement are governed by the authorized geographic code, except that if Code 941 is authorized, the Cooperating Country is also eligible. Section 604(d) of the Foreign Assistance Act requires that if a recipient country discriminates by statute, decree, rule, or practice with respect to AID-financed procurement against any marine insurance company authorized to do business in the U.S., then any AID-financed commodity shipped to that country shall be insured against marine risk and the insurance shall be placed in the U.S. with a company or companies authorized to do marine insurance business in the U.S.

(d) Ocean and air transportation shall be in accordance with the applicable provisions contained within this grant.

(e) 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 AID 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 (AID Geographic code 000),

(2) The Cooperating Country,

(3) Selected Free World countries (AID Geographic Code 941),

(4) Free World countries (AID Geographic Code 899).

(f) Special Restrictions on the Procurement of Construction or Engineering Services: Section 604(g) of the Foreign Assistance Act provides that AID funds may not be used for "procurement of construction or engineering services from advanced developing countries, eligible under Geographic Code 941, which have attained a competitive capability in international markets for construction services or engineering services." In order to insure eligibility of a Code 941 contractor for construction or engineering services, the grantee shall obtain the grant officer's prior approval for any such contract.

(END OF STANDARD PROVISION)

SUBAGREEMENTS (MAY 1986)

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

(a) Awards 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 AID Consolidated List of Debarred, Suspended, and Ineligible Awardees. AID will provide the grantee with a copy of this list upon request.

(b) All subagreements shall as a minimum contain in addition to provisions to define a sound and complete agreement, the following provisions as well as any that are specifically required by any other provision in this grant. Whenever a provision within this grant is required to be inserted in a subagreement, the grantee shall insert a statement in the subagreement that in all instances where AID is mentioned, the grantee's name will be substituted.

(1) Subagreements in excess of $10,000 shall contain provisions or conditions that will allow for administrative or legal remedies in instances where subrecipients violate subagreement terms and provide for such remedial action as may be appropriate.

(2) All subagreements in excess of $10,000 shall contain suitable provisions for termination by the recipient including the manner by which termination will be effected and the basis for settlement. In addition, such subagreements shall describe conditions under which the subagreement may be terminated for default as well as conditions where the subagreement may be terminated because of circumstances beyond the control of the subrecipient.

(3) All subagreements over $10,000 issued by recipients shall include a provision to the effect that the recipient, AID, or their duly authorized representatives, shall have access to any books, documents, papers and records of the subrecipient which are directly pertinent to the specific program for the purpose of making audits, examinations, excerpts and transcriptions.

(4) Subagreements, the principal purpose of which is to create, develop or improve products, processes or methods; or for exploration into

fields that directly concern public health, safety or welfare; or subagreements in the field of science or technology in which there has been little significant experience outside of work funded by Federal assistance, shall contain a notice to the effect that matters regarding rights to inventions and materials generated under the subagreement are subject to the regulations contained in the provisions of this grant. The subrecipient shall be advised as to the source of additional information regarding these matters.

(END OF STANDARD PROVISION)

* LOCAL COST FINANCING (NOVEMBER 1988)

(This provision applies only when local costs are authorized by the grant, and must be used with the standard provision entitled "Procurement of Goods and Services.")

(a) Costs qualifying as local costs are eligible for financing under the grant in accordance with the terms of this standard provision. Local costs are defined as (1) indigenous goods, (2) imported shelf items, and (3) services provided by suppliers meeting the requirements contained in subparagraph (b). Indigenous goods are those that have been mined, grown or produced in the cooperating country through manufacture, processing or assembly. In the case of produced goods containing imported components, to qualify as indigenous a commercially recognized new commodity must result that is substantially different in basic characteristics or in purpose or utility from its components. Imported items are eligible for financing under the following situations: (1) Imported items available in the cooperating country which otherwise meet the source/origin requirements of the grant may be financed in unlimited quantities, regardless of dollar value, up to the total amount available for local procurement under the terms of the grant agreement. (2) Imported items from Geographic Code 941 countries which are vailable in the cooperating country can be funded in unlimited quantities, regardless of dollar value, up to the total amount available for local procurement under the terms of the grant. (3) Imported items from any Free World country which are available locally, or imported specifically for the grant, may be financed if the cost of the transaction, excluding the cost of the transportation, does not exceed the local currency equivalent of $5,000. *

(b) To qualify as local costs, goods and services must also meet the following additional requirements:

(1) They must be paid for in local currency.

(2) The supplier must be located in the cooperating country and must be of cooperating country nationality as defined in AID Handbook 1B, Chapter 5.

(3) Any component from a country not included in AID geographic code 935 renders a commodity ineligible for financing.

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* Revised

(c) Ineligible Goods and Services: Under no circumstances shall the grantee procure any of the following under this grant:

(1) Military equipment,

(2) Surveillance equipment,

(3) Commodities and services for support of police or other law enforcement activities,

(4) Abortion equipment and services,

(5) Luxury goods and gambling equipment, or

(6) Weather modification equipment.

(d) Ineligible Suppliers: Funds provided under this grant shall not be used to procure any goods or services furnished by any firm or individual whose name appears on AID's Consolidated List of Debarred, Suspended, or Ineligible Awardees (AID Regulation 8, (22 CFR 208)). AID will provide the grantee with this list upon request.

(e) Restricted Goods: The grantee shall not procure any of the following goods and services without the prior written authorization of the grant officer:

(1) Agricultural commodities,

(2) Motor vehicles,

(3) Pharmaceuticals,

(4) Pesticides,

(5) Rubber compounding chemicals and plasticizers,

(6) Used equipment,

(7) U.S. Government-owned excess property, or

(8) Fertilizer.

(f) IF AID determines that the grantee has procured any of the restricted or ineligible goods and services specified in subparagraphs (c) through (e) above, or has received reimbursement for such purpose without the prior written authorization of the grant officer, the grantee agrees to refund to AID the entire amount of the reimbursement.

(END OF STANDARD PROVISION)

(NEXT PAGE 4D-35)

PATENT RIGHTS (MAY 1986)

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

(a) Definitions:

(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 AID within two months after the inventor discloses it in writing to recipient personnel responsible for patent matters. The disclosure to AID 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 AID the recipient shall promptly notify AID 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 AID within twelve months of disclosure to the recipient, provided that 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 AID to a date that is no more than 60 days prior to the end of the statutory period.

(3) The recipient shall file its initial patent application on an elected invention within two years after election or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The recipient shall file patent applications in additional countries within either ten months of the corresponding initial patent application or six months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(4) Requests for extension of the time for disclosure to AID, election, and filing may, at the discretion of AID, be granted.

(d) Conditions When the Government May Obtain Title: The recipient shall convey to AID upon written request, title to any subject invention:

(1) If the recipient fails to disclose or elect the subject invention within the times specified in (c) above, or elects not to retain title, AID may only request title within sixty days after learning of the recipient's failure to report or elect within the specified times.

(2) In those countries in which the recipient fails to file patent applications within the times specified in (c) above; provided, however, that if the recipient has filed a patent application in a country after the times specified in (c) above, but prior to its receipt of the written request of AID the recipient shall continue to retain title in that country.

(3) In any country in which the recipient decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on a patent on a subject invention.

(e) Minimum Rights to Recipient:

(1) The recipient shall retain a nonexclusive, royalty-free license throughout the world in each subject invention to which the Government obtains title except if the recipient fails to disclose the subject invention within the times specified in (c) above. The recipient's license extends to its subsidiaries and affiliates, if any, within the corporate structure of which the recipient is a party and includes the right to grant sublicenses of the same scope to the extent the recipient was legally obligated to do so at the time the agreement was awarded. The license is transferable only with the approval of AID except when transferred to the successor of that party of the recipient's business to which the invention pertains.

(2) The recipient's license may be revoked or modified by AID to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions in the Federal Property Management Regulations and agency licensing regulations (if any). This license shall not be revoked in that field of use or the geographical areas in which the recipient has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of AID to the extent the recipient, its licensees, or its subsidiaries or affiliates have failed to achieve practical application.

(3) Before revocation or modification of the license, AID shall furnish the recipient written notice of its intention to revoke or modify the license, and the recipient shall be allowed thirty days (or such other time as may be authorized by AID for good cause shown by the recipient) after the notice to show cause why the license should not be revoked or modified. The recipient has the right to appeal, in accordance with applicable agency licensing regulations (if any) and the Federal Property Management Regulations concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of its license.

(f) Recipient Action to Protect the Government's Interest:

(1) The recipient agrees to execute or to have executed and promptly deliver to AID all instruments necessary to (i) establish or conform the rights the Government has throughout the world in those subject inventions to which the recipient elects to retain title, and (ii) convey title to AID when requested under paragraph (d) above, and to enable the Government to obtain patent protection throughout the world in that subject invention.

(2) The recipient agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the recipient each subject invention made under agreement in order that the recipient can comply with the disclosure provisions of paragraph (c) above, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by (c)(1) above. The recipient shall instruct such employees through employee agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) The recipient shall notify AID of any decision not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than 30 days before the expiration of the response period required by the relevant patent office.

(4) The recipient agrees to include, within the specification of any United States patent application and any patent issuing thereon covering a subject invention, the following statement: "This invention was made with Government support under (identify the agreement awarded by AID). The Government has certain rights in this invention."

(g) Subagreements and Contracts: The recipient shall include this standard provision suitably modified to identify the parties, in all subagreements and contracts, regardless of tier, for experimental, developmental, or research work to be performed by a small business firm or nonprofit organization. The subrecipient or contractor shall retain all rights provided for the recipient in this standard provision, and the recipient shall not, as part of the consideration for awarding the contract or subagreement, obtain rights in the contractor's or subrecipient's subject inventions.

(h) Reporting Utilization of Subject Inventions: The recipient agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the recipient or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the recipient, and such other data and information as AID may reasonably specify. The recipient also agrees to provide additional reports as may be requested by AID in connection with any march-in proceedings undertaken by AID in accordance with paragraph (j) of this provision. To the extent data or information supplied under this section is considered by the recipient, its licensee or assignee to be privileged and confidential and is so marked, AID agrees that, to the extent permitted by law, it shall not disclose such information to persons outside the Government.

(i) Preference for United States Industry: Notwithstanding any other provision of this clause, the recipient agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any products embodying the subject invention shall be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by AID upon a showing by the recipient or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances manufacture in the United States is not commercially feasible.

(j) March-in Rights: The recipient agrees that with respect to any subject invention in which it has acquired title, AID has the right to require the recipient, an assignee or exclusive licensee of a subject invention to grant a non-exclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the recipient, assignee, or exclusive licensee refuses such a request, AID has the right to grant such a license itself if AID determines that:

(1) Such action is necessary because the recipient or assignee has not taken or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;

(2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the recipient, assignee, or their licensees;

(3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the recipient, assignee, or licensees; or

(4) Such action is necessary because the agreement required by paragraph (i) of this clause has not been obtained or waived or because a license of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

(k) Special Provisions for Agreements with Nonprofit Organizations: If the recipient is a nonprofit organization, it agrees that:

(1) Rights to a subject invention may not be assigned without the approval of AID, except where such assignment is made to an organization which has as one of its primary functions the management of inventions and which is not, itself, engaged in or does not hold a substantial interest in other organizations engaged in the manufacture or sale of products or the use of processes that might utilize the invention or be in competition with embodiments of the invention provided that such assignee shall be subject to the same provisions as the recipient.

(2) The recipient may not grant exclusive licenses under the United States patents or patent applications in subject inventions to persons other than small business firms for a period in excess of the earlier of:

(i) Five years from first commercial sale or use of the invention; or

(ii) Eight years from the date of the exclusive license excepting that time before regulatory agencies necessary to obtain premarket clearance, unless on a case-by-case basis, AID approves a longer exclusive license. If exclusive field of use licenses are granted, commercial sale or use in one field of use shall not be deemed commercial sale or use as to other fields of use and a first commercial sale or use with respect to a product of the invention shall not be deemed to end the exclusive period to different subsequent products covered by the invention.

(3) The recipient shall share royalties collected on a subject invention with the inventor; and

(4) The balance of any royalties or income earned by the recipient with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions, shall be utilized for the support of scientific research or education.

(l) Communications: Communications concerning this provision shall be addressed to the grant officer at the address shown in this agreement.

(END OF STANDARD PROVISION)

(NEXT PAGE 4D-43)

PUBLICATIONS (MAY 1986)

(This provision is applicable when publications are financed under the grant.)

(a) If it is the grantee's intention to identify AID's contribution to any publication resulting from this grant, the grantee shall consult with AID on the nature of the acknowledgement prior to publication.

(b) The grantee shall provide the AID project officer with one copy of all published works developed under this grant and with lists of other written work produced under the grant.

(c) In the event grant 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 grant unless the schedule of the grant has identified the profits or royalties as program income.

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

(END OF STANDARD PROVISION)

(NEXT PAGE 4D-45)

NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS (MAY 1986)

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

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 grant on the basis of race, color, national origin, age, handicap, or sex.

(END OF STANDARD PROVISION)

(NEXT PAGE 4D-47)

REGULATIONS GOVERNING EMPLOYEES (MAY 1986)

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

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

(b) The sale of personal property or automobiles by grantee 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 AID personnel employed by the Mission except as this may conflict with host government regulations.

(c) Other than work to be performed under this grant for which an employee is assigned by the grantee, no employee of the grantee 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 grantee's employees, while in a foreign country, are expected to show respect for its conventions, 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 grantee employee is not in accordance with the preceding paragraphs, the grantee's chief of party shall consult with the AID Mission Director and the employee involved and shall recommend to the grantee 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 grant 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 grantee shall use its best efforts to cause the return of such employee to the United States, or point of origin, as appropriate.

(END OF STANDARD PROVISION)

(NEXT PAGE 4D-49)

PARTICIPANT TRAINING (MAY 1986)

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

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

(b) Application of Handbook 10: Participant training under this grant is to be conducted according to the policies established in AID Handbook 10, Participant Training, except to the extent that specific exceptions to Handbook 10 have been provided in this grant with the concurrence of the Office of International Training. (Handbook 10 may be obtained by submitting a request to the grant officer.) Except for paragraph (h) on orientation, the following paragraphs in this standard provision are not subject to waiver except as specifically stated.

(c) Participant Training Information System: All grantees shall ensure that participants trained in the United States or in a third country are included in the Agency's Participant Training Information System.

The grantee shall fill out form AID 1381-4 entitled "Participant Data" and send it to the addresses indicated on the back of the form. The grantee can obtain a supply of these forms and additional instructions for completing them from the grant officer. Data should be submitted prior to the initiation of participant travel. If this is not possible, the forms should be prepared and submitted immediately after arrival of the participant(s). The grantee shall also submit to the grant officer a blue copy of the form when subsequent changes in the participant's training program are made and at termination of the participant's training program, ensuring that the original participant number (pre-printed on the form) is used.

(d) Visa Requirements For Training Within The United States:

(1) AID-sponsored participants are admitted to the United States under the Department of State/USIA Exchange Visitor Program and are issued J-1 visas. The program identification number is G-2-0263.

(2) J-1 visas are issued by the U.S. Embassy or Consulate for AID-sponsored participants upon submission by the participant of Form IAP-66A which may be obtained only from the AID Mission. The Mission retains one copy of the IAP-66A and forwards one copy to AID/S&T/IT.

(3) Holders of J-1 visas are subject to the Immigration and Nationality Act, as amended, and may not apply for an immigrant or an H or L nonimmigrant visa until 2 years' residency is completed in their home country, after completion of training.

(4) Participant passports and visas should normally be valid for six months beyond the duration of the proposed program to allow for program readjustments if necessary. This may not be regarded as an opportunity to encourage program extensions.

(e) Maintenance and Other Allowances: Grantees must observe the maintenance and other allowances for AID-sponsored participants in the United States and third countries as set forth in Handbook 10. No exceptions or variations are permissible except with the advance concurrence of the Office of International Training.

(f) Health and Accident Coverage (HAC) Program For Training Within The United States: The grantee shall enroll all participants training in the U.S. in AID's HAC Program. HAC Program coverage for an enrolled participant begins at the moment of departure from the host country to the U.S. until the moment of return to the host country providing, however, that there is not substantial unapproved delay between completion of training under this grant and their return, and that there is no layover at any point to or from the U.S. except the minimal amount necessary for plane connections.

(1) The HAC Program enables the participant, or the provider of medical services, to submit bills for medical costs resulting from illness and accident to the HAC Claims Office which pays all reasonable and necessary medical charges for covered services not otherwise covered by other insurance programs (see paragraph 6 below), in accordance with the standard coverage established by AID under the HAC Program.

(2) The grantee shall, as early as possible and no later than the initiation of travel to the United States by each participant financed by AID under this grant, fill out AID Form 1381-4 entitled "Participant Data Form" and mail it to the grant officer, who shall transmit it to the addressees indicated on the back of the form. The grantee can obtain a supply of these forms and instructions for completing them from the grant officer.

(3) Enrollment fees shall be submitted, thirty days prior to the beginning of each new enrollment period. The current enrollment fee amount shall be obtained from the grant officer. Payments will be made via check made payable to AID and submitted to:

Agency for International Development
Office of Financial Development
Central Accounting Division-Cashier (FM/CAD)
Washington, D.C. 20523

(i) The enrollment fee shall be accompanied by a letter which lists the names of the enrollees (identical to that on the Participant Data Form) period of coverage, fee amount paid, grant number, and the U.S. Government appropriation number as shown on the grant cover letter.

(ii) The enrollment fees shall be calculated on the basis of fixed rates per participant per each 30 day period. The enrollment fees may not be prorated for fractional periods of less than 30 days and should cover the current training period for which funds are obligated under the grant.

(4) The grantee shall assure that enrollment begins immediately upon the participant's departure for the U.S. for the purpose of participating in a training program financed or sponsored by AID, and that enrollment continues in full force and effect until the participant returns to his or her country of origin or is released from AID's responsibility, whichever occurs first.

(5) The grantee shall provide each participant with a copy of the HAC brochure, copies of which are available from the grant officer.

(6) If the grantee has a mandatory, nonwaivable health and accident insurance program for participants, the costs of such insurance will be allowable under this grant. Any claims eligible under such insurance will not be payable under AID's HAC plan or under this grant. However, even though the participant is covered by the grantee's mandatory, nonwaivable health and accident insurance program, the participant must be enrolled in AID's HAC Program. In addition, a copy of the mandatory insurance policy must be forwarded to the grant officer, who will forward it to the HAC Claims Office.

(7) Medical costs not covered by the grantee's health service program or mandatory, nonwaivable health and accident insurance program, or AID's HAC Program shall not be reimbursable under this grant unless specific written approval from the grant officer has been obtained.

(g) Participant Counseling For Training Within The U.S.: Problems involving participants such as serious physical or emotional illness, accident or injury, arrest, death, the voluntary or involuntary early termination of a program, and the refusal of a participant to return to the home country upon completion of the program should be referred to the AID Participant Counselor at the Office of International Training.

The Counselor can be reached by calling the Office of International Training during workdays and the AID Duty Officer (202-647-1512) at other times. In referring cases, give the Counselor the name, country, and current location of the participant as well as a brief description of the problem with names and telephone numbers of hospitals, physicians, attorneys, etc. Following verbal referral, the participant's name, home address, and next of kin, and location of training should be sent to the grant officer, who will transmit the information to the S&T/IT Counselor.

(h) Orientation: In addition to the above mandatory requirements for all participants, grantees are strongly encouraged to provide, in collaboration with the Mission training officer, predeparture orientation (see Chapter 13 of Handbook 10) and orientation in Washington at the Washington International Center (see Chapter 18D of Handbook 10). 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 grant officer, who will transmit the request to NCIV through S&T/IT.

(END OF STANDARD PROVISION)

VOLUNTARY POPULATION PLANNING (AUGUST 1986)

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

(a) Voluntary Participation:

(1) The grantee agrees to take any steps necessary to ensure that funds made available under this grant 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 grantee 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 agreement, 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) Voluntary Participation Requirements For Sterilization Programs:

(1) None of the funds made available under this grant 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 person to practice sterilization.

(2) The grantee shall ensure that any surgical sterilization procedures supported in whole or in part by funds from this grant are performed only after the individual has voluntarily gone to 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 grantee 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 the oral explanation shall be acknowledged by the patient's mark on the certification and by the signature or mark of a witness who shall be of the same sex and speak the same language as the patient.

(4) Copies of informed consent forms and certification documents for each voluntary sterilization procedures must be retained by the grantee for a period of three years after performance of the sterilization procedure.

(c) Prohibition on Abortion-Related Activities:

(1) No funds made available under this grant will 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 them to have abortions; (iii) payments to persons to perform abortions or to solicit persons 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 grant will be used to pay for any biomedical research which relates, in whole or in part, to methods of, or the 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.

(d) Ineligibility of Foreign Nongovernmental Organizations That Perform or Actively Promote Abortion As a Method of Family Planning:

(1) The recipient certifies that it does not now and will not during the term of this grant perform or actively promote abortion as a method of family planning in AID-recipient countries or provide financial support to any other foreign nongovernmental organization that conducts such activities. For purposes of this paragraph (d), a foreign nongovernmental organization is a nongovernmental organization which is not organized under the laws of any State of the United States, the District of Columbia or the Commonwealth of Puerto Rico.

(2) The recipient agrees that the authorized representatives of AID may, at any reasonable time, (i) inspect the documents and materials maintained or prepared by the recipient in the usual course of its operations that describe the family planning activities of the recipient, including reports, brochures and service statistics; (ii) observe the family planning activity conducted by the recipient; (iii) consult with family planning personnel of the recipient; and (iv) obtain a copy of the audited financial statement or report of the recipient, if there is one.

(3) In the event AID has reasonable cause to believe that the recipient may have violated its undertaking not to perform or actively promote abortion as a method of family planning, the recipient shall make available to AID such books and records and other information as AID may reasonably request in order to determine whether a violation of the undertaking has occurred.

(4) The recipient shall refund to AID the entire amount of assistance for family planning furnished under this grant in the event it is determined that the certification provided by the recipient under subparagraph (1), above, is false.

(5) Assistance for family planning to the recipient under this grant shall be terminated if the recipient violates any undertaking required by this paragraph (d), and the recipient shall refund to AID the value of any assistance furnished under this grant that is used to perform or actively promote abortion as a method of family planning.

(6) The recipient may not furnish assistance for family planning under this grant to a foreign nongovernmental organization (the subrecipient) unless (i) the subrecipient certifies in writing that it does not perform or actively promote abortion as a method of family planning in AID-recipient countries and does not provide financial support to any other foreign nongovernmental organization that conducts such activities and (ii) the recipient obtains the written agreement of the subrecipient containing the undertakings described in subparagraph (7), below.

(7) Prior to furnishing assistance for family planning under this grant to a subrecipient, the subrecipient must agree in writing that:

(i) The subrecipient will not, while receiving assistance under this grant, perform or actively promote abortion as a method of family planning in AID-recipient countries or provide financial support to other foreign nongovernmental organizations that conduct such activities.

(ii) The recipient and authorized representatives of AID may, at any reasonable time, (A) inspect the documents and materials maintained or prepared by the subrecipient in the usual course of its operations that describe the family planning activities of the subrecipient, including reports, brochures and service statistics; (B) observe the family planning activity conducted by the subrecipient; (C) consult with family planning personnel of the subrecipient; and (D) obtain a copy of the audited financial statement or report of the subrecipient, if there is one.

(iii) In the event the recipient or AID has reasonable cause to believe that a subrecipient may have violated its undertaking not to perform or actively promote abortion as a method of family planning, the recipient shall review the family planning program of the subrecipient to determine whether a violation of the undertaking has occurred. The subrecipient shall make available to the recipient such books and records and other information as may be reasonably requested in order to conduct the review. AID may also review the family planning program of the subrecipient under these circumstances, and AID shall have access to such books and records and information for inspection upon request.

(iv) The subrecipient shall refund to the recipient the entire amount of assistance for family planning furnished to the subrecipient under this grant in the event it is determined that the certification provided by the subrecipient under subparagraph (6), above, is false.

(v) Assistance for family planning to the subrecipient under this grant shall be terminated if the subrecipient violates any undertaking required by this paragraph (d), and the subrecipient shall refund to the recipient the value of any assistance furnished under this grant that is used to perform or actively promote abortion as a method of family planning.

(vi) The subrecipient may furnish assistance for family planning under this grant to another foreign nongovernmental organization (the sub-subrecipient) only if (A) the sub-subrecipient certifies in writing that it does not perform or actively promote abortion as a method of family planning in AID-recipient countries and does not provide financial support to any other foreign nongovernmental organization that conducts such activities and (B) the subrecipient obtains the written agreement of the sub-subrecipient that contains the same undertakings and obligations to the subrecipient as those provided by the subrecipient to the recipient as described in subparagraphs (7)(i)-(v), above.

(8) Agreements with subrecipients and sub-subrecipients required under subparagraphs (6) and (7) shall contain the definitions set forth in subparagraph (13) of this paragraph (d).

(9) The recipient shall be liable to AID for a refund for a violation by a subrecipient relating to its certification required under subparagraph (6) or by a subrecipient or sub-subrecipient relating to its undertakings in the agreement required under subparagraphs (6) and (7) only if (i) the recipient knowingly furnishes assistance for family planning to a subrecipient which performs or actively promotes abortion as a method of family planning, or (ii) the certification provided by a subrecipient is false and the recipient failed to make reasonable efforts to verify the validity of the certification prior to furnishing assistance to the subrecipient, or (iii) the recipient knows or has reason to know, by virtue of the monitoring which the recipient is required to perform under the terms of this grant, that a subrecipient has violated any of the undertakings required under subparagraph (7) and the recipient fails to terminate assistance for family planning to the subrecipient, or fails to require the subrecipient to terminate assistance to a sub-subrecipient which violates any undertaking of the agreement required under subparagraph (7)(vi), above. If the recipient finds, in exercising its monitoring responsibility under this grant, that a subrecipient or sub-subrecipient receives frequent requests for the information described in subparagraph (13)(iii)(A)(II), below, the recipient shall verify that this information is being provided properly in accordance with subparagraph (13)(iii)(A)(II) and shall describe to AID the reasons for reaching its conclusion.

(10) In submitting a request to AID for approval of a recipient's decision to furnish assistance for family planning to a subrecipient, the recipient shall include a description of the efforts made by the recipient to verify the validity of the certification provided by the subrecipient. AID may request the recipient to make additional efforts to verify the validity of the certification. AID will inform the recipient in writing when AID is satisfied that reasonable efforts have been made. If AID concludes that these efforts are reasonable within the meaning of subparagraph (9) above, the recipient shall not be liable to AID for a refund in the event the subrecipient's certification is false unless the recipient knew the certification to be false or misrepresented to AID the efforts made by the recipient to verify the validity of the certification.

(11) It is understood that AID also may make independent inquiries, in the community served by a subrecipient or sub-subrecipient, regarding whether it performs or actively promotes abortion as a method of family planning.

(12) A subrecipient must provide the certification required under subparagraph (6) and a sub-subrecipient must provide the certification required under subparagraph (7)(vi) each time a new agreement is executed with the subrecipient or sub-subrecipient furnishing assistance for family planning under this grant.

(13) The following definitions apply for purposes of this paragraph (d):

(i) Abortion is a method of family planning when it is for the purpose of spacing births. This includes, but is not limited to, abortions performed for the physical or mental health of the mother but does not include abortions performed if the life of the mother would be endangered if the fetus were carried to term or abortions performed following rape or incest (since abortion under these circumstances is not a family planning act).

(ii) To perform abortions means to operate a facility where abortions are performed as a method of family planning. Excluded from this definition are clinics or hospitals which do not include abortion in their family planning programs.

(iii) To actively promote abortion means for an organization to commit resources, financial or other, in a substantial or continuing effort to increase the availability or use of abortion as a method of family planning.

(A) This includes, but is not limited to, the following:

(I) Operating a family planning counseling service that includes, as part of the regular program, providing advice and information regarding the benefits and availability of abortion as a method of family planning;

(II) Providing advice that abortion is an available option in the event other methods of family planning are not used or are not successful or encouraging women to consider abortion (passively responding to a question regarding where a safe, legal abortion may be obtained is not considered active promotion if the question is specifically asked by a woman who is already pregnant, the woman clearly states that she has already decided to have a legal abortion, and the family planning counsellor reasonably believes that the ethics of the medical profession in the country requires a response regarding where it may be obtained safely);

(III) Lobbying a foreign government to legalize or make available abortion as a method of family planning or lobbying such a government to continue the legality of abortion as a method of family planning;

(IV) Conducting a public information campaign in AID-recipient countries regarding the benefits and/or availability of abortion as a method of family planning.

(B) Excluded from the definition of active promotion of abortion as a method of family planning are referrals for abortion as a result of rape, incest or if the life of the mother would be endangered if the fetus were carried to term.

(C) Action by an individual acting in the individual's own capacity shall not be attributed to an organization with which the individual is associated, provided that the organization neither endorses nor provides financial support for the action and takes reasonable steps to ensure that the individual does not improperly represent that the individual is acting on behalf of the organization.

(iv) To furnish assistance for family planning to a foreign nongovernmental organization means to provide financial support under this grant to the family planning program of the organization, and includes the transfer of funds made available under this grant or goods or services financed with such funds, but does not include the purchase of goods or services from an organization or the participation of an individual in the general training programs of the recipient, subrecipient or sub-subrecipient.

(v) To control an organization means the possession of the power to direct or cause the direction of the management and policies of an organization.

(14) In determining whether a foreign nongovernmental organization is eligible to be a recipient, subrecipient or sub-subrecipient of assistance for family planning under this grant, the action of separate nongovernmental organizations shall not be imputed to the recipient, subrecipient or sub-subrecipient, unless, in the judgment of AID, a separate nongovernmental organization is being used as a sham to avoid the restrictions of this paragraph (d). Separate nongovernmental organizations are those that have distinct legal existence in accordance with the laws of the countries in which they are organized. Foreign organizations that are separately organized shall not be considered separate, however, if one is controlled by the other. The recipient may request AID's approval to treat as separate the family planning activities of two or more organizations, which would not be considered separate under the preceding sentence, if the recipient believes, and provides a written justification to AID therefor, that the family planning activities of the organizations are sufficiently distinct as to warrant not imputing the activity of one to the other.

(15) Assistance for family planning may be furnished under this grant by a recipient, subrecipient or sub-subrecipient to a foreign government even though the government includes abortion in its family planning program, provided that no assistance may be furnished in support of the abortion activity of the government and any funds transferred to the government shall be placed in a segregated account to ensure that such funds may not be used to support the abortion activity of the government.

(e) The grantee shall insert paragraphs (a), (b), (c), and (e) of this provision in all subsequent subgrants and contracts involving family planning or population activities which will be supported in whole or part from funds under this grant. Paragraph (d) shall be inserted in subagreements and sub-subagreements in accordance with the terms of paragraph (d). The term subagreement means subgrants and subcooperative agreements.

(END OF STANDARD PROVISION)

PROTECTION OF THE INDIVIDUAL AS A RESEARCH SUBJECT
(NOVEMBER 1984)

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

(a) Safeguarding the rights and welfare of human subjects involved in research supported by AID is the responsibility of the organization to which support is awarded. It is the policy of AID that no work shall be initiated under any grant for the support of research involving human subjects unless the research is given initial and continuing review and approval by an appropriate committee of the applicant organization. This review shall assure that (1) the rights and welfare of the individuals involved are adequately protected, (2) the methods used to obtain informed consent are adequate and appropriate, and (3) the risks and potential medical benefits of the investigation are assessed.

(b) The organization must provide written assurance to AID that it will abide by this policy for all research involving human subjects supported by AID. This assurance shall consist of a written statement of compliance with the requirements regarding initial and continuing review of research involving human subjects and a description of the organization's review committee structure, its review procedures, and the facilities and personnel available to protect the health and safety of human subjects. In addition to providing the assurance, the organization must also certify to AID for each proposal involving human subjects that its committee has reviewed and approved the proposed research before any work may be initiated.

(c) Since the welfare of the subject individual is a matter of concern to AID as well as to the organization; AID advisory groups, consultants, and staff may independently review all research involving human subjects, and prohibit research which presents unacceptable hazards. This provision, however, shall not derogate in any manner from the responsibility of the organization set forth herein.

(d) All of the above provisions apply to any research involving human subjects conducted outside of the United States and, in addition, such overseas research will conform to legal and other requirements governing human research in the country where they are conducted.

(e) In addition to the procedures set forth above, studies with unmarketed drugs will be carried out in accordance with provisions applicable in the country where the study is conducted.

(f) Guidance on procedures to safeguard human subjects involved in research is found in Title 45, Part 46, of the Code of Federal Regulations. Compliance with these procedures, except as modified above, is required.

(END OF STANDARD PROVISION)

NEGOTIATED OVERHEAD RATES - PROVISIONAL (NOVEMBER 1984)

(This provision is applicable to all recipients who have an established provisional overhead rate.)

(a) An overhead rate shall be established for each of the grantee's accounting periods during the term of this grant. Pending establishment of a final rate, provisional overhead payments shall be at the rate(s), on the base(s), and for the period(s) shown in the Schedule of this grant.

(b) The grantee, not later than 6 months after the close of each of its accounting periods during the term of this grant, shall submit to the grant officer a proposed final rate(s) for the period, together with supporting cost data. Negotiation of final overhead rate(s) by the grantee and the grant officer shall be undertaken as promptly as practicable after receipt of the grantee's proposal.

(c) The results of each negotiation shall be set forth in an amendment to the grant and shall specify (1) the agreed upon final rate(s), (2) the base(s) to which the rate(s) apply, and (3) the period for which the rates apply. The overhead rate amendment shall not change any monetary ceiling, grant obligation, or specific cost allowance or disallowance provided for in this grant.

(d) To prevent substantial over or under payment, the provisional or billing rates may, at the request of either party, be revised by mutual agreement, either retroactively or prospectively. Any such revision of negotiated provisional rates provided in this provision shall be set forth in an amendment to this grant.

(e) 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".

(END OF STANDARD PROVISION)

(NEXT PAGE 4D-65)

GOVERNMENT FURNISHED EXCESS PERSONAL PROPERTY (NOVEMBER 1984)

(This provision applies when personal property is furnished under the grant.)

The policies and procedures of Handbook 16, "Excess Property," and the appropriate provisions of 41 CFR 101-43 apply to the Government furnished excess property under this grant.

(END OF STANDARD PROVISION)

(NEXT PAGE 4D-67)

TITLE TO AND USE OF PROPERTY (GRANTEE TITLE) (MAY 1986)

(This provision is applicable only when the Government vests title to property in the grantee.)

(a) Title to all property financed under this grant shall vest in the grantee.

(b) The grantee agrees to use and maintain the property for the purposes of the grant.

(c) With respect to property having an acquired value of $1,000 or more, the grantee agrees to report such items to the grant officer as they are acquired and to maintain a control system which will permit their ready identification and location.

(d) Within thirty calendar days after the end of the grant, the grantee will provide a list to the grant officer of each item that has an appraised value of $1,000 or more with a detailed proposal of what the grantee intends to do with that property. If the grant officer does not respond within 120 calendar days, the grantee may proceed with the disposition of the property. However, if the grantee uses the property for purposes other than those of the grant or sells or leases the property, AID shall be reimbursed for its share of the property unless the grant officer authorizes AID'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 AID's contribution to the grantee's program. If AID paid 100% of the grantee's costs, then AID would receive 100% of the selling cost less a nominal selling fee of $100.

(END OF STANDARD PROVISION)

(NEXT PAGE 4D-69)

TITLE TO AND CARE OF PROPERTY (U.S. GOVERNMENT TITLE) (MAY 1986)

(This provision is applicable when title to property is vested in the U.S. Government.)

(a) Property, title to which vests in the Government under this grant, whether furnished by the Government or acquired by the grantee, is subject to this provision and is hereinafter collectively referred to as "Government property." Title to Government property shall not be affected by the incorporation or attachment thereof to any property not owned by the Government, nor shall such Government property, or any part thereof, be or become a fixture or lose its identity as personal property by reason of affixation to any real property.

(b) Use of Government Property: Government property shall, unless otherwise provided herein or approved by the grant officer, be used only for the performance of this grant.

(c) Control, Maintenance and Repair of Government Property:

(1) The grantee shall maintain and administer in accordance with sound business practice a program for the maintenance, repair, protection, and preservation of Government property so as to assure its full availability and usefulness for the performance of this grant. The grantee shall take all reasonable steps to comply with all appropriate directions or instructions which the grant officer may prescribe as reasonably necessary for the protection of the Government property.

(2) The grantee shall submit, for review and written approval of the grant officer, a records system for property control and a program for orderly maintenance of Government property; however, if the grantee's property control and maintenance system has been reviewed and approved by another Federal department or agency pursuant to Attachment N of OMB Circular No. A-110, the grantee shall furnish the grant officer proof of such approval in lieu of another approval submission.

(3) Property Control: The property control system shall include but not be limited to the following:

(i) Identification of each item of Government property acquired or furnished under the grant by a serially controlled identification number and by description of item. Each item must be clearly marked "Property of U.S. Government."

(ii) The price of each item of property acquired or furnished under this grant.

(iii) The location of each item of property acquired or furnished under this grant.

(iv) A record of any usable components which are permanently removed from items of Government property as a result of modification or otherwise.

(v) A record of disposition of each item acquired or furnished under the grant.

(vi) Date of order and receipt of any item acquired or furnished under the grant.

(vii) The official property control records shall be kept in such condition that at any stage of completion of the work under this grant, the status of property acquired or furnished under this grant may be readily ascertained. A report of current status of all items of property acquired or furnished under the grant shall be submitted yearly concurrently with the annual report.

(4) Maintenance Program: The grantee's maintenance program shall be consistent with sound business practice, the terms of the grant, and provide for:

(i) disclosure of need for and the performance of preventive maintenance,

(ii) disclosure and reporting of need for capital type rehabilitation, and

(iii) recording of work accomplished under the program.

(A) Preventive maintenance - Preventive maintenance is maintenance generally performed on a regularly scheduled basis to prevent the occurrence of defects and to detect and correct minor defects before they result in serious consequences.

(B) Records of maintenance - The grantee's maintenance program shall provide for records sufficient to disclose the maintenance actions performed and deficiencies discovered as a result of inspections.

(C) A report of status of maintenance of Government property shall be submitted annually concurrently with the annual report.

(d) Risk of Loss:

(1) The grantee shall not be liable for any loss of or damage to the Government property, or for expenses incidental to such loss or damage except that the grantee shall be responsible for any such loss or damage (including expenses incidental thereto):

(i) Which results from willful misconduct or lack of good faith on the part of any of the grantee's directors or officers, or on the part of any of its managers, superintendents, or other equivalent representatives, who have supervision or direction of all or substantially all of the grantee's business, or all or substantially all of the grantee's operation at any one plant, laboratory, or separate location in which this grant is being performed;

(ii) Which results from a failure on the part of the grantee, due to the willful misconduct or lack of good faith on the part of any of its directors, officers, or other representatives mentioned in (i) above:

(A) to maintain and administer, in accordance with sound business practice, the program for maintenance, repair, protection, and preservation of Government property as required by (i) above, or

(B) to take all reasonable steps to comply with any appropriate written directions of the grant officer under (c) above;

(iii) For which the grantee is otherwise responsible under the express terms designated in the schedule of this grant;

(iv) Which results from a risk expressly required to be insured under some other provision of this grant, but only to the extent of the insurance so required to be procured and maintained, or to the extent of insurance actually procured and maintained, whichever is greater;

(v) Which results from a risk which is in fact covered by insurance or for which the grantee is otherwise reimbursed, but only to the extent of such insurance or reimbursement; or

(vi) Provided, that, if more than one of the above exceptions shall be applicable in any case, the grantee's liability under any one exception shall not be limited by any other exception.

(2) The grantee shall not be reimbursed for, and shall not include as an item of overhead, the cost of insurance, or any provision for a reserve, covering the risk of loss of or damage to the Government property, except to the extent that the Government may have required the grantee to carry such insurance under any other provision of this grant.

(3) Upon the happening of loss or destruction of or damage to the Government property, the grantee shall notify the grant officer thereof, shall take all reasonable steps to protect the Government property from further damage, separate the damaged and undamaged Government property, put all the Government property in the best possible order, and furnish to the grant officer a statement of:

(i) The lost, destroyed, or damaged Government property;

(ii) The time and origin of the loss, destruction, or damage;

(iii) All known interests in commingled property of which the Government property is a part; and

(iv) The insurance, if any, covering any part of or interest in such commingled property.

(4) The grantee shall make repairs and renovations of the damaged Government property or take such other action as the grant officer directs.

(5) In the event the grantee is indemnified, reimbursed, or otherwise compensated for any loss or destruction of or damage to the Government property, it shall use the proceeds to repair, renovate or replace the Government property involved, or shall credit such proceeds against the cost of the work covered by the grant, or shall otherwise reimburse the Government, as directed by the grant officer. The grantee shall do nothing to prejudice the Government's right to recover against third parties for any such loss, destruction, or damage, and upon the request of the grant officer, shall, at the Governments expense, furnish to the Government all reasonable assistance and cooperation (including assistance in the prosecution of suits and the execution of instruments or assignments in favor of the Government) in obtaining recovery.

(e) Access: The Government, and any persons designated by it, shall at all reasonable times have access to the premises wherein any Government property is located, for the purpose of inspecting the Government property.

(f) Final Accounting and Disposition of Government Property: Upon completion of this grant, or at such earlier dates as may be fixed by the grant officer, the grantee shall submit, in a form acceptable to the grant officer, inventory schedules covering all items of Government property not consumed in the performance of this grant or not theretofore delivered to the Government, and shall prepare, deliver, or make such other disposition of the Government property as may be directed or authorized by the grant officer.

(g) Communications: All communications issued pursuant to this provision shall be in writing.

(END OF STANDARD PROVISION)

TITLE TO AND CARE OF PROPERTY (COOPERATING COUNTRY TITLE)
(NOVEMBER 1984)

(This provision is applicable to property titled in the name of the cooperating country or such public or private agency as the cooperating country government may designate.)

(a) Except as modified by the Schedule of this grant, title to all equipment, materials and supplies, the cost of which is reimbursable to the grantee by AID or by the cooperating country, shall at all times be in the name of the cooperating country or such public or private agency as the cooperating Government may designate, unless title to specified types or classes of equipment is reserved to AID under provisions set forth in the Schedule of this grant; but all such property shall be under the custody and control of grantee until the owner of title directs otherwise or completion of work under this grant or its termination, at which time custody and control shall be turned over to the owner of title or disposed of in accordance with its instructions. All performance guarantees and warranties obtained from suppliers shall be taken in the name of the title owner.

(b) The grantee shall prepare and establish a program, to be approved by the Mission, for the receipt, use, maintenance, protection, custody and care of equipment, materials and supplies for which it has custodial responsibility, including the establishment of reasonable controls to enforce such program. The grantee shall be guided by the requirements of paragraph 1T of Chapter 1, Handbook 13.

(c) Within 90 days after completion of this grant, or at such other date as may be fixed by the grant officer, the grantee shall submit an inventory schedule covering all items of equipment, materials and supplies under the grantee's custody, title to which is in the cooperating country or public or private agency designated by the cooperating country, which have not been consumed in the performance of this grant. The grantee shall also indicate what disposition has been made of such property.

(END OF STANDARD PROVISION)

COST SHARING (MATCHING) (MAY 1986)

(This provision is applicable when the recipient is required to provide a matching share or to cost share.)

(a) For each year (or funding period) under this grant, the grantee agrees to expend from non-Federal funds an amount at least equal to the percentage of the total expenditures under this grant specified in the schedule of the grant. The schedule of this grant may also contain restrictions on the application of cost sharing (matching) funds. The schedule takes precedence over the terms of this provision.

(b) Eligibility of non-Federal funds applied to satisfy cost sharing (matching) requirements under this grant are set forth below:

(1) Charges incurred by the grantee as project costs. Not all charges require cash outlays by the grantee during the project period; examples are depreciation and use charges for buildings and equipment.

(2) Project costs financed with cash contributed or donated to the grantee by other non-Federal public agencies and institutions, and private organizations and individuals, and

(3) Project costs represented by services and real and personal property, or use thereof, donated by other non-Federal public agencies and institutions, and private organizations and individuals.

(c) All contributions, both cash and in-kind, shall be accepted as part of the grantee's cost sharing (matching) when such contributions meet all of the following criteria:

(1) Are verifiable from the grantee's records;

(2) Are not included as contributions for any other Federally assisted program;

(3) Are necessary and reasonable for proper and efficient accomplishment of project objectives;

(4) Are types of charges that would be allowable under the applicable Federal cost principles;

(5) Are not paid by the Federal Government under another grant or agreement (unless the grant or agreement is authorized by Federal law to be used for cost sharing or matching);

(6) Are provided for in the approved budget when required by AID; and

(7) Conform to other provisions of this paragraph.

(d) Values for grantee in-kind contributions will be established in accordance with the applicable Federal cost principles.

(e) Specific procedures for the grantee in establishing the value of in-kind contributions from non-Federal third parties are set forth below:

(1) Valuation of volunteer services: Volunteer services may be furnished by professional and technical personnel, consultants, and other skilled and unskilled labor. Volunteer services may be counted as cost sharing or matching if the service is an integral and necessary part of an approved program.

(i) Rates for volunteer services: Rates for volunteers should be consistent with those paid for similar work in the grantee's organization. In those instances in which the required skills are not found in the grantee's organization, rates should be consistent with those paid for similar work in the labor market in which the grantee competes for the kind of services involved.

(ii) Volunteers employed by other organizations: When an employer other than the grantee furnishes the services of an employee, these services shall be valued at the employee's regular rate of pay (exclusive of fringe benefits and overhead costs) provided these services are of the same skill for which the employee is normally paid.

(2) Valuation of donated expendable personal property: Donated expendable personal property includes such items as expendable equipment, office supplies, laboratory supplies or workshop and classroom supplies. Value assessed to expendable personal property included in the cost (matching) share should be reasonable and should not exceed the market value of the property at the time of the donation.

(3) Valuation of donated nonexpendable personal property, buildings, and land or use thereof:

(i) The method used for charging cost sharing or matching for donated nonexpendable personal property, buildings and land may differ according to the purpose of the grant as follows:

(A) If the purpose of the grant is to assist the recipient in the acquisition of equipment, buildings or land, the total value of the donated property may be claimed as cost sharing or matching.

(B) If the purpose of the grant is to support activities that require the use of equipment, buildings, or land; depreciation or use charges for equipment and buildings may be made. The full value of equipment or other capital assets and fair rental charges for land may be allowed provided that AID has approved the charges.

(ii) The value of donated property will be determined in accordance with the usual accounting policies of the grantee with the following qualifications:

(A) Land and buildings: The value of donated land and buildings may not exceed its fair market value, at the time of donation to the grantee as established by an independent appraiser; and certified by a responsible official of the grantee.

(B) Nonexpendable personal property: The value of donated nonexpendable personal property shall not exceed the fair market value of equipment and property of the same age and condition at the time of donation.

(C) Use of space: The value of donated space shall not exceed the fair rental value of comparable space as established by an independent appraisal of comparable space and facilities in a privately owned building in the same locality.

(D) Borrowed equipment: The value of borrowed equipment shall not exceed its fair rental value.

(f) The following requirements pertain to the grantee's supporting records for in-kind contributions from non-Federal third parties.

(1) Volunteer services must be documented and, to the extent feasible, supported by the same methods used by the grantee for its employees.

(2) The basis for determining the valuation for personal services, material, equipment, buildings and land must be documented.

(g) Individual expenditures do not have to be shared or matched provided that the total expenditures incurred during the year (or funding period) are shared or matched in accordance with the agreed upon percentage set forth in the schedule of the grant.

(h) If at the end of any year (or funding period) hereunder, the grantee has expended an amount of non-Federal funds less than the agreed upon percentage of total expenditures, the difference may be applied to reduce the amount of AID funding the following year (or funding period), or, if this grant has expired or been terminated, the difference shall be refunded to AID.

(i) Failure to meet the cost sharing (matching) requirements set forth in paragraph (a) above shall be considered sufficient reasons for termination of this grant for cause in accordance with paragraph (a) entitled "For Cause" of the standard provision of this grant entitled "Termination and Suspension".

(j) The restrictions on the use of AID grant funds hereunder set forth in the standard provisions of this grant are applicable to expenditures incurred with AID funds provided under this grant. The grantee will account for the AID funds in accordance with the standard provision of this grant entitled "Accounting, Audit, and Records".

(k) Notwithstanding paragraph (b) of the standard provision of this grant entitled "Refunds", the parties agree that in the event of any disallowance of expenditures from AID grant funds provided hereunder, the grantee may substitute expenditures made with funds provided from non-Federal sources provided they are otherwise eligible in accordance with paragraph (b) of this provision.

(END OF STANDARD PROVISION)

CHAPTER 5

GRANTS TO PUBLIC INTERNATIONAL ORGANIZATIONS

5A. Purpose and Application

1. This chapter provides guidance on grants to public international organizations (PIOs). It applies to all AID direct assistance to PIOs (except assistance under Sections 214 or 301(a) of the Foreign Assistance Act) regardless of the source of funding or whether negotiated in AID/Washington or in the field.

2. No other part of this Handbook is required to be applied to PIOs unless specifically made applicable in this Chapter.

3. Because of the basic nature of AID's relationship with PIOs, cooperative agreements are not considered suitable instruments for use with PIOs.

5B. Definition of Public International Organization

1. For the purpose of this Chapter, the term public international organization includes any organization designated as such by the President under the terms of the International Organizations Immunities * Act (22 U.S.C. 288 et seq.). A listing of organizations designated as * PIOs is included as Appendix 5A. If an organization not listed claims the status of PIO, their claim shall be accepted if they can present a copy of an Executive Order so designating them under the International Organizations Immunities Act.

2. In addition, while most International Agricultural Research Centers (IARCs) are not designated as international organizations under the Immunities Act, it is AID's policy to provide core support grants to these organizations in accordance with the provisions of this chapter. Organizations qualifying for support as IARCs are designated by the Senior Assistant Administrator for Science and Technology.

5C. Delegations of Authority

1. Regional Bureau Assistant Administrators have authority to sign grants to PIOs for programs/projects within their responsibility and may redelegate such authority.

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* Revised

5C

* 2. The Director of the Office of Procurement and to Grant Officers under their warrants have authority to sign grants to PIOs funded by central bureaus. *

3. The Director of the Office of U.S. Foreign Disaster Assistance has authority to sign grants to PIOs within the limitations of Handbook 8.

5D. Conditions for Use

Grants to PIOs are appropriate when a preaward determination is made that all of the following conditions are met:

1. Support for a PIO's project or activity (either an expansion of its current program or the initiation of a new program activity) is considered to be more effective and efficient than direct AID assistance in achieving a particular development assistance or disaster relief objective;

2. The program and objectives of the PIO are compatible with those of AID;

3. There is no reason to consider the PIO not responsible; and

4. Grants are made for specific projects or activities of interest to AID and not for augmentation of a PIO's operating budget, nor for activities for which the U.S. is making a voluntary contribution under Chapter 3 of the Foreign Assistance Act.

5E. Competition

Competition is not required for grants to PIOs.

5F. Special Requirements

1. Ineligible Countries

If the proposed grant is for a program which may include countries AID is prohibited from providing assistance to under the Foreign Assistance Act of 1961, as amended, or under acts appropriating funds for foreign assistance, the cognizant General Counsel or Regional Legal Advisor must be consulted when the agreement is being developed to determine appropriate language for the grant document to assure that funds are not used for assistance to such countries.

* Revised

5F

2. Clearance

a. The proposed grant must be cleared by the cognizant AID bureau. If the grant finances activities which are to be carried out in a particular country or countries, the Mission Director or AID Representative shall be advised of the proposed grant and its purpose.

* b. The grant must be reviewed and cleared by the appropriate GC in AID/W or Regional Legal Advisor prior to signature by the AID grant officer to determine applicable authority under the Foreign Assistance Act, appropriate clauses, notification requirements, etc. *

5G. Legal and Administrative Constraints

The applicability of legal and administrative constraints on AID grants to PIOs is based on whether AID is the sole contributor to the project or activity of the PIO.

1. If AID is the sole contributor,* it is necessary to:

a. Reserve audit rights for the GAO, as required under Section 301(d) of the Foreign Assistance Act, and for the AID IG. Under the terms of the International Organizations and Immunities Act, a PIO may elect not to allow GAO access to the PIO's records. In such a case AID would be unable to issue a grant. The United Nations and its specialized agencies (e.g., FAO, WHO) do not permit access to their books, and as a practical matter, AID is unable to be the sole contributor to a project or activity of the United Nations or its specialized agencies.

b. Apply AID procurement policies and procedures, unless they are waived.

2. If AID is not the sole contributor:

a. AID may rely on the audit policies and procedures of the PIO. Prior to approving such a grant, however, AID should be satisfied that the PIO has effective and responsible audit procedures. The audit

*AID provides 100% of the financing for the activity.

* Revised

5G2a

procedures of the United Nations, and its specialized agencies (e.g., FAO, WHO) have been found to be responsible and effective. Questions regarding other PIOs should be directed to the Office of Procurement, Procurement Support Division, Overhead and Special Costs and Contract Close-Out Branch (OP/PS/OCC). OP/PS/OCC will be able to provide guidance regarding PIOs to which AID has made grants in the past. It may be necessary to consult with the IG regarding other PIOs.

b. AID may rely on the procurement procedures and policies of the PIO.

3. In exceptional cases, when AID is the major contributor, AID, with the concurrence of State/IO, may attempt to negotiate the application of selected audit and procurement policies with the PIO if that is necessary to protect U.S. interest.

4. Appendix 5B has Standard Provisions for AID grants to PIOs which implement the requirements of this Section 5G. These standard provisions are to be used for all grants to PIOs whether or not the United States is the sole contributor.

5. If additional standard provisions are needed for a particular grant, either because the United States is the sole contributor or because of the nature of the program, the appropriate provisions in Appendix 4D of this Handbook (AID Eligibility Rules for Goods and Services, Local Cost Financing, Title to and Use of Property, etc.) would meet AID's requirements; however, we recognize that it may be necessary to negotiate with the PIO to determine the actual language usage to be included. If the intent of the clause is unchanged, this is not a deviation. When grant funds are provided for assistance for family planning, PPC and GC should be consulted to determine if any special provisions restricting the use of AID funds are necessary.

5H. Payment

The standard provisions cover periodic advances, reimbursement, and advance payment by letter of credit. Letters of credit are not issued to international organizations located overseas except for United Nations organizations. For grants funded by OFDA, it may be appropriate to provide the entire amount of the grant (by check or funds transfer) at the time the grant is issued if the grant is in response to requests for contributions to relief programs, quick response is necessary, and funds would, in any event, be disbursed over a short period of time. In any event, the Grant Officer should clear the method of payment with the paying office before the grant is issued.

5I. Numbering and Central Records Control

* 1. The Office of Procurement, Procurement Support Division, Support Services Branch (OP/PS/SUP) is responsible for collecting data on and maintaining a central depository of all AID acquisition and assistance actions, and for preparing reports for AID, other agencies, and Congress. A co-signed copy of every grant to a PIO shall be provided immediately upon execution to OP/PS/SUP along with a CIMs data sheet.
2. OP/PS/SUP will provide the number for PIO grants signed by AID/W officials. Missions should assign their own numbers to PIO grants issued in the field. *

5J. Grant Format

A format for grants to PIOs is included as Appendix 5B.

5K. Deviations

Deviations from this Chapter 5 may be processed in accordance with Chapter 1E of this Handbook. The Director of the Office of Procurement, the Assistant Administrator, or the Mission Director may authorize a deviation to an agreement which he or she has authority to sign.

* Revised

APPENDIX 5A

ORGANIZATIONS CURRENTLY DESIGNATED BY THE PRESIDENT AS PIO'S

The Food and Agriculture Organization
The International Labor Organization
The United Nations
Inter-American Institute of Agricultural Sciences
Inter-American Statistical Institute
International Bank for Reconstruction and Development
International Monetary Fund
International Wheat Advisory Committee (International Wheat Council)
United Nations Educational Scientific, and Cultural Organization
International Civil Aviation Organization
International Telecommunication Union
International Cotton Advisory Committee
International Joint Commission, United States and Canada
World Health Organization
South Pacific Commission
Organization for European Economic Cooperation
Inter-American Defense Board
Intergovernmental Committee for European Migration
Organization of American States (includes the Pan American Union)
World Meterological Organization
International Finance Corporation
International Atomic Energy Agency
Universal Postal Union
International Hydrographic Bureau
Intergovernmental Maritime Consultative Organization
Pan American Health Organization (includes the Pan American Sanitary Bureau)
Inter-American Development Bank
Caribbean Organization
Inter-American Tropical Tuna Commission
Great Lakes Fishery Commission
International Pacific Halibut Commission
International Coffee Organization
Interim Communications Satellite Committee
International Telecommunications Satellite Consortium
International Cotton Institute
Asian Development Bank
International Secretariat for Volunteer Service
United International Bureau for the Protection of Intellectual Property
Customs Cooperation Council
* European Space Agency
European Bank for Reconstruction and Development *

* Revised

Organization of African Unity
World Intellectual Property Organization
International Development Association
International Centre for Settlement of Investment Disputes
International Telecommunications Satellite Organization
The African Development Fund
The International Fertilizer Development Center
International Maritime Satellite Organization
The Multinational Force and Observers
The International Food Policy Research Institute
The Africa Development Bank
The International Criminal Police Organization
The International Boundary and Water Commission, United States and Mexico
World Tourism Organization
International Committee of the Red Cross
* International Fund for Agricultural Development *

* Revised

APPENDIX 5B
SAMPLE FORMAT

Mr. John Doe (Date)
(Title)
(Organization)
(Address)

Subject: Grant No. _____

Dear Mr. Doe:

Pursuant to the authority contained in the Foreign Assistance Act of 1961, as amended, the Agency for International Development (hereinafter referred to as "A.I.D.") hereby grants to (Organization) (hereinafter referred to as the "Grantee"), the sum of $ _____ to provide support for a program in _____, as described in the Schedule of this grant and in Attachment 2, entitled "Program Description."

This grant is effective and obligation is made as of the date of this letter and shall apply to expenditures made by the Grantee in furtherance of program objectives during the period beginning with the effective date and ending _____.

This grant is made to the Grantee on condition that the funds will be administered in accordance with the terms and conditions as set forth in Attachment 1 (the Schedule); Attachment 2 (the Program Description); and Attachment 3 (the Standard Provisions); all of which have been agreed to by your organization.

Please sign the original and all enclosed copies of this letter to acknowledge your receipt of the grant, and return the original and all but one copy to me.

Sincerely yours,

_____
Grant Officer

Attachments:
1. Schedule
2. Program Description
3. Standard Provisions

ACKNOWLEDGED:
(Organization)
BY: _____
TITLE: _____
DATE: _____

FISCAL DATA

Appropriation : _____
Budget Plan Code : _____
PIO/T No. : _____
Project No. : _____
Total Estimated Amount: _____
Total Obligated Amount: _____
Paying Office:

SCHEDULE

A. Purpose of Grant
The purpose of this Grant is to provide support for (state title of program), as more specifically described in Attachment 2 (the Program Description) of this Grant.

B. Period of Grant
1. The effective date of this Grant is _____. The expiration date of this Grant is _____.

(For incrementally funded grants add the following sentence:)

2. Funds obligated hereunder are available for program expenditures for the estimated p riod from _____ to _____ as shown in the Grant Budget below.

C. Amount of Grant and Payment
[For fully funded grants use the following:

1. A.I.D. hereby obligates the amount of $_____ for purposes of this Grant.

2. Payment shall be made to the Grantee in accordance with procedures set forth in Attachment 3 (the Standard Provisions).]

- or -

[For incrementally funded grants use the following in lieu of the above:)

1. The total estimated amount of this Grant for the period shown in B.1 above is $_____.

2. A.I.D. hereby obligates the amount of $_____ for program expenditures during the period set forth in B.2. above and as shown in the Grant Budget below.

3. Payment shall be made to the Grantee in accordance with procedures set forth in Attachment 3 (the Standard Provisions).

4. Additional funds up to the total amount of the grant shown in C.1. above may be obligated by A.I.D. subject to the availability of funds, the mutual agreement of the parties to proceed, and the requirements of the Standard Provision of the Grant entitled "Revision of Grant Budget."]

D. Grant Budget

The following is the Grant Budget. Revisions to this Budget shall be made in accordance with the Standard Provision of this Grant entitled "Revision of Grant Budget."

Cost Element	Obligated Amount *		Estimated Additional *		Total Estimated *	
	From** U.S.$	to** Local Currency	From** U.S.$	to** Local Currency	From** U.S.$	to** Local Currency
1.						
2.						
3.						
4.						
5.						
6.						
Total $						

* Use all three columns for incrementally funded grants, otherwise use only the "Total Estimated" column.

** Insert grant effective and expiration dates.

E. Reporting and Evaluation

(Describe both fiscal and technical reporting requirements and evaluation criteria and schedules. Specify the address to which each report is to be delivered.) The Grantee shall prepare and submit 2 copies of each report required by this grant to the Bureau for Program and Policy Coordination, Center for Development Information and Evaluation, Development Information Division (PPC/CDIE/DI). All documents should be mailed to:

PPC/CDIE/DI
ACQUISITION
Room 209, SA-18
Agency for International Development
Washington, D.C. 20523

The title of all reports forwarded shall include a descriptive title, the author's name(s), grant number, the project number and title, contractor's name, name of the A.I.D. project office, and the publication or issuance date of the report.

F. Special Provisions

(Use this paragraph to delete inapplicable Standard Provisions and to add provisions of special applicability as necessary, such as waivers, authorized local cost financing, title to property, source and origin requirements, and any alterations to the Standard Provisions which have been approved as deviations.)

APPENDIX 5C

STANDARD PROVISIONS FOR GRANTS TO PUBLIC INTERNATIONAL ORGANIZATIONS

1. Allowable Costs
2. Refunds
3. Revision of Grant Budget
4. Termination Procedures
* 5. U.S. Officials Not to Benefit
6. Nonliability
7. Amendment
8. Notices
9. Publications
10. Audit and Records (Select and include only the applicable version as specified in the applicability statement of the provision.)
11. Payment (Select and include only the applicable version as specified in the applicability statement of the provision.) *

1. ALLOWABLE COSTS (JULY 1988)

a. The grantee shall be reimbursed for costs incurred in carrying out the purposes of this grant which are reasonable, allocable, and allowable.

(1) Reasonable shall mean those costs that do not exceed those which would be incurred by an ordinarily prudent person in the conduct of normal business.

(2) Allocable shall mean those costs which are necessary to the grant.

(3) Allowable shall mean those costs which are reasonable and allocable, and which conform to any limitations set forth in this grant.

b. Prior to incurring a questionable or unique cost, the grantee is encouraged to obtain the grant officer's written determination as to whether the cost will be allowable.

2. REFUNDS (JULY 1988)

a. The grantee is encouraged to utilize interest bearing accounts where feasible and shall remit to AID all interest earned on funds provided by AID

b. Funds obligated by AID but not disbursed to the grantee at the time the grant expires or is terminated shall revert to AID, except for such funds encumbered by the grantee by a legally binding transaction applicable to this grant. Any funds advanced to but not expended by the grantee at the time of expiration or termination of the grant shall be refunded to AID except for such funds encumbered by the grantee by a legally binding transaction applicable to this grant.

* Revised

c. If, at any time during the life of the grant, or as a result of final audit, it is determined that AID funds provided under this grant have been expended for purposes not in accordance with the terms of this grant, the grantee shall refund such amount to AID

3. REVISION OF GRANT BUDGET (JULY 1988)

a. The approved grant budget is the financial expression of the grantee's program as approved during the grant award process.

b. The grantee shall immediately request approval from the grant officer when there is reason to believe that within the next 30 calendar days a revision of the approved grant budget will be necessary for any of the following reasons:

(1) To change the scope or the objectives of the project and/or revise the funding allocated among project objectives.

(2) Additional funding is needed.

(3) The grantee expects the amount of AID authorized funds to exceed its needs by more than $5,000 or five percent of the AID award, whichever is greater.

c. Except as required by other provisions of this grant specifically stated to be an exception from this provision, the Government shall not be obligated to reimburse the grantee for costs incurred in excess of the total amount obligated under the grant. The grantee shall not be obligated to continue performance under the grant (including actions under the "Termination Procedures" provision) or otherwise to incur costs in excess of the amount obligated under the grant, unless and until the grant officer has notified the grantee in writing that such obligated amount has been increased and has specified the new grant total amount.

4. TERMINATION PROCEDURES (JULY 1988)

This agreement may be terminated, in whole or in part, by either party at any time upon 30 days written notice of termination. Upon receipt of and in accordance with a termination notice from the grant officer, the grantee shall take immediate action to cease all expenditures financed by this grant and to cancel all unliquidated obligations if possible. Further, upon receipt of notice of termination, the grantee shall not enter into any further obligations under this grant. Except as provided below, no further reimbursement shall be made after the effective date of termination. The grantee shall within 30 days of the effective date of termination repay to the Government all unexpended AID funds which are not otherwise obligated by a legally binding transaction applicable

to this grant. Should the funds paid by the Government to the grantee prior to the effective date of termination be insufficient to cover the grantee's obligations in a legally binding transaction, the grantee may submit to the Government within 90 days after the effective date of termination a written claim for such amount. The grant officer shall determine the amount(s) to be paid by the Government to the grantee under such claim in accordance with the "Allowable Costs" provision of this grant.

* 5. U.S OFFICIALS NOT TO BENEFIT (JULY 1988)

No member of or delegate to the U.S. Congress or resident U.S. Commissioner shall be admitted to any share or part of this grant or to any benefit that may arise therefrom.

6. NONLIABILITY (JULY 1988)

AID does not assume liability for any third party claims for damages arising out of this grant.

7. AMENDMENT (JULY 1988)

The grant may be amended upon mutual consent of the parties by formal modifications to the basic grant document or by means of an exchange of letters between the grant officer and an appropriate official of the grantee.

8. NOTICES (JULY 1988)

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

To the AID grant officer, at the address specified in the grant.

To grantee, at grantee's address shown in the grant or to such other address designated within the grant.

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

9. PUBLICATIONS (JULY 1988) *

(This provision is applicable when publications are financed under the grant.)

a. If it is the grantee's intention to identify AID's contribution to any publication resulting from this grant, the grantee shall consult with AID on the nature of the acknowledgement prior to publication.

* Revised

b. The grantee shall provide the AID project officer with one copy of all published works developed under this grant and with lists of other written work produced under the grant.

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

* 10. AUDIT AND RECORDS (STANDARD) (JULY 1988)

(This provision is applicable when AID is not the sole contributor to the grant program.)

The grantee shall maintain books, records, documents, and other evidence in accordance with the grantee's usual accounting procedures to sufficiently substantiate charges to the grant. The Grantee confirms that this program will be subject to an independent audit in accordance with the Grantee's usual auditing procedure, and agree to furnish copies of these audit reports to AID along with such other related information as may be requested by AID with respect to questions arising from the audit report.

10. AUDIT AND RECORDS (AID SOLE CONTRIBUTOR) (JULY 1988)

(This provision is applicable when AID is the sole contributor to the grant program.)

The grantee shall maintain books, records, documents, and other evidence in accordance with the grantee's usual accounting procedures to sufficiently substantiate charges to the grant. The Grantee agrees to make available to AID or the Comptroller General of the United States all records and documents which support expenditures made under this program.

10. Audit and Records (U.N. Grants) (July 1988) *

(This provision is applicable to grants to the United Nations when AID is not sole contributor. When this provision is used the "Reporting and Evaluation" clause in the grant schedule should be deleted.)

It is agreed that the grantee will furnish the U.S. government with a final report on activities carried out under this grant, including accounting for these funds in sufficient detail to enable AID to liquidate the grant. The report should be submitted to the U.S. Mission to the U.N. in New York for forwarding to the AID program office.

* Revised

It is understood that financial records, including documentation to support entries on accounting records and to substantiate charges against the grant, shall be maintained in accordance with the Grantee's usual accounting procedures, which shall follow generally accepted accounting practices. All such financial records shall be maintained for at least three years after the final disbursement of funds under this grant.

The Grantee confirms that the grant account will be audited in accordance with established procedures under appropriate provisions of the financial regulations and rules of the United Nations.

Any funds disbursed by AID, but not committed by the Grantee prior to the expiration date shall be refunded to AID Funds not used for the purpose of this Grant shall be refunded to AID by the Grantee.

* 11. PAYMENT (PERIODIC ADVANCE) (OCTOBER 1991)

(This provision is applicable when: (i) the grantee maintains procuredures to minimize the time elapsing between the transfer of funds and the disbursement thereof, and (ii) the grantee's financial management system meets generally accepted accounting standards for funds control and accountability.)

a. Periodic advances shall be limited to the minimum amounts needed to meet current disbursement needs and shall be scheduled so that the funds are available to the grantee as close as is administratively feasible to the actual disbursements by the grantee for program costs. Cash advances made by the grantee to secondary recipient or the grantee's field organizations shall conform substantially to the same standards of timing and amount as apply to cash advances by AID to the grantee.

b. The grantee shall submit requests for advances (using SF-270, "Request for Advance or Reimbursement") at least monthly to the paying office specified in the grant letter. Requests shall state the estimated disbursements to be made during the period covered by the request, less the estimated balance of cash on hand at the beginning of the period and the advance amount being requested.

c. The grantee shall submit a "Financial Status Report" (SF-269A) quarterly, no later than 30 days after the end of the period, to the paying office specified in the grant letter. The report shall show disbursements, advances received, and any cash remaining on hand for the period covered by the report. Within 90 days following the expiration of the grant, the grantee shall submit a SF-269A showing total disbursements, total advances received, and any cash remaining on hand, which will be refunded to AID. *

* Revised

* d. If at any time, the AID Controller determines that the grantee has demonstrated an unwillingness or inability to: (1) establish procedures that will minimize the time elapsing between cash advances and the disbursement thereof, (2) timely report cash disbursements and balances as required by the terms of the grant, and (3) impose the same standards of timing of advances and reporting on any subrecipient or any of the grantee's overseas field organizations, the AID Controller shall advise the grant officer who may suspend or revoke the advance payment procedure.

11. PAYMENT (COST-REIMBURSEMENT) (JULY 1988)
(This provision is applicable when the grantee does not meet the standards for a letter of credit or for periodic advances)

The grantee shall submit to the paying office indicated in the grant letter an original and 3 copies of SF 1034, "Public Voucher for Purchases and Services Other Than Personal" and SF 1034A, Continuation of SF 1034, normally once a month, but in any event no less than quarterly. Each voucher shall be identified by the grant number and shall state the total costs for which reimbursement is being requested.

11. PAYMENT (LETTER OF CREDIT) (JULY 1988) *
(This provision is applicable when a Letter of Credit is requested by the grantee and approved by AID's Office of Financial Management.)

a. Payment under this grant shall be by means of a Letter of Credit (LOC) in accordance with the terms and conditions of the LOC and any instructions issued by the AID Office of Financial Management, Program Accounting and Finance Division (FA/FM/CMP).

b. As long as the LOC is in effect, the terms and conditions of the LOC and any instructions issued by FA/FM/CMP constitute the payment conditions of this grant superseding and taking precedence over any other clause of this grant concerning payment.

c. If the LOC is revoked, payment may be made on a cost-reimbursement basis, in accordance with paragraph e. of this clause.

d. Revocation of the LOC is at the discretion of FA/FM/CMP after consultation with the grant officer. Notification to the recipient of revocation must be in writing and must specify the reasons for such action. The recipient may appeal any such revocation to the grant officer, in accordance with the Disputes clause of this grant. Pending final decision, payments under the contract will be in accordance with paragraph e. of this clause

e. If the LOC is revoked, the grantee shall submit to the AID Controller an original and 3 copies of SF 1034, "Public Voucher for Purchases and Services Other Than Personal" and SF 1034A, Continuation of SF 1034, normally once a month, but in any event no less than quarterly. Each voucher shall be identified by the grant number and shall state the total costs for which reimbursement is being requested.

* Revised

CHAPTER 6

COOPERATIVE AGREEMENTS

6A. Authority

The authority to make cooperative agreements is contained in the Foreign Assistance Act of 1961, as amended, and the Federal Grant and Cooperative Agreement Act of 1977 (P.L. 95-224). AID has implemented P.L. 95-224 in Chapter 25 of Handbook 1, Supplement B. Additional guidance regarding the use of Cooperative Agreements is contained in Final OMB Guidance published in the Federal Register on August 18, 1978 (43 F.R. 3680), portions of which are set forth in paragraph 6D below.

6B. Definition and Characteristics

1. Definition

A cooperative agreement is an assistance instrument in which substantial involvement is anticipated between AID and the recipient during performance of the proposed activity. A cooperative agreement instrument is used when:

a. The principal purpose of the relationship is the transfer of money, property, services or anything of value to the recipient in order to accomplish a public purpose of support or stimulation authorized by Federal statute, and

b. A grant would be appropriate except that substantial involvement is anticipated between AID and the recipient during performance of the proposed activity.

2. Characteristics

** a. The principal purpose of the relationship is the transfer of money, property, services, or anything of value to the recipient in order to accomplish a public purpose of support or stimulation authorized by Federal statute, rather than acquisition, by purchase, lease, or barter, of property or services for the direct benefit or use of the Federal Government, and

b. A grant would be appropriate except that substantial involvement is anticipated between the Agency and the recipient during the performance of the proposed activity.

When the instrument indicates the recipient can expect Agency collaboration or participation in the management of the project, substantial Federal involvement is anticipated. Anticipated substantial involvement during performance would exist and will be presumed to be substantial where the relationship includes one or more of the following:

- review and approval of one stage before work can begin on a subsequent stage during the period of the agreement; **

* New Material

6B2

** - review and approval of the substantive provisions of subordinate agreements or contracts;

- involvement in the selection of key recipient personnel;

- Agency and recipient collaboration or joint participation;

- monitoring to permit specified kinds of direction or redirection of the work because of interrelationships with other projects. **

6C. Choice of Instrument

The choice of instrument will be made on the basis of whether the intended relationship as described in the project documents constitutes assistance and involves substantial involvement. When the primary purpose of the activity is the transfer of funds (or anything of value) to accomplish a public purpose of support or stimulation; i.e., to provide assistance to the recipient in carrying out a program, and the recipient can expect to carry out the program without substantial Agency involvement (collaboration, participation, or intervention) as long as it is carried out in accordance with the terms of the assistance instrument, then a grant is the appropriate instrument. When the primary purpose of the activity is as above and substantial Agency involvement is anticipated (collaboration, participation, intervention) in the performance of the program, a cooperative agreement is the appropriate instrument. (See also 25E of Supplement B to Handbook 1.)

6D. OMB Policy on Substantial Involvement

The following paragraphs 6D1 and 6D2 are quoted from the Final OMB Guidance (on the Federal Grant and Cooperative Agreement Act) published in the Federal Register on August 18, 1978 (43 F.R. 3680).

"1. Anticipated substantial involvement during performance. The basic statutory criterion for distinguishing between grants and cooperative agreements is that for the latter, 'substantial involvement is anticipated between the executive agency and the recipient during performance of the contemplated activity' (emphasis added).

a. Anticipated substantial Federal involvement is a relative rather than an absolute concept. The examples that follow in "b" and "c" are not meant to be a checklist or to be considered as individual determinants. Rather, they are to illustrate the general policy that:

** New Material

6D1a

(1) When the terms of an assistance instrument indicate the recipient can expect to run the project without agency collaboration, participation, or intervention as long as it is run in accordance with the terms of the assistance instrument, substantial involvement is not anticipated.

(2) When the instrument indicates the recipient can expect agency collaboration or participation in the management of the project, substantial Federal involvement is anticipated.

b. As a guide to making these determinations, anticipated substantial involvement during performance does not include:

(1) Agency approval of recipient plans prior to award.

(2) Normal exercise of Federal stewardship responsibilities during the project period such as site visits, performance reporting, financial reporting, and audit to insure that the objectives, terms, and conditions of the award are accomplished.

(3) Unanticipated agency involvement to correct deficiencies in project or financial performance from the terms of the assistance instrument.

(4) General statutory requirements understood in advance of the award such as civil rights, environmental protection, and provision for the handicapped.

(5) Agency review of performance after completion.

(6) General administrative requirements, such as those included in OMB Circulars A-21, A-95, A-102, A-110, FMC 74-4, and A-122.

c. Conversely, anticipated involvement during performance would exist and, depending on the circumstances, could be substantial, where the relationship includes, for example:

(1) Agency power to immediately halt an activity if detailed performance specifications (e.g., construction specifications) are not met. These would be provisions that go beyond the suspension remedies of the Federal Government for nonperformance as in OMB Circulars A-102 and A-110.

(2) Agency review and approval of one stage before work can begin on a subsequent stage during the period covered by the assistance instrument.

(3) Agency review and approval of substantive provisions of proposed subgrants or contracts. These would be provisions that go beyond existing policies on Federal review of grantee procurement standards and sole source procurement.

(4) Agency involvement in the selection of the recipient personnel. (This does not include assistance instrument provisions for the participation of a named principal investigator for research projects.)

(5) Agency and recipient collaboration or joint participation.

(6) Agency monitoring to permit specified kinds of direction or redirection of the work because of interrelationships with other projects.

(7) Substantial, direct agency operational involvement or participation during the assisted activity is anticipated prior to award to insure compliance with such statutory requirements as civil rights, environmental protection, and provision for the handicapped. Such participation would exceed that normally anticipated under (b) (4), above.

(8) Highly prescriptive agency requirements prior to award limiting recipient discretion with respect to scope of services offered, organizational structure, staffing, mode of operation and other management processes coupled with close agency monitoring or operational involvement during performance over and above the normal exercise of Federal stewardship responsibilities to ensure compliance with these requirements.

"2. OMB policy on substantial involvement. Agencies should limit Federal involvement in assisted activities to the minimum consistent with program requirements. Nothing in P.L. 95-224 should be construed as authorizing agencies to increase their involvement beyond that authorized by other statutes."

6E. Use of Cooperative Agreements for Collaborative Assistance

1. A collaborative assistance project is any project for which it has been determined that a continuing collaborative relationship between A.I.D., the host country, and the recipient is required from project design through completion of the project. A.I.D., host country, and recipient participation in a continuing review and evaluation of the project is essential for its proper execution.

2. The collaborative assistance method is fully defined and discussed in Appendix 6B -- The Collaborative Assistance Method.

3. Given the nature of the relationship between A.I.D., the host country, and the recipient, a cooperative agreement is considered an appropriate instrument for collaborative assistance projects.

6F. Recipient Selection

The recipient selection procedures are the same for cooperative agreements as for grants. For information on competition requirements, see Chapter 2. Information on applications and eligibility criteria is in Chapter 4. File documentation requirements appear in Chapter 1, Section 1V.

6G. Cooperative Agreement Processing

1. For information concerning processing cooperative agreements, see Chapter 4.

2. Appendix 6A contains a sample format for the Cooperative Agreement Schedule including the cover page.

3. Each cooperative agreement will include an explicit statement of the nature, character and extent of anticipated A.I.D. involvement in the program/project supported by the cooperative agreement.

6H. Standard Provisions

1. Standard Provisions in Chapter 4, Appendix 4C, will be used in all cooperative agreements and subagreements with U.S. organizations, changing the terms "Grant" and "Grantee" to "Agreement" and "Recipient," respectively. Standard Provisions in Chapter 4, Appendix 4D will be used in all cooperative agreements and subagreements with non-U.S. organizations, changing the terms as above. If a U.S. recipient makes a subagreement with a non-U.S. subrecipient, Standard Provisions set forth in Appendix 4D shall be applicable, changing the terms as above. If a non-U.S. recipient makes a subagreement with a U.S. subrecipient, the Standard Provisions set forth in Appendix 4C are applicable, changing the terms as above.

2. The use of Standard Provisions which differ from any of those set forth in the appropriate Appendix, or deletion of a mandatory and applicable Standard Provision, requires a deviation approved in accordance with 1E of Chapter 1.

3. The Special Provisions article of the Schedule (see paragraph F of Appendix 4B) shall be used to delete by reference and/or modify Standard Provisions for which a deviation has been approved, or to add any Standard Provisions.

6I. Cooperative Agreement Administration

Cooperative Agreements are administered the same as grants, Guidance is in Chapter 4, Section 4I.

APPENDIX 6A

S A M P L E F O R M A T

COOPERATIVE AGREEMENT SCHEDULE

I. Authority, Purpose and Program Description

II. Funds Obligated, Payment, Estimated Cost and Cost Sharing

III. Substantial Involvement Understandings (This article should include an explicit statement of the nature, character, and extent of anticipated Federal involvement.)

IV. Period of Agreement

V. Reports and Evaluation

VI. Negotiated Overhead Rates (if applicable)

VII. Financial Plan

VIII. Special Provisions

IX. Standard Provisions

Appendix 6B - The Collaborative Assistance Method

1. Purpose

The collaborative assistance system is designed to:

(a) Increase the joint implementation authority and responsibility of the recipient and the LDC.

(b) Encourage more effective collaboration between all participating parties (A.I.D., host country, and recipient) at important stages including the design stage of a collaborative assistance project.

2. Policy

The collaborative assistance approach represents an alternative method for long-term technical assistance which involves professional collaboration for a problem solving type activity to develop new institutional forms and capabilities, to devise operating systems and policies, and to conduct joint research and development including training. In such an activity, the difficulty in defining, in advance, precise and objectively verifiable contractor inputs and long-term project content as a basis for payment usually requires a flexible approach to project design, contracting, and project implementation. Such flexibility is also essential to the collaborative style which is responsive to LDC desires in problem areas of great complexity and varying uncertainty.

3. Implementation Procedures

(a) Introduction. This paragraph 3 provides background information, guidelines and procedures to effect the implementation of the policy set forth in paragraph 2 of this Appendix.

(b) Conditions and practices. In order for this policy to work effectively even when the proposed activity fits the criteria described in paragraph 2 there must also be:

(1) Acceptance of the notion that the host country, in consultation with the recipient, is in the best position to make tactical day-to-day decisions on project inputs within agreed upon limitations and output expectations;

(2) Sufficient trust and respect between the Agency and the recipient to allow this flexible implementation authority;

(3) A direct-hire project monitor with appropriate background to be knowledgeable of progress and to assist in an advisory and facilitative capacity, both during and between periodic reviews. In addition, the following important conditions must be met:

(i) Adequate preproject communication between, and identification of assistance required by, the host government and U.S.A.I.D.;

(ii) Full joint planning and improved project design ("Joint" as used herein refers to the primary parties, i.e., the collaborating institutions, as well as the host government and U.S.A.I.D. In some instances, it can also include other donors);

(iii) Careful recipient selection, i.e., matching of the technical and managerial capabilities to the anticipated requirements of the overseas activity;

(iv) Establishment of relationships between host country, A.I.D. and recipient staff to include host country leadership, flexible implementation authority, and effective management by the recipient;

(v) Improved joint project evaluation, feedback, and replanning; and

(vi) Simplified administrative procedures and greater reliance on in-country logistical support.

(c) Project Stages and Recipient Involvement. In the long-term technical assistance projects as described above, there are four discrete but sometimes overlapping decision stages which take place - with the principal recipient usually involved in the last three.

(1) Problem analysis and project identification. After the host government has indicated a desire for U.S. collaboration on a particular problem and the A.I.D. field mission has determined that the proposed activity is consistent with its program goals and priorities, considerable effort is usually necessary to refine further the project purpose and type of assistance required and provide a basis for contractor selection. This is a crucial step and is focused on results sought--on what the prospective recipient is expected to produce in relation to resources to be used and to project purpose. It should result in a clear understanding of what the LDC wants and an overall plan which includes agreement on specific objectives or outputs, acceptable types of activities and inputs and an initial budget-resulting in project documentation. At this step, A.I.D. makes decisions it cannot delegate on what it will support and at what cost.

If needed to supplement its direct hire expertise, A.I.D. can use outside consultants for analysis and advice but retains the ultimate decision for itself in collaboration with, but independent of the requesting host government.

Normally, there will need to be some mutual interaction between the overall planning stage outlined here and the detailed planning and design work which follows in the next phase. There will usually be some overlap, with preliminary decisions in this stage providing a basis for selection of implementing agents for stage (2) which in turn proceeds through some preliminary planning to guide completion of stage (1) as a basis for the cooperative agreement (hereafter referred to as "CA").

(2) Project definition. At this stage, having selected the implementing agent, the U.S. and LDC organizations which will be collaborating in carrying out the project are encouraged to work out, to their mutual satisfaction, the particulars of what to do and how to do it (i.e., detailed project design) within the context of LDC leadership and responsibility and the general agreements and budget reached in stage (1). The emphasis here is on the technical approach to management of project inputs. This may involve a short-term reconnaissance and/or an extensive period of detailed joint planning and feeling out of what is feasible during a preliminary operating phase of the project, possibly lasting as much as a year or more. This stage recognizes the importance, for the problem-solving or ground breaking types of technical assistance, of involving the U.S. and LDC implementing organizations together as soon as the detailed design work begins. A.I.D.'s role here is to facilitate, not direct, the joint planning, assure consistency with prior agreements or concur in changes, affirm that the implementing parties have agreed on a reasonable project design, and prepare or cause to be prepared the documentation required for stage (3), including any amendments that might be required to the project documentation. If and when a decision is made by the host government and A.I.D. to proceed into the operating phase with the same recipient, the U.S. intermediary should be treated as a cooperating partner in the negotiation of the subsequent long-term operating agreement(s) with the host government, host institution and A.I.D.

(3) Implementation. The results of the approach outlined in the stage above should include, in addition to a better understanding and more meaningful commitment by all parties, the following specific products:

(i) A jointly developed life-of-project design which reflects the commitment of all parties and includes clear statements of purpose, principal outputs, eligible types of activity and expenditure limits, critical assumptions, and major progress indicators;

(ii) A workplan and input schedule for the first two years or at least as long as the expenditure period for the next obligation of project funds;

(iii) Provisions for any administrative support, special services or other inputs by the host country, recipient, and/or A.I.D.; and

(iv) A plan for periodic joint evaluation and review of progress and subsequent workplans, normally annually, with the participation of all parties.

Appropriate elements of these agreements and understandings are now embodied in a CA for project implementation, as described in paragraph (d)(2)(i) of the section on CA Implications. This CA allows the U.S. intermediary to apply its judgment, reflecting close collaboration with its LDC colleagues, in adjusting the flow of A.I.D.-financed inputs and in making other operational decisions with a minimum of requirements for prior A.I.D. approvals or CA amendments as long as the recipient stays within the bounds of the approved overall plan and budget. In this phase, A.I.D. will give technical assistance recipients the authority and responsibility for using their specialized expertise to the fullest extent in the scheduling and managing of project inputs.

(4) Monitoring, joint evaluation and replanning. With increased flexibility and responsibility for implementation placed with the technical assistance recipient, the host government, and/or institutional collaborator, improved and timely progress reporting and periodic, joint, and structured reviews of results and evolving plans are imperative as a basis for monitoring and evaluating recipient performance, revalidating or adjusting project design, and for determining future funding levels and commitments.

Both the recipient's annual report and the joint review should be structured within the framework of purpose, outputs, performance indicators, etc., originally established in the project identification phase, as modified by detailed project design, and reflected in the Project Agreement and other pertinent documentation. The field review will normally serve as the occasion for discussing changes in or additions to previously agreed-to workplans as well as proposing changes in purpose, types of activities authorized and budgets which require an amendment to the CA. Obviously, the appropriate host government, host institution, and senior officials should be thoroughly involved in the process, which will have to be adapted to the conditions within specific projects and countries. An important USAID responsibility is to assure that there is appropriate host country participation in developing and improving project plans prior to new obligations of funds. The special

requirements and responsibilities for the various parties shall also be reflected in the project agreement and CA terms and in guidelines on the content of annual reports, evaluation procedures, etc.

Standard checking on services actually delivered as a basis for reimbursement will be continued including appropriate audit of expenditures.

(d) CA Implications.

(1) CA Stages. Initial design stage should be separated from the longer term implementation stage without any A.I.D. commitment to undertake the second until it has exercised its independent judgment based on the product of the first plus any outside expert appraisal it and the host country want to use.

The long-term implementation stage itself may be further subdivided into periods which permit time between predetermined events for analysis, determination of new project requirements, and evaluation of performance prior to initiating the next phase by CA amendment/extension. If, for any reason, such an examination does not appear to warrant project continuation, then termination of the project and/or CA would be the next step.

(2) Flexible implementation authority. While good project design will eliminate or diminish many operational problems, the very nature of long-term technical assistance requires flexible implementation within agreed purposes, ultimate outputs, types of activity and available financing. With these key variables for A.I.D. management control established, CA's should be written so as to minimize the need for amendments and A.I.D. approval of changes in input particulars. This can be facilitated, both for the USAID, host country, institution, and the contractor by:

(i) Retention of operational plan in the CA and removal of workplan. The CA narrative will contain the life-of-the-project Operational Plan, consistent with the design as developed in stage (2) and reflected in the project documentation (and subsequent amendments thereto). The Operational Plan includes a statement of the purpose to be achieved, the outputs to be produced by the recipient and the types of activities to be undertaken, the more significant indicators of progress, a general description of the type of inputs that are authorized and intended to be provided during the life-of-the-project, and the overall budget.

In order to allow adjustments at the implementation level without going through the CA amendment process, the detailed but short-term workplan containing specific descriptions and scheduling of all inputs such as numbers and types of staff, participants, commodities, etc., and specific activities, will not be a part of the CA. It is a working document to be modified in the field when the situation demands. The latest version will be available as a supporting document to justify proposed new obligation levels. Normally, the workplan and derived budget will cover a rolling two year period, i.e., each year another yearly increment is added after review and approval.

(ii) Budget flexibility. To support this implementation flexibility, budget or fiscal controls will be shifted from fixed line items for each input category to program categories, permitting the recipient to adjust amounts and timing to achieve previously approved types of activity. This same type of flexibility should apply to any local currency supplied for project operations and/or recipient staff support.

(iii) Negotiation of advance understandings. To permit recipients to manage their activities in accordance with their own policies and procedures and thereby sharpen their management responsibility while achieving substantial savings in time and reduced documentation, A.I.D. may negotiate advance understandings with recipients on dollar costs and administrative procedures that would be included by reference in its subsequent CA's. Upon receipt of a request from the recipient that its policies be reviewed and approved for usage in its CA in lieu of the standard terms and conditions, OP/PS/OCC, A.I.D./W will initiate negotiations of such policies in an expeditious manner. The approved policies will be used in all relevant relations involving the Agency and respective recipients in lieu of CA standard provisions, whenever this may be appropriate. This does not apply to local currency costs and host government procedures which must be negotiated in each case.

The purpose of the practices listed above is not only to give a qualified recipient the authority to adjust the composition and timing of inputs but to assign to it clear responsibility for managing such resources, as the evolving circumstances require, to achieve the agreed-upon outputs on a cost efficient basis. It should also reduce the delay and paperwork involved in frequent but minor amendments and approvals. For the agency as a whole, both in the Mission and A.I.D./W, these have involved a large workload and cost.

(e) Role of A.I.D. Nothing in this appendix is intended to delegate, diminish or otherwise modify A.I.D.'s final responsibility for the prudent management of public funds and its own programs. Rather, in withdrawing from the day-to-day involvement in and responsibility for managing and adjusting the flow of inputs during the implementation, the best use of limited agency staff and time can be devoted to protecting the public interest in gaining maximum results from the funds appropriated for technical assistance by:

(1) Seeking optimum identification in terms of LDC priorities and U.S. capabilities;

(2) Mobilizing and selecting the best U.S. professional talent to design and carry out the project;

(3) Monitoring what is happening to assure adequacy of processes, get a feel of results, assure actual delivery of inputs being financed;

(4) Assuring that the attention of A.I.D.'s implementation agents and LDC colleagues stay well focused on project purpose and results to be achieved (outputs) and the relation of these to what is being done and actual results;

(5) Providing recipients adequate authority and responsibility to adjust inputs promptly and sensitively to the evolving project situations.

Attention to these considerations, and to achievements of the preimplementation conditions prescribed above, should greatly increase the chances for successful project completion and impact on a cost effective basis, which is the final measurement of prudent management.

Attachment to Appendix 6B - Guidelines for
Invitations for Applications

A. General Information

The selection procedures in Chapter 2, Section 2B apply to the selection of a recipient under a collaborative assistance project. When an invitation for applications is issued the evaluation criteria should specify the technical inputs required for successful execution of the project and normally require a response in three general areas:

1. A description of the recipient's capability to address the problem described in the invitation for applications.

2. Any related experience, whether in the country or region or in the problem area.

3. A demonstrable commitment of the recipient to support the project.

The applications should address the capability, experience, and commitment to the particular project.

B. Specific Personnel Information

The application should specify within the areas set out in the evaluation criteria the following planning and personnel factors:

1. The design team plan and the scope of work for each member.

2. A list of candidates for design team and their credentials.

3. A list of possible candidates for long-term assignment to the project. (Since there has been no project design, the specific technical assistance slots and technical responsibilities are vague. But it is expected that at least half of the personnel needs can be estimated early in the project. The recipient should make its best guess for the team and present to the Agency the persons or types of persons they are likely to employ.)

C. Multiple Recipient Submissions

Joint effort on the part of several recipients is encouraged when appropriate. A single recipient may submit an expression of interest for part of the project without knowledge of other collaborators or it may submit information in response to A and B of this Attachment as part of a suggested collection of recipients. In either case, a proposed plan for cooperation is necessary.

However, such joint efforts must specify the division of responsibilities for the planning and personnel factors indicated in B. of this Attachment. Often A.I.D. will identify the need for cooperation and suggest such an effort in the invitation for applications. Even if A.I.D. does not suggest collaboration, joint efforts with a description of the cooperation would be an appropriate way to respond to an invitation for applications.

TRANSMITTAL MEMORANDUM CHECKSHEET FOR HANDBOOK 13

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13:2	_____	13:27	_____	13:52	_____
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