Nobody took lightly the specters Signer raised, but several witnesses, ranging from Fredrickson to Alan McGowan of the Scientists' Institute for Public Information, said that the recombinant DNA technique and genetic engineering were separate subjects which should not be confused. The National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research should be asked to take up the question of human genetic engineering, several witnesses suggested.

As to whether the capability was one that society is ready to handle, Davis said it was "tragic that the proposal of gene therapy in man is viewed as a threat more than a promise." Nathans, in reply to a related question, said he did not believe that "if you do the research you must inherit all the possible evils that could come from it." Rowe declared himself "strongly opposed" to the use of recombinant DNA or any other technology to change heredity. As for the technique's contribution to the public's future shock, it will be another accelerating force, Rowe said, but "I do not think it will be acceptable to society to moderate the pace of change by refusing to take advantage of the immense opportunities for the control of disease."

Parallel hearings are to be held in April by the Senate health subcommittee, which shares legislative authority over the research with the Rogers subcommittee,and oversight hearings starting in March will be held by the House Subcommittee on Science, Research and Technology, but there are no signs yet of any major sentiment in Congress to derail the general thrust of making the NIH guidelines on recombinant DNA research apply to all.

—NICHOLAS WADE

Lobbying Rules for Nonprofits: New Option Sets Specific Limits

Recent changes in tax law which permit certain nonprofit organizations greater latitude in lobbying activities have not resulted in an all-out assault on Capitol Hill by new legions of lobbyists. The typical reaction among eligible organizations seems to be a cautious review of options; many have decided to stand pat.

The Tax Reform Act of 1976 allows some tax-exempt organizations to elect to operate under new provisions which prescribe dollar limits on lobbying—up to $1 million a year for organizations with big budgets—and define much more clearly than the law has in the past what is and what is not lobbying. The organizations affected, mainly those devoted to charitable, scientific, literary, or educational purposes, may also decide to continue to be governed by earlier regulations set forth in section 501(c)(3) of the tax code by which they are covered.

The new law went into effect only on 1 January so it is rather early to identify trends, but at this point major scientific nonprofit organizations such as the AAAS, American Institute of Physics (AIP), American Chemical Society (ACS), and Federation of American Societies for Experimental Biology (FASEB) are not altering their position on lobbying, at least for the time being. The option seems to be more attractive to nonprofit public interest groups such as the Environmental Defense Fund and Natural Resources Defense Council.

For the past several years tax-exempt organizations have sought changes in the lobbying provisions of the law under which they operate. The existing law required that "no substantial part of the activities (of a 501(c)(3) organization) is carrying on propaganda or is otherwise attempting to influence legislation." Such organizations were not forbidden to lobby but stood to lose their tax-exempt status if they were found in violation of the "substantial part" provision. Generally, loss of tax-exempt status meant not only that the organization itself would be subject to federal income taxes, but, more important, that contributors would no longer be able to deduct their gifts as charitable contributions. The main difficulty of the lobbying provision was that neither court decisions nor Treasury regulations were clear enough to enable organizations to know how much and what kind of lobbying activity was permitted.

It is worth noting that the law concentrates on attempts to influence legislation. The term lobbying was coined to describe the activities of agents lurking in the lobbies of Congress and seeking to influence legislators. Today, the term is generally construed more broadly, to include, for example, attempts to influence administrative decisions, the writing of regulations, and the actions of regulatory agencies in the executive at all levels of government. Consequently, a wide range of activities commonly regarded as lobbying are not covered by the lobby laws.

The new provisions define two main types of lobbying—direct and grass-roots.* Direct lobbying is described as "any attempt to influence legislation through communication with any member or employee of a legislative body, or with any other official or employee who may participate in the formulation of legislation." Grass-roots lobbying refers to efforts of various kinds of organizations to encourage the public at large, as distinct from their own members, to support particular legislative aims.

One feature of the new law that nonprofits are likely to find attractive is that it insulates electing organizations against the abrupt loss of their tax-exempt status for overspending in a single year. In the best remembered recent case, the Sierra Club had its exemption lifted in 1966, with grass-roots lobbying apparently playing a major part in the decision. Under the new law, loss of tax-exempt status is decreed if average spending over 4 years exceeds permissible amounts.

The provisions have no effect on longstanding prohibitions against nonprofit organizations participating in election campaigns or any other sort of partisan activity. The new option is not open to private foundations, churches, or church-related organizations. Private foundations came under attack beginning in the late 1960's for funding political activity, particularly for grants to activist community action groups. One question about the new law that has caused some anxiety to private foundations is raised by grants by them to nonprofit organizations which elect to be governed by the new law. The

*Organizations that elect to operate under the amendments are permitted to spend 20 percent of the first $500,000 of annual expenditures on direct lobbying activities and a declining percentage of further expenditures up to a maximum of $1 million in nontaxable spending on lobbying. An organization may spend up to a quarter of the amount for which it is eligible on grass-roots lobbying. An organization may spend up to 50 percent of its nontaxable spending maximum on lobbying if it is willing to pay a 25 percent excise tax on the added sum.

interpretation under which foundations are proceeding is that grants for general purposes to so-called "electing" organizations are permissible, but that foundations should avoid awarding grants earmarked for activities that include lobbying.

For nonprofits that do not elect the new status, the old rules and, apparently, the old uncertainty prevail. The Internal Revenue Service has resisted any assumption that a specific formula delineating the amount of lobbying permissible is acceptable, including the 5 percent figure that has achieved fairly wide usage as a "safe" level. The IRS argues that it is entitled to look at all aspects of an organization's activities—for example, the efforts of volunteers—to determine whether a substantial part of its resources is going into lobbying. Some nonprofit officials have hoped that the money limits and definitions in the new law might serve as a guide to groups that do not choose to change status. Officials in the Treasury Department say that the contrary is probably the case, since Congress liberalized the rules specifically for organizations who elect the new status.

As is often true, detailed questions about the new provisions are not likely to be answered until the Treasury Department issues regulations to implement the new law. The statutory language itself, however, is much clearer on what can and cannot be done than the language of the old law.

Not regarded as lobbying under the new provisions, for example, are making available the results of nonpartisan analyses or research or providing technical assistance or testimony to a legislative body in response to a written request from that body. Communication with government officials is permitted so long as there is no effort to influence legislation. A nonprofit organization may also engage in what is termed "self-defense direct lobbying" under the new law. This refers to lobbying activities to oppose a possible decision "which might affect the existence of the organization, its powers and duties, its tax-exempt status, or the deduction of contributions to the organization. . . ."

Among the Washington-based organizations with professional and academic constituencies the general response to the new law seems mainly to be review of activities that might be construed as lobbying and, in a few cases, expressing cautious interest in the new option.†

A spokesman for the Association of American Medical Colleges says that the AAMC has made a close count of the time and money applied to its legislative activities, from the cost of telephone calls to hours of staff involvement, and found that the total fell well within the 5 percent that has served as the rule-of-thumb limit on lobbying activities for 501(c)(3) groups. The AAMC underwent an Internal Revenue Service audit last year, passed with flying colors, says the spokesman, and is not contemplating a change in status. Like some other organizations, AAMC appears to feel that electing to operate under the new rules might make it appear that the organization was launching a heavy lobbying operation, which would be inappropriate for an organization representing a higher education group.

The American Council on Education (ACE), the largest of the higher education organizations, has decided for itself and recommended to its constituents that staying with the present arrangement is the best policy.

Below the Threshold

American Chemical Society officials have discussed the options but have found that the society's lobbying activities are well below the threshold implicit in the old law and decided that there would be no discernible benefit in changing. In any event, a change of status would require a decision by society membership. The American Physics Institute executive committee has discussed the options, but there is no movement away from the status quo.

AAAS officials have made an inventory of activities in association programs and of *Science* content which might be construed as lobbying and find the total well below the traditional limits for 501(c)(3)'s. A suggestion that the AAAS consider changing its status on lobbying has been put forward by a subcommittee of the association's committee on Scientific Freedom and Responsibility. The subcommittee argues that the AAAS must interact more effectively with the legislative process if it is to be effective, for example, in working in behalf of government or industry employees who act as "whistle-blowers," calling attention to problems related to the organizations that employ them, or in correcting legislation that results in such things or visa restrictions on scientists. The committee has moved to have the matter brought to the attention of the association's board and affiliates. AAAS executive officer William D. Carey, however, says that the association is "not anywhere close to changing its position."

An opposite tack is being taken by some public interest organizations, including the Environmental Defense Fund (EDF) and the National Resources Defense Council (NRDC). EDF has decided to take advantage of the new provisions and is carefully following ground rules prepared by legal counsel so that it will adhere to legal restrictions in the new law. The new law requires a detailed accounting of time and money devoted to lobbying. EDF figures that its staff can now spend about 17 percent of its time on lobbying activities. NRDC is preparing to follow the same course. Both organizations are primarily engaged in litigation both in court cases and in administrative proceedings.

Such public interest groups have long sought less restrictive lobbying laws for nonprofit organizations. They argue that industry lobbyists have an overwhelming advantage over them because their industry lobbying expenses can be written off as business expenses.

While the major impulse behind the successful effort to reform the lobbying provisions affecting nonprofits was to clarify the ground rules to protect their tax exemptions, the drive to loosen the reins on such lobbying was also strong. Efforts to further lengthen the tether on the nonprofits in order to counter the lobbying activities of other interest groups is continuing. And attempts to broaden the legal definition of lobbying beyond the narrow sense of influencing legislation—notably by the Common Cause organization—should raise the visibility of the lobbying issue generally. Lobbying, therefore, is likely to be the subject of increasingly intense lobbying.—JOHN WALSH

†Some major organizations with professional constituencies do not have the option. The American Medical Association and the Institute for Electrical and Electronic Engineers are 501(c)(6) organizations. This category covers membership organizations which stress activities benefiting their members. Trade associations are typical (c)(6) groups. These organizations are required to pay taxes on unrelated business income such as revenue from advertising in their publications.

RECENT DEATHS

Richard M. Pickett, professor of engineering and chairman of mechanics and materials, California State University, Northridge; 25 September.

Tullio J. Pignani, 56; chairman of mathematics, East Carolina University; 30 September.

Edwin G. Schafer, 92; professor emeritus of agronomy, Washington State University; 8 July.

Otto R. Zeasman, 90; professor emeritur of agricultural engineering, University of Wisconsin, Madison; 23 September.