SEC. 835. TREATMENT OF LOBBYING AND POLITICAL ACTIVITY COSTS AS ALLOWABLE COSTS UNDER DEPARTMENT OF ENERGY CONTRACTS.

(a) ALLOWABLE COSTS.—

(1) Section 4801(b) of the Atomic Energy Defense Act (50 U.S.C. 2781(b)) is amended—

(A) by striking "(1)" and all that follows through "the Secretary" and inserting "The Secretary"; and

(B) by striking paragraph (2).

(2) Section 305 of the Energy and Water Development Appropriation Act, 1988, as contained in section 101(d) of Public Law 100-202 (101 Stat. 1329-125), is repealed.

(b) REGULATIONS REVISED.—The Secretary of Energy shall revise existing regulations consistent with the amendments made by subsection (a) no later than 150 days after the date of the enactment of this Act. Such regulations shall be consistent with the Federal Acquisition Regulation 48 C.F.R. 31.205-22.

Section-by-Section Analysis

The Federal Acquisition Regulation (FAR), at 31.205-22, restricts reimbursement for lobbying and political activity to costs incurred in connection with providing a presentation of information that is readily obtainable on a topic directly related to the performance of a contract. The information must be technical and factual. Costs associated with its delivery are not reimbursable unless incurred for the purpose of offering testimony at a regularly scheduled congressional hearing pursuant to a written request made by the chairman or ranking minority member of the committee or subcommittee conducting such hearing.

The Department of Energy (DOE) regulation, at 970.3102-05-22, relaxes the FAR's restriction to permit reimbursement for "expert advice" from its contractors that does not necessarily represent the views of DOE or the Federal Government. It must be technical, factual, or scientific; but it is not an explicit requirement that it be technical and factual. It also is not restricted to formal hearings nor formal requests by the committee or subcommittee chairs and ranking members. Oral or contemporaneous requests from representatives or staffers are

enough, and the advice may be reimbursed not only for topics related to performance of the contract, but also for proposed legislation as well.

This expanded scope for allowable lobbying and political activity costs requires DOE to reimburse its contractors for work that may not be in furtherance of mission requirements at a time when agencies cannot afford to allow diversion of resources away from priorities.

DOE's regulation is consistent with DOE-specific legislation. The DOE-specific legislation is inconsistent with contractor lobbying and political activity reimbursement restrictions and allowances placed on the rest of government. The legislative proposal would repeal that DOE-specific legislation and the implementing DOE regulation and would require that DOE regulations, post-repeal, be consistent with regulation governing contractor lobbying and political activity reimbursement applied to the rest of government. Section 4801 of the Atomic Energy Defense Act (50 U.S.C. 2781) is limited in applicability to the national security programs of the Department of Energy. The proposal does not change this limitation; however, in the past, implementing regulations for all of DOE have been consistent with section 4801.

Changes to Existing Law: The following shows the changes to existing law made by the proposal:

ATOMIC ENERGY DEFENSE ACT

SEC. 4801. [50 U.S.C. 2781] COSTS NOT ALLOWED UNDER COVERED CONTRACTS.

(a) IN GENERAL.—The following costs are not allowable under a covered contract:

(1) Costs of entertainment, including amusement, diversion, and social activities and any costs directly associated with such costs (such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities).

(2) Costs incurred to influence (directly or indirectly) legislative action on any matter pending before Congress or a State legislature.

(3) Costs incurred in defense of any civil or criminal fraud proceeding or similar proceeding (including filing of any false certification) brought by the United States where the contractor is found liable or has pleaded nolo contendere to a charge of fraud or similar proceeding (including filing of false certification).

(4) Payments of fines and penalties resulting from violations of, or failure to comply with, Federal, State, local, or foreign laws and regulations, except when incurred as a result of compliance with specific terms and conditions of the contract or specific written instructions from the contracting officer authorizing in advance such payments in accordance with applicable regulations of the Secretary of Energy.

(5) Costs of membership in any social, dining, or country club or organization.

(6) Costs of alcoholic beverages.

(7) Contributions or donations, regardless of the recipient.

(8) Costs of advertising designed to promote the contractor or its products.

(9) Costs of promotional items and memorabilia, including models, gifts, and souvenirs.

(10) Costs for travel by commercial aircraft or by travel by other than common carrier that is not necessary for the performance of the contract and the cost of which exceeds the amount of the standard commercial fare.

(b) REGULATIONS.—~~(1) Not later than 150 days after November 8, 1985, the~~ The Secretary of Energy shall prescribe regulations to implement this section. Such regulations may establish appropriate definitions, exclusions, limitations, and qualifications. Such regulations shall be published in accordance with section 1707 of title 41.

~~(2) In any regulations implementing subsection (a)(2), the Secretary may not treat as not allowable (by reason of such subsection) the following costs of a contractor:~~

~~(A) Costs of providing to Congress or a State legislature, in response to a request from Congress or a State legislature, information of a factual, technical, or scientific nature, or advice of experts, with respect to topics directly related to the performance of the contract.~~

~~(B) Costs for transportation, lodging, or meals incurred for the purpose of providing such information or advice.~~

(c) DEFINITION.—In this section, "covered contract" means a contract for an amount more than $100,000 entered into by the Secretary of Energy obligating funds appropriated for national security programs of the Department of Energy.

(d) EFFECTIVE DATE.—Subsection (a) shall apply with respect to costs incurred under a covered contract on or after 30 days after the regulations required by subsection (b) are issued.

ENERGY AND WATER DEVELOPMENT APPROPRIATION ACT, 1988

(as contained in section 101(d) of Public Law 100-202)

~~SEC. 305. (a) In any regulations issued pursuant to section 1534 of the Defense Authorization Act for 1986, the Secretary of Energy may not disallow the following costs associated with the activities of contractor personnel from the Department of Energy National Laboratories (or Department of Energy personnel of the Department of Energy National Laboratories):~~

~~(1) Costs of providing to Congress or a State legislature, in response to a request (written or oral, prior or contemporaneous) from Congress or a State legislature, information or expert advice of a factual, technical, or scientific nature, with respect to:~~

~~(A) topics directly related to the performance of the contract; or~~

~~(B) proposed legislation; irrespective of whether such information or advice was requested or supplied through the Department of Energy.~~

~~(2) Costs for transportation, lodging, or meals incurred for the purpose of providing such information or advice.~~

~~(b) No part of any appropriation made in this title shall be obligated or expended to influence, either directly or indirectly, any appropriation or legislation before Congress, or for any publicity or propaganda purpose not specifically authorized by Congress: Provided, That this provision shall not apply to:~~

~~(1) the communication of departmental or agency views to the Congress;~~

~~(2) the conduct of normal legislative liaison activities; or~~

~~(3) the costs described in subsection (a).~~