provision on legislative lobbying cost prohibition. To avoid any misunderstandings or disagreements between contractors and the Department, the criteria for cost allowability are being revised to provide clear direction on when and under what circumstances management and operating contractors will be reimbursed for costs of providing information or expert advice to Congress or a State legislature. While contractors may incur the costs of responding to a request for information from Congressional Members or staff, reimbursement of travel costs will require the additional step of a written request signed by a Member of Congress.

EFFECTIVE DATE: January 11, 1996.

FOR FURTHER INFORMATION CONTACT: Michael L. Righi, Office of Policy (HR–51), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202–586–8175).

SUPPLEMENTARY INFORMATION:

I. Background

A. Discussion

The proposed rule was published on October 18, 1994, at 59 FR 52505 to amend the DEAR standard clause on legislative lobbying cost prohibition, DEAR 970.5204–17, which is applicable to all DOE management and operating (M&O) contracts. It included a new requirement that the contractor notify the Department as soon as practicable when providing information or expert advice to Congress or a State legislature. It also included a new requirement that the contractor provide a disclaimer that the information or expert advice represents the views of the contractor and not the Department.

Five sets of comments were received from organizations outside of the Department.

B. Disposition of Comments

1. Statutory Treatment of Laboratories (Pub. L. 100–202)

Two of the commenters referred to language contained in Pub. L. 100–202, Section 305 of the Energy and Water Development Appropriation Act for 1988. A variation of the same language was enacted in the National Defense Authorization Act for Fiscal Years 1988 and 1989, Pub. L. 100–180, Section 3131. The language from the authorization act extends beyond treatment of just laboratories and was codified at 42 U.S.C. 7256a(b)(2).

As a practical matter, neither the 1988 Appropriations Act nor the 1988/1989 Defense Authorization Act prohibits the Department from issuing clarifying regulations on the circumstances under which lobbying costs will be reimbursed. In fact, both prohibitions specifically contemplate implementing regulations. Further, neither of these Acts prohibit the Department from defining the parameters for reimbursement or imposing documentation requirements on the contractor for reimbursement of these costs. Rather, these Acts appear simply to prohibit the Department from making a blanket prohibition of unallowability. Since the language in this rulemaking describes the parameters for reimbursement of this category of cost, we do not believe it violates the prohibition contained in 42 U.S.C. 7256a(b)(2).

2. Distinction Between Requests From Congress and State Legislatures

Two of the commenters questioned creating different treatment for costs depending on whether they were incurred in response to a Congressional request or a request from a State legislature. More specifically, unlike Congressional requests, a request for information or expert advice from a State legislator would be required to be written and signed by the legislator (not staff) in advance, in all cases, to justify any reimbursement of costs.

The U.S. Congress has oversight responsibility over the Department and its operations, and appropriates funds for its use. This authority and responsibility are not delegated to, or shared by, the State legislatures. Thus, we believe that the difference in treatment between Congressional requests and requests from State legislatures is justified because of the higher level of responsibility and responsiveness owed by the Department to the U.S. Congress.

3. Deletion of Reference to Congressional Record Notice

One commenter questioned the deletion of the parenthetical reference ''(* * * including a Congressional Record notice requesting testimony or statements for the record at a regularly scheduled hearing) * * *.'' This language referred to types of requests where the response costs would be allowable.

A general request or invitation for ''interested parties'' to present views or testimony to Congress on a particular issue, such as that appearing in a Congressional Record notice, is open to the public at large and is usually general in nature. Members of the public whose views are specifically sought are individually invited. It is not unreasonable for the Department to require its contractors be specifically invited in writing to testify before providing for reimbursement of travel costs.

4. Record Keeping Requirements and Proposed Deletion of FAR 31.205–22(f)

Two commenters disagreed with the Department's conclusion that the NOPR contained no new record keeping requirements. These commenters felt that the burden under this initiative ran counter to the current streamlining efforts in the Federal government.

The Department believes that the additional documentary burden, compared to that currently imposed on the Department's contractors, is not unreasonable and is consistent with FAR Part 31, generally, and FAR 31.205–22, specifically. It is also consistent with Office of Management and Budget Circular A–21 paragraph 24, and a recently proposed amendment to FAR 31.201–2, Determining allowability (59 FR 47776, September 16, 1994, FAR Case 93–20). The proposal to amend FAR 31.201–2 will make it clear that the contractor is to be responsible for maintaining records to support its cost claims and authorizes the contracting officer to disallow costs which are inadequately supported. While the proposed rulemaking to amend FAR 31.201–2 has not been finalized, 41 U.S.C. 256(f)(2) now provides that the FAR shall require that a contracting officer may not resolve any questioned costs until the contracting officer has obtained adequate documentation, and the opinion of the contract auditor, with respect to such costs. The amendment to 41 U.S.C. 256 resulted from Section 2151 of the Federal Acquisition Streamlining Act of 1994, Pub. L. 103–355.

Another commenter pointed out that the Civilian Agency Acquisition Council (CAAC) and the Defense Acquisition Regulations Council (DARC) have published a proposal to delete paragraph (f) of FAR 31.205–22 (See 59 FR 47776, September 16, 1994, FAR Case 93–6). Paragraph (f) of the DEAR clause parallels paragraph (f) of FAR 31.205–22. The language proposed for deletion provides that time logs,