The closest applicable definition under the SBA's rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of LECs nationwide of which it is aware appears to be the data that the Commission collects annually in connection with the Telecommunications Relay Service (TRS). According to our most recent data, 1,371 companies reported that they were engaged in the provision of local exchange services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, or are dominant, the Commission is unable at this time to estimate with greater precision the number of LECs that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that fewer than 1,371 small providers of local exchange service are small entities or small incumbent LECs that may be affected by the Notice.

17. *Description of Projected Reporting, Recordkeeping and Other Compliance Requirements.* As a result of rules that the Commission may adopt, incumbent LECs and CLECs may be required to discern the amount of traffic carried on their networks that is bound for ISPs. In addition, such incumbent LECs and entrants may be required to produce information regarding the costs of carrying ISP-bound traffic on their networks.

18 *Steps Taken to Minimize Significant Economic Impact on Small Entities, and Alternatives Considered.* As noted, the Commission proposes to adopt rules that may require incumbent LECs and CLECs to discern the amount of traffic carried on their networks that is bound for ISPs. The Commission anticipates that if it adopts such rules, incumbent LECs and CLECs, including small entity incumbent LECs and CLECs, will be able to receive compensation for the delivery of ISP-bound traffic that they might not otherwise receive. The Notice also requests comment on alternative proposals.

19. *Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules.* None.

3. Comment Filing Procedures

20. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before April 12, 1999, and reply comments on or before April 27, 1999. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 Fed. Reg. 24,121 (1998).

21. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail message to ecfs@fcc.gov and include ''get form <your e-mail address>'' in the body of the message. A sample form and directions will be sent in reply.

22. Parties that choose to file by paper must file an original and four copies of each filing. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 Twelfth St., S.W., Room TW–A325, Washington, DC 20554.

23. Parties that choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to: Wanda Harris, Federal Communications Commission, Common Carrier Bureau, Competitive Pricing Division, 445 Twelfth St., S.W., Fifth Floor, Washington, DC 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using WordPerfect 5.1 for Windows or compatible software. The diskette should be accompanied by a cover letter and should be submitted in ''read only'' mode. The diskette should be clearly labelled with the commenter's name, proceeding (including the docket number in this case, CC Docket No. 99–68); type of pleading (comment or reply comment); date of submission; and the name of the electronic file on the diskette. The label should also include the following phrase ''Disk Copy—Not an Original.'' Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, DC 20036.

V. Ordering Clauses

24. Accordingly, *it is ordered,* pursuant to Sections 1, 4 (i) and (j), 201–209, 251, 252, and 403 of the Communications Act, as amended, 47 U.S.C. 151, 154(i), 154(j), 201–209, 251, 252 and 403, that this Notice of Proposed Rulemaking *is hereby adopted* and comments *are requested.*

25. *It is further ordered* that the Commission's Office of Public Affairs, Reference Operations Division, *shall send* a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–7160 Filed 3–23–99; 8:45 am]

BILLING CODE 6712–01–U

DEPARTMENT OF ENERGY

48 CFR Part 970

RIN 1991–AB36

Acquisition Regulation: Costs Associated With Whistleblower Actions

AGENCY: Department of Energy.

ACTION: Supplemental proposed rule; notice of limited reopening of comment period.

SUMMARY: On January 5, 1998, the Department of Energy (DOE or Department) published a notice of proposed rulemaking (NOPR) to amend the Department of Energy Acquisition Regulations (DEAR) to incorporate a contract reform initiative concerning costs associated with defense of whistleblower actions. DOE has issued this document to invite public comments on alternate regulatory text that DOE is considering. The alternate text would implement a cost principle instead of a contract clause approach, and it would expand the coverage of the proposed DEAR revision to include allowability of labor settlement costs generally.

DATES: Written comments must be submitted no later than April 23, 1999.

ADDRESSES: Comments should be addressed to: Terrence D. Sheppard, Office of Procurement and Assistance Policy (MA–51), Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585–0705.

FOR FURTHER INFORMATION CONTACT: Terrence D. Sheppard (202) 586–8193; fax (202) 586–0545; e-mail terry.sheppard@hq.doe.gov.

SUPPLEMENTARY INFORMATION:

I. Background
II. Public Comment

I. Background

On January 5, 1998 the Department published a NOPR to amend the DEAR to incorporate a contract reform initiative concerning costs associated with defense of whistleblower actions (63 FR 386). On the same day, the Department also published proposed revisions to its whistleblower protection program (10 CFR Part 708). (63 FR 374).

This document invites public comment on an alternate approach to the cost clause that DOE proposed in the January 1998 NOPR. The alternative that DOE is considering would add a new cost principle in DEAR subpart 970.31. The cost principle would address the allowability of costs relating to labor disputes generally, including whistleblower actions. The cost principle would be less prescriptive than the proposed contract clause, and would give contracting officers greater discretion to review the circumstances of each case in making a determination of allowability.

DOE developed this cost principle approach after considering written comments from two entities that were critical of the contract clause proposed in the January 1998 NOPR. One commenter objected to the proposed contract clause provision that would generally disallow the costs of defending a whistleblower action if an adverse determination had been issued against the contractor. See proposed 970.5204–XX(c)(2). The commenter argued that it would be unfair to treat all adverse decisions in the same manner, regardless of the circumstances surrounding the decision. The commenter further pointed out that some cases may represent situations where two reasonable minds could disagree and the reviewer rules in favor of the employee; such close cases would not represent bad faith by the contractor.

In reformulating the whistleblower cost clause as a cost principle, contracting officers would have greater latitude and discretion to review the facts of each case in determining the allowability of defense costs. In some situations, the contracting officer could also determine settlement costs to be unallowable when the facts warrant that determination. Both commenters on the January 1998 NOPR stated that the proposed cost clause, by disallowing costs if there has been an adverse determination against the contractor, would have the practical effect of encouraging contractors to enter into settlements with alleged whistleblowers, regardless of the merit of the claim and whether the contractor's defense of its action was a prudent business decision. In their view, a liberal settlement policy would encourage meritless or questionable claims.

DOE thinks the cost principle that follows this paragraph would provide greater leeway in allowability determinations for situations where a contractor's prudent business judgment determines the need to defend against claims of undetermined merit or claims that may adversely impact industrial relations and employee morale. The cost principle also would bring the Department into greater conformity with the rest of the federal government, particularly as reflected in the decisions of the various Boards of Contract Appeals.

As an alternate to the proposed rule published on January 5, 1998 at 63 FR 386, DOE proposes to add a new section to part 970 to read as follows:

970.3102–XX Labor disputes and whistleblower actions.

(a) Labor settlement costs (awards) can arise from judicial orders, negotiated agreements, arbitration, or an order from a Federal agency or board. The awards generally involve a violation in one of the following areas:

(1) Equal Employment Opportunity (EEO) laws,

(2) Union agreements,

(3) Federal labor laws, and

(4) Whistleblower protection laws.

(b) An award or settlement can cover compensatory damages, or underpayment for work performed. Reimbursement for a complainant employee's legal counsel may also be covered by an award or settlement.

(c) The allowability of these costs should be determined on a case-by-case basis after considering the relevant terms of the contract and the surrounding circumstances; i.e., looking behind the settlement and considering the causes. If the dispute resulted from actions that would be taken by a prudent business person (FAR 31.201–3 and 48 CFR (DEAR) 970.3101–3), the costs would be allowable. However, if the dispute was occasioned by contractor actions which are unreasonable or were found by the agency or board ruling on the dispute to be caused by unlawful, negligent or other malicious conduct, the costs would be unallowable.

(d) The allocability of these costs must also be reviewed (FAR 31.201–4 and 48 CFR (DEAR) 970.3101–3). In some circumstances an award may not impact direct costs, but may be determined to be an allowable indirect cost.

(e) Litigation costs incurred as part of labor settlements shall be differentiated and accounted for so as to be separately identifiable. If a contracting officer provisionally disallows such costs, the contractor may not use funds advanced by DOE to finance litigation costs connected with the defense of a labor dispute or whistleblower action.

(f) Settlement and litigation costs associated with actions resolved prior to an adverse determination or finding against a contractor through judicial action or an agency board will, depending on the circumstances and facts of each case, generally be allowable, if consistent with paragraph (c) of this section. Litigation costs associated with an adverse determination against the contractor require a higher level of scrutiny before a determination of allowability can be made.

II. Public Comment

DOE invites public comment on this cost principle, as well as general comment on the relative merits of the contract clause and cost principle approaches. DOE also invites public comment on the suggested expansion of coverage to include labor settlement costs generally. DOE will finally decide these issues after considering public comments it receives.

Issued in Washington, D.C. on March 17, 1999.

Richard H. Hopf,

Deputy Assistant Secretary for Procurement and Assistance Management.

[FR Doc. 99–7065 Filed 3–23–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA 99–5098]

Federal Motor Vehicle Safety Standards; Side Impact Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of a public meeting.

SUMMARY: This document announces that NHTSA will be holding a public meeting to explore technical issues (including test procedures) relating to the assessment of potential benefits and risks of inflatable restraint systems for side crash protection. This meeting is intended to provide an opportunity for