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

the automotive community and interested parties to discuss their evaluation of the safety performance of these inflatable restraint systems. The meeting is open to both participants (presenters and discussants) and observers.

DATES: *Public Meeting:* A public meeting will be held on April 19, 1999, from 9:00 a.m. to 4:00 p.m. If you wish to participate in the meeting, contact Randa Radwan Samaha, at the address, telephone, or e-mail listed below, by April 7, 1999. If you wish to present a prepared oral statement during the meeting, please provide a copy of your statement to Ms. Samaha by April 12, 1999.

Written Comments: If you wish to submit written comments to the agency, you must do so in time for the agency to receive your comments by April 30, 1999.

ADDRESSES: *Public Meeting:* The public meeting will be held in Room 2230 of the Nassif Building, 400 Seventh St., S.W., Washington, DC 20590.

Written Comments: If you wish to submit written comments on the issues related to or discussed at this meeting, mention Docket No. NHTSA 99–5098 in your comments, and submit them to: Docket Management, Room PL–401, 400 Seventh Street, S.W., Washington, DC 20590 (Docket hours are from 10:00 a.m. to 5:00 p.m.).

FOR FURTHER INFORMATION CONTACT: *For non-legal issues:* Randa Radwan Samaha, Office of Vehicle Safety Research, NRD–11, 400 Seventh Street, S.W., Washington, DC 20590 (telephone 202–366–4707; fax 202–366–5670, *randa.samaha.@nhtsa.dot.gov*).

For legal issues: Edward Glancy, Office of Chief Counsel, NCC–20, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, DC 20590 (telephone 202–366–2992; fax 202–366–3820).

SUPPLEMENTARY INFORMATION:

A. Background

Several types of inflatable restraint systems (IRS) for side crash protection are rapidly emerging in the U.S. and world markets. The number of vehicles equipped with these systems is projected to increase substantially over the next two to three years. About three-quarters of automakers already offer side-mounted air bags in at least some of their model year 1999 vehicles. The side IRS vary widely in designs, sizes, mounting locations and methods, inflation systems, body regions protected, and areas of coverage. In particular, there are seat and door mounted air bag systems for thorax protection, seat-mounted air bag systems for combination thorax/head protection, and various versions of window curtains, an inflatable tubular structure system, and headrest-mounted air bags for head protection.

Although these systems have been demonstrated to have potential for superior protection in side crashes, there may be a potential of added injury risk by the side IRS to out-of-position children and adults. This potential risk has been examined in exploratory static deployment testing by vehicle manufacturers, NHTSA, Transport Canada, and other institutions; discussed in recent communications between the agency and the automakers; and called attention to in some automakers' news releases and owner's manuals.

In view of the potential risk, it is necessary to understand the performance and overall effectiveness of these recently introduced systems. It is especially necessary to conduct a critical evaluation of any possible harmful effects and unintended consequences of their deployment for children and out-of-position occupants. In December 1998, NHTSA sent a letter to twenty-one vehicle manufacturer executives urging them to personally ensure that their side-mounted air bag systems are designed to ''do no harm'' to occupants. In a February 1999 public statement, the agency said that, ''Manufacturers have an obligation to thoroughly and adequately test the safety of any new technology under real world conditions prior to introduction into the market place.'' In addition, the agency noted in that statement that it ''has held meetings with industry to better understand system designs.''

To date, NHTSA has not received any reports of serious or fatal injuries directly attributable to a side IRS. Both NHTSA and Transport Canada are currently monitoring the field experience of these systems in North America. Further, NHTSA is aware of vehicle manufacturers' efforts to find ways to minimize injury risk to out-of-position occupants either through the design or location of the side IRS, or by means of automatic deactivation under certain circumstances (e.g., when the presence of a child is detected by sensors in the vehicle seat).

Although the side IRS are designed primarily to provide protection to adult occupants, vehicle manufacturers conduct tests with smaller-sized dummies to attempt to determine the injury potential to out-of-position adults and children. Based on recent communications with vehicle manufacturers, the agency is aware of substantial differences among vehicle manufacturers in the test procedures and type of testing performed with child sized and adult dummies, and the levels of the biomechanical injury criteria considered as acceptable performance. (The agency notes that much of the information submitted to it by the manufacturers was provided along with requests that the information be treated as confidential business information under 5 U.S.C. 552. The agency has granted those requests.)

B. Public Meeting

In light of the foregoing, the agency is holding a public meeting to share the real world and test data that are available and explore technical issues relating to the assessment of potential benefits and risks of side IRS.

1. Purpose and Issues

The purpose of this meeting is to:

- Share real world field and test data on the performance of side IRS involving both children and adult occupants.
- Obtain specific technical comments, discussion, and/or constructive input related to the test conditions, anthropomorphic devices, and injury criteria for evaluating the potential benefits and injury risks of side IRS.
- Obtain pertinent technical comments, discussion, and/or constructive input related to new technologies applicable to side IRS design and performance.
- Provide an opportunity for interested persons to present other pertinent data relevant to and appropriate for the assessment of side IRS, e.g., specifications for desirable performance.

Specific issues to be considered and discussed during the meeting include:

- What are the appropriate criteria and their biomechanical bases for assessing injury risk to out-of-position children and adults? Specific body regions to be considered include as a minimum the skull/brain, the neck, the thorax, the upper and lower extremities, and auditory system.
- What and how many appropriate tests should be performed to determine if the side IRS are safe and providing a safety benefit?

2. Procedural Matters.

A written transcript of the meeting will be made.

To make efficient use of the limited time available for the meeting, the issues will be addressed in the following order:

1. Available real world field data.

2. Available test data.
   a. IRS Injury Risk
   b. IRS Effectiveness
3. Child and adult injury criteria for the skull/brain, neck, torso, upper and lower extremities, and auditory system.
4. New technologies applicable to side IRS design and performance (e.g., sensing and suppression).
5. Proposals for test conditions and procedures.

The discussion of each issue will be structured as follows: (1) A short presentation by NHTSA, (2) Presentations by persons and organizations who have indicated the desire to present data or share other information, (3) Presentations of any new or unconsidered data by interested persons, (4) An open discussion by meeting participants of the technical merits of the presentations and of potential test procedures, and (5) A summary statement.

3. Meeting Participation

This is a public meeting and attendance is open to all members of the public. You may attend as a participant (a presenter or a discussant) or an observer.

C. Written Comments

To ensure that the agency is fully cognizant of the issues and positions taken at this meeting, you are encouraged to submit written comments on the issues related to or discussed at this meeting. Two copies should be submitted to DOT's Docket Management Office at the address given at the beginning of this document.

In addition, if your comments are four or more pages in length, we request, but do not require, that you send 10 additional copies, as well as one copy on computer disc, to: Randa Radwan Samaha, Office of Vehicle Safety Research, NRD–11, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, DC 20590. Providing these additional copies would aid the agency in expediting its review of your comments. The copy on computer disc may be in any format, although the agency would prefer that it be in WordPerfect 8.

Your comments must not exceed 15 pages in length (49 CFR 553.21). You may append necessary supplemental material to your comments without regard to the 15-page limit. This limitation is intended to encourage you to detail your primary arguments in a concise fashion. This will aid the agency in understanding your comments.

If you wish to submit certain information under a claim of confidentiality, you should submit three copies of the complete submission, including purportedly confidential business information, to the Chief Counsel, NHTSA, at the street address given above. In addition, you should submit two copies from which the purportedly confidential information has been deleted to Docket Management. Your request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR Part 512.

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

Issued on: March 17, 1999.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

Raymond P. Owings,

Associate Administrator for Research and Development.

[FR Doc. 99–7172 Filed 3–23–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of Reopening of Comment Period on Our Re-evaluation of Whether Designation of Critical Habitat Is Prudent for 245 Hawaiian Plants

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of reopening of comment period.

SUMMARY: We, the Fish and Wildlife Service, provide notice of reopening the public comment period on our re-evaluation of whether designation of critical habitat is prudent for 245 Hawaiian plants. Our original notice was published in the **Federal Register** on November 30, 1998 (63 FR 65805) and the original public comment period was opened from November 30, 1998, to March 1, 1999. This notice reopens the comment period to May 24, 1999.

DATES: Comments from all interested parties must be received by May 24, 1999.

ADDRESSES: Comments and materials concerning the notice should be sent to Robert P. Smith, Pacific Islands Manager, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, Room 3–122, Box 50088, Honolulu, HI 96850 (telephone: 808/541–2749; facsimile: 808/541–2756).

FOR FURTHER INFORMATION CONTACT: Karen Rosa, Assistant Field Supervisor, Ecological Services (see **ADDRESSES** section) (telephone: 808/541–3441; facsimile: 808/541–3470).

SUPPLEMENTARY INFORMATION:

Background

On January 29, 1997, the Sierra Club Legal Defense Fund (now Earthjustice Legal Defense Fund) filed a lawsuit on behalf of the Conservation Council for Hawaii, the Sierra Club, and the Hawaiian Botanical Society in U.S. District Court in Honolulu, Hawaii, for the Service's failure to designate critical habitat for 278 endangered or threatened Hawaiian plant taxa. Because the statute of limitations had elapsed for many of the plants, this list of plants was later reduced to 245 taxa.

The 245 plant species that are the subject of our November 30, 1998, notice were listed by the Service over a period of several years, between 1990 and 1996, at which time the Service determined that designation of critical habitat was not prudent for one or more of the following three reasons: designation of critical habitat would increase the likelihood of illegal taking or vandalism; designation of critical habitat would not be beneficial for plant species located on private property; and, designation of critical habitat for plant species located on Federal lands provides little or no additional benefit beyond the existing precautions the Federal government must take under section 7 of the Act.

The 245 plant taxa are: *Abutilon eremitopetalum, Abutilon sandwicense, Acaena exigua, Achyranthes mutica, Adenophorus periens, Alectryon macrococcus, Alsinidendron lychnoides, Alsinidendron obovatum, Alsinidendron trinerve, Alsinidendron viscosum, Amaranthus brownii, Argyroxiphium kauense, Argyroxiphium sandwicense* ssp. *macrocephalum, Adenophorus periens, Asplenium fragile* var. *insulare, Bidens micrantha* ssp. *kalealaha, Bidens wiebkei, Bonamia menziesii, Brighamia insignis, Brighamia rockii, Canavalia molokaiensis, Cenchrus agrimonioides, Centaurium sebaeoides, Chamaesyce celastroides* var. *kaenana, Chamasyce deppeana, Chamaesyce halemanui, Chamaesyce herbstii, Chamaesyce kuwaleana, Chamaesyce rockii, Clermontia drepanomorpha, Clermontia lindseyana, Clermontia oblongifolia* ssp. *brevipes, Clermontia oblongifolia* ssp. *mauiensis, Clermontia peleana,*