

**Federal Acquisition Regulation
Federal Acquisition Circular 2005-70 Summary of Rules**

<u>Item</u>	<u>Subject</u>	<u>FAR Case</u>
I	Pilot Program for Enhancement of Contractor Employee Whistleblower Protections	2013-015
II	Allowability of Legal Costs for Whistleblower Proceedings	2012-017

Item I— Pilot Program for Enhancement of Contractor Employee Whistleblower Protections (FAR Case 2013-015)

This interim rule amends the FAR to implement a four-year pilot program to enhance the existing whistleblower protections for contractor employees at subpart 3.9. In accordance with FAR 1.108(d)(3), contracting officers are encouraged to include the changes in these rules in major modifications to contracts and orders awarded prior to the effective date of this interim rule. The pilot program is mandated by section 828, entitled “Pilot Program for Enhancement of Contractor Employee Whistleblower Protections,” of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2013 ([Pub. L. 112-239](#), enacted January 2, 2013). This rule implements section 828 by amending FAR 3.900, Scope of subpart, to make FAR 3.901 through 3.906 inapplicable to DoD, NASA, and the Coast Guard and to prohibit the use of these sections for new awards by all other agencies subject to the FAR (title 41 agencies) through January 1, 2017. This rule creates a new FAR section 3.908 to be used by title 41 agencies through January 1, 2017. Other exceptions: FAR 3.907, which addresses whistleblower protections under the American Recovery and Reinvestment Act of 2009, is unaffected by this rule. This rule does not provide any right not otherwise provided by law to disclose classified information, nor does it apply to any element of the intelligence community, as defined in section 3(4) of the National Security Act of 1947 ([50 U.S.C. 401](#)(a)(4)). In addition, the interim rule applies to actions over the simplified acquisition threshold. Effective: September 30, 2013.

Item II— Allowability of Legal Costs for Whistleblower Proceedings (FAR Case 2012-017)

This interim rule amends the FAR by revising the cost principle at 31.205-47 to implement sections 827(g) and 828(d) of the NDAA for FY 2013 ([Pub. L. 112-239](#)). There are two new whistleblower programs for contractor and subcontractor employees, at [10 U.S.C. 2409](#) and [41 U.S.C. 4712](#). The latter program is a pilot program, being addressed in FAR Case 2013-015, amending FAR subpart 3.9. The cost principle addresses the allowability of legal costs incurred by a contractor or subcontractor in connection with a whistleblower protection proceeding commenced by a contractor or subcontractor employee submitting a complaint of reprisal under the applicable whistleblower statute. Because most contracts awarded to small businesses use simplified acquisition procedures or are awarded on a competitive, fixed-price basis, thus limiting their exposure to the cost principles, the impact of this interim rule on small businesses will be minimal. Effective: September 30, 2013.