

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Chapter 1**

[Docket FAR 2013–0076, Sequence 6]

**Federal Acquisition Regulation;
Federal Acquisition Circular 2005–70;
Introduction****AGENCY:** Department of Defense (DoD),
General Services Administration (GSA),and National Aeronautics and Space
Administration (NASA).**ACTION:** Summary presentation of
interim rules.**SUMMARY:** This document summarizes
the Federal Acquisition Regulation
(FAR) rules agreed to by the Civilian
Agency Acquisition Council and the
Defense Acquisition Regulations
Council (Councils) in this Federal
Acquisition Circular (FAC) 2005–70. A
companion document, the *Small Entity
Compliance Guide* (SECG), follows this
FAC. The FAC, including the SECG, is
available via the Internet at [http://
www.regulations.gov](http://www.regulations.gov).**DATES:** For effective dates and comment
dates see separate documents, which
follow.**FOR FURTHER INFORMATION CONTACT:** The
analyst whose name appears in the table
below in relation to the FAR case.
Please cite FAC 2005–70 and the
specific FAR case numbers. For
information pertaining to status or
publication schedules, contact the
Regulatory Secretariat at 202–501–4755.**RULE LISTED IN FAC 2005–70**

Item	Subject	FAR Case	Analyst
I	Pilot Program for Enhancement of Contractor Employee Whistleblower Protections (Interim)	2013–015	Corrigan.
II	Allowability of Legal Costs for Whistleblower Proceedings (Interim)	2013–017	Chambers.

SUPPLEMENTARY INFORMATION:

Summaries for each FAR rule follow. For the actual revisions and/or amendments made by these FAR cases, refer to the specific item numbers and subjects set forth in the documents following these item summaries. FAC 2005–70 amends the FAR as specified below:

**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.

**Item II—Allowability of Legal Costs for
Whistleblower Proceedings (FAR Case
2013–017)**

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.

Dated: September 24, 2013.

William Clark,*Acting Director, Office of Government-wide
Acquisition Policy, Office of Acquisition
Policy, Office of Government-wide Policy.*

Federal Acquisition Circular (FAC) 2005–70 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005–70 is effective September 30, 2013.

Dated: September 23, 2013.

Richard Ginman,*Director, Defense Procurement and
Acquisition Policy.*

Dated: September 24, 2013.

Houston Taylor,*Acting Senior Procurement Executive/Deputy
CAO, Office of Acquisition Policy, U.S.
General Services Administration.*

Dated: September 23, 2013.

William P. McNally,*Assistant Administrator for Procurement,
National Aeronautics and Space
Administration.*

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