

GHG and climate risk disclosures proposed for federal contractors

At a glance

The federal government proposed the “Federal Supplier Climate Risks and Resilience Rule” to require many federal contractors — representing over 85% of federal government spending — to publicly disclose greenhouse gas emissions. Certain “major” contractors would also be required to disclose climate-related financial risk factors and to set science-based greenhouse gas reduction targets.

This In brief was updated on January 5, 2023 to reflect the extension of the comment period to February 13, 2023.

What happened?

On November 10, 2022, the Biden Administration proposed the *Federal Supplier Risks and Resilience Rule* intended to address climate-related financial risks in the Federal supply chain. The Federal Acquisition Regulatory Council (FAR Council) proposed [rulemaking](#) that would amend the Federal Acquisition Register to require “major” federal contractors, as defined, to provide public disclosure of (1) scope 1, scope 2, and relevant scope 3 greenhouse gas (GHG) emissions; (2) climate-related financial risk factors based on the Task Force on Climate-Related Financial Disclosures (TCFD) framework; and (3) GHG reduction targets established in line with the [Science Based Targets initiative](#) (SBTi). Major contractors without existing targets would be required to establish them. Smaller contractors, defined as “significant,” would be required to provide disclosure of scope 1 and scope 2 GHG emissions.

Proposed rule highlights

With limited exceptions, entities would be subject to the proposed rules based on the volume of federal contracts received in the prior Federal fiscal year. “Major” contractors are those receiving more than \$50 million in federal contracts, while “significant” contractors are those receiving from \$7.5 to \$50 million in federal contracts. These thresholds are based on the size of contracts awarded and not on related revenue in any given year. The rules include limited exceptions for certain entity types, including certain colleges and universities, not-for-profit research entities, and state and local governments.

For impacted major contractors, the requirements would include the following:

- **Annual GHG disclosures:** disclosure of annual GHG scope 1, scope 2, and “relevant scope 3 emissions” as determined under the [GHG Protocol Corporate Accounting and Reporting Standard](#). These metrics would be disclosed publicly via the System for Award Management website ([SAM.gov](#)).
- **Annual climate disclosures:** completion of the CDP (formerly the Climate Disclosure Project) questions that align with the TCFD framework, including the entity’s climate risk assessment process and identified risks. These disclosures would be required to be made available either on a publicly accessible website or via the CDP website.

- **Science-based targets:** development of GHG reduction targets in line with reductions that SBTi deems necessary to meet the goals of the Paris Agreement, namely, to limit global warming to below 2° C above pre-industrial levels. The targets would need to be validated by the SBTi at least every five years and made available on a publicly accessible website. Progress against these published goals would be disclosed as part of the CDP questionnaire.

While the proposal requires a 2° C target, SBTi is no longer validating targets above 1.5° C. Thus, if contractors have not validated a target with SBTi in any of the previous five years, their GHG emissions reductions goals would need to be aligned with a 1.5° C scenario.

Significant contractors would only be required to provide scope 1 and scope 2 GHG emissions, as would a major contractor that is considered a “small business for [its primary] North American Industry Classification System (NAICS) code.”

The rule would permit an entity to meet these requirements itself or through its immediate owner or highest-level owner.

Why is this important?

The proposed rule has a stated intent of prompting suppliers to take action on measuring and managing GHG emissions reductions via public transparency. Almost 6,000 entities representing approximately 86% of the federal government’s annual spending are expected to be subject to these requirements.

What’s next?

On December 23, 2022, the FAR Council extended the comment period on the proposed amendments from January 13, 2023 to February 13, 2023 to provide interested parties with additional time to comment.

Both major and significant contractors would be required to provide the annual disclosure of scope 1 and scope 2 GHG emissions beginning one year after the publication of a final rule. A major contractor’s annual climate risk and science-based target disclosures, including relevant scope 3 emissions, would be effective two years after the publication date of the final rule.

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QUESTION 1

Do all contracts with federal agencies need to be considered when determining whether a company meets the definition of a significant or major contractor, or are certain types of contracts excluded?

PwC response

Unless an entity is specifically exempted (e.g., higher education institutions, nonprofit research entities), the proposed rule states that it “will apply to acquisitions of commercial products (including COTS [commercial off-the-shelf] items) or commercial services, and to acquisitions valued at or below the SAT [simplified acquisition threshold].”¹ The SAT is a federally-set, inflation adjusted threshold below which simplified procedures can be used to solicit and award contracts. Commercial products and services and contracts below the SAT are common exemptions included in other FAR-based contracting requirements, but are not exempted in the proposed rule.

The rule does not provide for any exemptions based on contract type. As a result, all contracts, including those that are indefinite delivery indefinite quantity (IDIQ), such as utilities, and leases of real estate should be included when companies determine their volume of federal contract obligations.

QUESTION 2

Do contractors need to aggregate the work they do for multiple agencies when determining if they are a major or significant contractor?

PwC response

Yes. Whether a contractor is in the scope of the rule is determined by its “Federal contract obligations (as defined in OMB Circular A-11) in the prior Federal fiscal year as indicated in the System for Award Management (SAM) at <https://www.sam.gov>.”²

The System for Award Management contains an entity’s awards across all agencies. There are no rule provisions that provide for the assessment to be performed on an individual contract basis or individual agency basis. Accordingly, all contract obligations should be aggregated regardless of which federal agency is the counterparty.

QUESTION 3

Do contractors need to aggregate contracts awarded to separate legal subsidiaries when determining if they meet the reporting criteria? For example, oil, gas, and telephone providers often operate as regional or state entities.

PwC response

Similar to the assessment of work with multiple Federal agencies discussed in Question 2, the proposed rule does not specifically address whether a company is required to aggregate contracts awarded to separate subsidiaries. Instead, the rules indicate that applicability would be determined based on the entity’s SAM registration. How this will apply to more complex organizations with multiple SAM-registered entities under a common parent entity remains an open question. Other FAR-based reporting and applicability thresholds require the aggregation of contracts for all entities that share a common highest-level parent, which would include separate “sister” legal entities.

QUESTION 4

Does the rule require ongoing reporting over the contract performance period?

PwC response

The proposed rule is specific that the applicable disclosures would be required in the year after the company has met the reporting thresholds. It does not specify whether disclosure would continue to be required throughout the contract performance period if annual Federal contract awards fall below the reporting thresholds. Other FAR-based reporting rules, however, require continued compliance throughout the period of an active contract. Careful analysis will be needed of the final language in the rule and in related contract clauses to determine the duration of reporting.

QUESTION 5

Are non-US contractors in scope?

PwC response

The proposed rule does not distinguish between US-based contractors and non-US contractors. Therefore, we believe all federal contractors — including entities based outside the US — would be subject to the rule unless they qualify for an exemption.

QUESTION 6

Are subcontractors in scope?

PwC response

The proposed rule does not expressly include or exclude subcontractors, and does not address whether contractors would be required to “flowdown” reporting to subcontractors, although flowdown is required for some other FAR-based reporting requirements (e.g., FAR requirements related to human trafficking). The need to flowdown the requirement will be determined based on the language in the final rule.

Even if flowdown is not required, the proposed rules would require a major contractor to report scope 3 greenhouse gas emissions from all entities in its value chain (upstream and downstream). Therefore, we would expect major contractors to request emissions information from subcontractors for their reporting.

¹ Department of Defense, General Services Administration, National Aeronautics and Space Administration, Proposed rule, “FAR: Disclosure of Greenhouse Gas Emissions and Climate-Related Financial Risk,” *Federal Register* 78, no. 218 (November 14, 2022): 68317

² *Ibid.*, 68313