

Proposed regulation for government contractors on greenhouse gases and climate change

Forensic & Integrity Services

April 2023

Following the comment period, which ended on February 13, 2023, final rule making began for Federal Acquisition Regulation (FAR) Case 2021-015 Disclosure of Greenhouse Gas Emissions and Climate-Related Financial Risks, a new proposed rule by the FAR Council. The proposed rule, which was introduced on November 22, 2022, requires federal contractors to publicly disclose their greenhouse gas (GHG) emission levels and set science-based reduction targets. The proposed rule will implement Executive Order (EO) 14030, Climate-Related Financial Risk Section 5(b)(i), addressing the intensifying physical impacts of climate change (CC) and operational impacts on the US government, its major contractors and their respective subcontractors.

The FAR Council will leverage third-party standards and systems, such as the Task Force on Climate-related Financial Disclosures (TCFD) recommendations, the GHG Protocol, the CDP (formerly Carbon Disclosure Project) reporting system and Science Based Targets initiative (SBTi) criteria to develop regulatory amendments and baseline compliance requirements with the new rule. In accordance with the Environmental Protection Agency, scope requirements will be bracketed into three reporting tiers.

Annual System for Award Management (SAM) representations and certifications will require major and significant contractors to provide their specified tier ranking and evidence of Scope 1 and 2 inventories and emissions. Major contractors, under Scope 3 reporting, must publicly submit their CDP Climate Change Questionnaire and provide online public access to their SBTi validated science-based targets.

EPA scope requirement levels	Scope applicability
Scope 1	Direct - Company facilities and vehicles
Scope 2	Indirect - Upstream activities
Scope 3	Indirect - Downstream activities

Key short-term compliance considerations include assessing the reliability of existing data on GHG, establishing targets when needed, and determining the ability to meet targets if a significant portion of the supply chain are Tier One contractors or small businesses, as these categories are exempted from disclosure requirements.

The level of reporting required (tier) will be dependent on the amount of annual federal funding (e.g., contracts, cooperative agreements, grants) contractors receive:

Tier ranking	Contractor applicability	Compliance requirements
Tier One	Annual federal funding valued at \$7.5m or less	Will not incur new reporting requirements
Tier Two (significant)	Annual federal funding valued higher than \$7.5m but less than \$50m	GHG inventory, Scope 1 and 2 annual disclosure requirements
Tier Three (major)	Annual federal funding exceeding \$50m	GHG inventory, Scope 1, 2 and 3 annual disclosure requirements, and science-based target requirements

What are the risks of noncompliance?

Federal contractors failing to disclose the requisite information contained in the proposed rule may be noncompliant with the requirements of FAR Part 9, Contractor Qualifications, and face False Claims Act compliance risks. Contractors that knowingly falsify their GHG emissions reporting could be subject to fines, contract cancellation, termination, possible suspension or debarment.



Compliance timelines from final rule effective date

Requirement	Significant contractors	Major contractors
Inventory GHG	1 year	1 year
Scope 1 & 2 Disclosure	1 year	1 year
Scope 3 Disclosure	N/A	2 years
Conduct climate risk assessment	N/A	2 years
Complete the CDP Climate Change Questionnaire	N/A	2 years
Commit to, develop, and obtain SBTi validation of a science-based target	N/A	2 years

What critical activities should suppliers undertake in establishing and maturing a GHG emissions and CC compliance program?

Critical activities	Key compliance considerations
Compliance program review, reporting and target setting	Establish and/or update GHG reporting mechanisms and emission targets that are commensurate with the applicable tier ranking.
Subcontract management	Flow down and require certification of GHG disclosure reporting and target requirements.
Compliance monitoring	Establish monitoring activities to verify the accuracy of GHG reporting and feasibility of emission targets.

What federal contractors can do

Now

Familiarize yourself with the requirements of frameworks inherent in the proposed rule and what your organization may be doing to address them.

Determine the availability and reliability of data needed for reporting.

Identify current GHG emissions reporting and disclosure capabilities.

Next

Assess if SBTi's are being established and begin implementation of processes, controls and reporting capabilities in preparation for public disclosures.

Determine if investment is needed to meet SBTi's.

Beyond

Periodically assess GHG targets for feasibility and update as required.

Key contacts

Forensic & Integrity Services
Government Contract Services
Ernst & Young LLP



Sajeev Malaveetil

Government Contract Services Leader
sajeev.malaveetil@ey.com



Courtney Black

Principal
courtney.black@ey.com



Eric Tracz

Manager
eric.tracz@ey.com

EY | Building a better working world

EY exists to build a better working world, helping create long-term value for clients, people and society and build trust in the capital markets.

Enabled by data and technology, diverse EY teams in over 150 countries provide trust through assurance and help clients grow, transform and operate.

Working across assurance, consulting, law, strategy, tax and transactions, EY teams ask better questions to find new answers for the complex issues facing our world today.

EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. Information about how EY collects and uses personal data and a description of the rights individuals have under data protection legislation are available via ey.com/privacy. EY member firms do not practice law where prohibited by local laws. For more information about our organization, please visit ey.com.

Ernst & Young LLP is a client-serving member firm of Ernst & Young Global Limited operating in the US.

About EY Forensic & Integrity Services

Embedding integrity into an organization's strategic vision and day-to-day operations is critical when managing complex issues of fraud, regulatory compliance, investigations and business disputes. Our international team of more than 4,000 forensic and technology professionals helps leaders balance business objectives and risks, build data-centric ethics and compliance programs, and ultimately develop a culture of integrity.

We consider your distinct circumstances and needs to assemble the right multidisciplinary and culturally aligned team for you and your legal advisors. We strive to bring you the benefits of our leading technology, deep subject-matter knowledge and broad global sector experience.

© 2023 Ernst & Young LLP.

All Rights Reserved.

US SCORE no. 19207-231US

CSG No. 2212-4146008

ED None

This material has been prepared for general informational purposes only and is not intended to be relied upon as accounting, tax, legal or other professional advice. Please refer to your advisors for specific advice.

ey.com/forensics/governmentcontractservices