



**Shaun Kennedy**

Partner  
Washington, D.C., Denver  
sckennedy@hollandhart.com



**Christine Garson**

Associate  
303.293.5977  
Denver  
cmgarson@hollandhart.com

# Proposed FAR Rule Creates Climate-Related Inventory and Disclosure Requirements for Federal Contractors

## Proposed FAR Rule Creates Climate-Related Inventory and Disclosure Requirements for Federal Contractors

**Insight — 11/18/2022**

On November 14, 2022, the Federal Acquisition Regulation ("FAR") Council issued a proposed rule that may require certain federal contractors to disclose their greenhouse gas ("GHG") emissions and associated financial risk. The proposed rule also establishes science-based targets for reduction of GHG.

This rule implements the inventory and disclosure set forth in Executive Order ("EO") 14030, Climate-Related Financial Risk, as well as portions of other related EOs. It revises FAR Part 23, creating a new subpart entitled "Public Disclosure of Climate Information." Importantly, GHG disclosures will be considered by contracting officers as part of a responsibility determination under the standards set forth in FAR Subpart 9.1.

### Covered Contractors

The proposed rule imposes GHG inventory and disclosure requirements on two categories of contractors registered in the System for Award Management ("SAM"), with limited exceptions (discussed below):

1. **Significant contractors.** Contractors that received between \$7.5 million and \$50 million in federal contract obligations in the prior federal fiscal year.
2. **Major contractors.** Contractors that received more than \$50 million in federal contract obligations in the prior federal fiscal year.

The FAR Council anticipates that approximately 5,766 significant and major contractors will be impacted by this proposed rule.

### Proposed GHG Inventory and Disclosure Requirements

The proposed rule imposes several GHG monitoring and disclosure requirements. In significant part, it requires covered contractors to compile inventories for:

1. **Scope 1 emissions**, which include GHG emissions from sources that are owned or controlled by the reporting company; and
2. **Scope 2 emissions**, which include GHG emissions associated with the generation of electricity, heating and cooling, or steam, when these are purchased or acquired for the reporting company's own consumption but occur at sources owned or controlled by another entity.

Under the proposed rule, GHG is defined to include carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, nitrogen trifluoride, and sulfur hexafluoride.

The proposed rule also provides direction regarding the proper conduct of a GHG inventory, including reference to accounting and reporting standards and calculation tools. Further, the inventory must represent emissions during a continuous period of 12 months, ending not more than 12 months before the inventory is completed.

Major contractors must fulfill *additional* requirements, including the development of an annual climate disclosure, which must be published on a publicly available website. This disclosure must include:

1. Inventories of Scope 1 and Scope 2 emissions, as defined above;
2. Inventory of Scope 3 emissions, which are emissions that are a consequence of the operations of the reporting entity but occur at sources other than those owned or controlled by the entity;
3. A description of the entity's climate risk assessment process and any risks identified; and
4. Completion of those portions of the CDP (formerly Carbon Disclosure Project) Climate Change Questionnaire that align with the Task Force on Climate-Related Financial Disclosures ("TCFD").

Furthermore, major contractors must develop science-based targets and have those targets validated by the Science Based Targets Initiative ("SBTi"). A science-based target is a target for reducing GHG emissions that is aligned with the latest climate science, as further described in the

proposed rule.

### **Impacts**

Importantly, contractors that fail to inventory their annual GHG emissions, and disclose such emissions in SAM, will be treated as not responsible under FAR Subpart 9.1. Further, major contractors that fail to publicly share their annual climate disclosure and set targets to reduce emissions will also be treated as not responsible.

Significant and major contractors must complete GHG inventories for Scope 1 and Scope 2 emissions *within one year* after publication of the final rule. Major contractors have *two years* to complete the additional requirements specific to them.

### **Exceptions**

Significant and major contractors falling under the following categories are listed as exempt from the GHG inventory, disclosure, and target requirements:

1. An Alaska Native Corporation, a Community Development Corporation, an Indian tribe, a Native Hawaiian Organization, or a Tribally owned concern;
2. A higher education institution;
3. A nonprofit research entity;
4. A state or local government; or
5. An entity deriving 80 percent or more of its annual revenue from Federal management and operating ("M&O") contracts that are subject to agency annual site sustainability reporting requirements.

There are also exceptions for certain major contractors that are considered small businesses for purposes of their primary North American Industry Classification System ("NAICS") code identified in SAM, or where the major contractor is a nonprofit organization. Such major contractors are not required to complete an annual climate disclosure or to set science-based targets; however, they still must complete GHG inventories of Scope 1 and Scope 2 emissions and the associated SAM reporting requirements.

### **Conclusion**

This proposed rule directly engages the federal contractor supply base in its goal of shedding light on major annual sources of GHG emissions and impending climate risks. By enhancing transparency and accountability,

the Government expects that contractors will take action, resulting in increased resilience of the federal supply chain.

Public comments on the proposed rule are due by January 13, 2023.