



Submitted via <https://www.regulations.gov>

December 15, 2022

Jennifer Hawes
General Services Administration
1800 F Street, NW
Washington, DC 20405

Re: Proposed Rule, Department of Defense, General Services Administration, and National Aeronautics and Space Administration; “Federal Acquisition Regulation: Disclosure of Greenhouse Gas Emissions and Climate-Related Financial Risk” 87 Fed. Reg. 68312 (November 14, 2022)

Dear Ms. Hawes:

The U.S. Chamber of Commerce (“the Chamber”) strongly urges a comment period extension of at least 60 days on the Department of Defense’s (DoD’s), General Services Administration’s (GSA’s), and National Aeronautics and Space Administration’s (NASA’s) proposed rule to amend the Federal Acquisition Regulation (FAR) to require certain federal contractors to “disclose their greenhouse gas emissions and climate-related financial risk and set science-based targets to reduce their greenhouse gas emissions” (“Proposed Rule”).¹

The Chamber represents a broad swath of businesses including federal contractors large and small that provide products and services across industries such as aerospace and defense, telecommunications, information technology, engineering services, food and hospitality, pharmaceuticals, biotechnology, healthcare, energy, and much more. Businesses are working along with governments and citizens in a growing effort to combat climate change. Working together will help to develop, finance, build, and operate the solutions needed to power economic growth worldwide, mitigate greenhouse gas emissions, and build a resilient, lower-carbon future. We continue to actively collaborate with our members and other stakeholders to promote practices, policies, and technology innovations across industry and government that address our shared climate challenges, particularly to reduce greenhouse gas emissions at the pace of innovation. Thousands of businesses are already taking action in their own operations and along their value chains by investing in technology solutions and other innovations and approaches.

¹ FAR Case 2021–015, Docket No. FAR– 2021–0015, Sequence No. 1

The scope and complexity of the Proposed Rule gives rise to the need for additional time. The Proposed Rule would mandate thousands of businesses to: (1) determine whether they are a significant or major contractor based on the size of their federal contract obligations in accordance with the proposal; (2) complete a GHG inventory of their direct greenhouse gas emissions (“Scope 1” emissions), emissions associated with purchased electricity or other forms of energy (“Scope 2” emissions), and (3) report these greenhouse gas emissions through the federal government’s System for Award Management (SAM). Additionally, major contractors would be required to (1) develop and submit an annual climate disclosure aligned with the Task Force on Climate-related Financial Disclosures (TCFD) Recommendations and which include “Scope 3” emissions; (2) conduct a climate risk assessment; (3) develop disclosures aligned with the Task Force on Climate Related Financial Risk; and (4) set, disclose, and validate science-based targets to reduce their emissions using the Science-Based Targets Initiative. The broad scope of these proposed requirements, the complexity of the issues that they raise, and their potential impacts demand additional time for contractors and other affected parties to more comprehensively study the consequences of this proposal and offer more complete responses in their comments.

The proposed rule raises a host of complex and important practical questions concerning matters such as feasibility, logistics, and cost, which require additional time for contractors and other stakeholders to provide comments that will be adequate to inform the agencies’ deliberations.² Although some contractors may collect and disclose information about Scope 1 and Scope 2 emissions, not all contractors have this information available to them at this time, in part because of constraints arising from supplier relationships. Major contractors would also be required to disclose Scope 3 emissions. For those that do already collect some or all of this information, they would benefit from additional time to help comment on the best way the FAR could synchronize existing collection and disclosure efforts with any new requirements to minimize redundant requirements that can add significant costs and inefficiencies to federal contracting.

Affected contractors would also need additional time to sort through the incorporation of GHG considerations into the existing requirements to ensure cost-effectiveness in contracting. Further evaluations are needed concerning current

² In addition, the proposed rule raises serious legal questions, which require careful and thorough consideration in order to ensure durable policy outcomes. See, for example, *Georgia v. President of the United States*, 46 F.4th 1283 (11th Cir. 2022) (upholding, in pertinent part, preliminary injunction against mandate requiring employees of federal contractors to be vaccinated against COVID-19 as a condition of all procurement contracts and solicitations).

government priorities set under Other Transaction Authority, Best Value Assessments, and Lowest Price Technically Acceptable determinations. Other priorities such as national security and impacts on small businesses require careful consideration to provide informed comments. It bears emphasis that the Proposed Rule indicates that total estimated public costs associated with the rule over a ten-year period would exceed \$3 billion; such a cost by itself warrants careful consideration during the comment process, and the Chamber expects the proposal's true cost would actually be much higher.

More time is needed to evaluate the various components of the standards and guidance that are required to be used for compliance with the reporting, target setting, and disclosure requirements of the Proposed Rule. As some of these standards were not developed through a consensus-based process as is common for other agency rulemakings that incorporate standards by reference, additional time will be needed to identify any potential gaps in the standards and guidance. As the standards and guidelines referenced in the Proposed Rule were developed as voluntary standards, identifying these gaps will be important and will take time.³

Additionally, we note that it is crucial for companies to be able to understand and assess how the Proposed Rule would interact not only with existing requirements, but with proposals from other federal agencies that would impose new requirements. The Office of the Comptroller of the Currency ("OCC"),⁴ the Federal Deposit Insurance Corporation ("FDIC"),⁵ Federal Insurance Office ("FIO"),⁶ and the Federal Reserve⁷ all have pending or recently-pending consultations that contemplate new requirements related to climate-related risks. The Securities and Exchange Commission ("SEC") also

³ The proposed rule references the following standards and guidance, each of which requires careful review to provide informed feedback:

1. CDP (formerly Carbon Disclosure Project) Climate Change Questionnaire,
2. Science Based Targets Initiative (SBTi),
3. Greenhouse Gas Protocol Corporate Accounting and Reporting Standard,
 - a. Greenhouse Gas Protocol Corporate Standard (2004),
 - b. Greenhouse Gases in Inventories: Accounting and Reporting Amendment (2013),
 - c. GHG Protocol Scope 2 Guidance (2015),
 - d. GHG Protocol Corporate Value Chain (Scope 3) Accounting and Reporting Standard Guidance (2011),
4. 2017 Recommendations of the Task Force on Climate-Related Financial Disclosures (TCFD), and
5. 2021 TCFD Annex: Implementing the Recommendations of the Task Force on Climate-related Financial Disclosures.

⁴ <https://www.occ.gov/news-issuances/bulletins/2021/bulletin-2021-62.html>

⁵ <https://www.fdic.gov/news/financial-institution-letters/2022/fil22013.html>

⁶ <https://home.treasury.gov/news/press-releases/jy1030>


⁷ <https://www.federalreserve.gov/newsevents/pressreleases/files/other20221202b1.pdf>

has pending a significant proposed rule⁸ that would require the vast majority of public companies – many of whom would be deemed significant or major federal contractors under this proposed rule – to disclose certain emissions and other climate-related risks. Concerningly, the SEC’s proposed rule on climate disclosures carries additional requirements for companies that have set net-zero emissions targets, a requirement that could be informed by the requirements contemplated in the Proposed Rule, among other things. The business community needs to have adequate opportunity to evaluate other agencies’ proposed requirements against the proposed requirements laid forth in the Proposed Rule.⁹

Finally, the comment period from publication of the Proposed Rule in the Federal Register is inclusive of three major federal holidays, including the busiest travel period of the year, which makes it more challenging to develop and coordinate comments on the rule that will reflect the breadth and variety of the concerns of affected stakeholders.

In light of these considerations, a minimum of 60 days of additional commenting time is needed to ensure that affected members of the business community are able to provide accurate and appropriately detailed comments on the proposal that will provide adequate information to the agencies to inform the development of any final rule. Thank you for considering our comments, and please contact us if you would like any additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Martin J. Durbin". The signature is written in a cursive, slightly slanted style.

Martin J. Durbin
President, Global Energy Institute,
and Senior Vice President, Policy

⁸ <https://www.sec.gov/rules/proposed/2022/33-11042.pdf>

⁹ In this regard, we note that the SEC provided over 100 days of public comment time between the original comment period and supplemental comment period. The SEC first extended the comment period on its proposed rule to June 17, 2022, to give the public a total of almost three months to review and comment measured from the date of release of the proposed rule on the SEC’s website (March 21, 2022). Then, the SEC accepted supplemental comments on the proposed rule several months after the original deadline. See Resubmission of Comments and Reopening of Comment Periods, 87 Fed. Reg. 63,016 (Oct. 18, 2022) (reopening comment period through Nov. 1, 2022; *see also* Procedural Requirements and Resubmission Thresholds Under Exchange Act Rule 14a-8, 85 Fed. Reg. 70,240, 70,268 n.312 (Nov. 4, 2020) (“consistent with [its] Informal and Other Procedures,” SEC considers comments submitted “before adoption of a final rule”). The Proposed Rule at issue here would go even further than the SEC proposal in a number of significant respects, and thus warrants additional time for comment.

U.S. Chamber of Commerce

cc:

Mathew Blum, Acting Administrator, Office of Federal Procurement Policy

Jeffrey Koses, Senior Procurement Executive, General Services Administration

Karla Jackson, Assistant Administrator for Procurement,

National Aeronautics and Space Administration

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John Tenaglia, Principal Director, Defense Pricing and Contracting, Department of

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