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Environmental Alert

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US proposes federal suppliers' mandatory evaluation of Climate Risks and Resilience Rule

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Comment period for the Federal Supplier Climate Risks and Resilience Rule extended.

What's the Impact

/ If finalized, certain federal contractors and suppliers will be required to publicly disclose their greenhouse gas emissions and climate-related financial risks and set science-based emissions reduction targets.

/ The proposed rule covers approximately 85% of the GHG emissions associated with the federal supply chain, making it one of the most significant supply chain rules in US history.

/ This rule will trigger significant requirements on employees' time and knowledge in the now-mainstream but ever-evolving world of Environmental Social Governance.

Public comment was extended until February 13, 2023, on the White House Council on Environmental Quality's November 10, 2022, proposal of the Federal Supplier Climate Risks and Resilience Rule (the "proposed rule"). Under the proposed rule, if finalized, certain federal contractors and suppliers are required to publicly disclose their greenhouse gas (GHG) emissions and climate-related financial risks and set science-based emissions reduction targets.

The proposed rule delineates three segments of federal contractors and suppliers, referred to as "major," "significant," and "other," based on the amounts they receive annually under their government contracts and creates different requirements for the three main categories, or scopes, of GHG emissions. As defined by the GHG Protocol,[1] Scope 1 emissions are direct emissions from owned or controlled sources; Scope 2 emissions are indirect emissions from the generation of purchased energy; and Scope 3 emissions are all indirect emissions (not included in Scope 2) that occur in the value chain of the reporting company, including both upstream and downstream emissions.

If finalized in its current form, "major" federal contractors receiving more than $50 million in annual contracts are required to publicly disclose Scope 1, Scope 2, and relevant categories of Scope 3 emissions and climate-related financial risks through the Carbon Disclosure Project (CDP)[2] and set science-based emissions reduction targets. "Significant" federal contractors receiving more than $7.5 million in annual contracts but less than $50 million are required to report Scope 1 and Scope 2 emissions without being required to disclose climate-related financial risks or set science-based emissions reduction targets. "Other" federal contractors receiving less than $7.5 million in annual contracts are exempt from the proposed rule.

As the United States is the world's single largest buyer of goods and services—purchasing over $630 billion in the last fiscal year alone—the proposed rule is one of the most significant supply chain rules in US history, covering approximately 85% of the GHG emissions associated with the federal supply chain. This proposed rule is designed to give the US government the data it needs from suppliers to see the full picture of its environmental impact and serve as an integral part of the administration's Federal Sustainability Plan, which sets a goal to achieve net-zero emissions procurement by 2050.

Regardless of the form in which this proposed rule is finalized, its leverage of widely adopted third-party standards and systems criteria[3] suggests that federal contractors would be well served by looking to engage vendors now with fluency in these standards and systems if they haven't already done so. As CDP reporting requires a significant amount of effort and time to gather necessary data and determine which years a business is evaluating for its baseline by which it will design reduction goals, if any, this rule will trigger significant requirements on employees' time and knowledge in the ever-evolving world of Environmental Social Governance (ESG), including specific importance on the "E," where the CDP framework fits. Gathering this data now, and engaging knowledgeable attorneys and consultants, will help federal contractors

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1 https://ghgprotocol.org/sites/default/files/standards_supporting/FAQ.pdf.

2 CDP is a not-for-profit charity that runs a global disclosure system for investors, companies, cities, states, and regions. See https://www.cdp.net/en.

3 For instance, the CDP environmental reporting system, the Task Force on Climate-Related Financial Disclosures (TCFD) Recommendations, and the Science Based Targets Initiative (SBTi).

and suppliers be ready for these potential disclosures and better position themselves with accurate information on GHG emissions and ways to reduce emissions and expenses. This proposed rule, and others like it,[4] confirm a now-mainstream understanding that ESG disclosures like these are needed to drive GHG emissions reductions.

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[4] The SEC's proposed Enhancement and Standardization of Climate-Related Disclosures for Investors rule announced March 21, 2022. See https://www.sec.gov/news/press-release/2022-46.