



DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 223

[Docket DARS-2026-0067]

RIN 0750-AM18

Defense Federal Acquisition Regulation Supplement: Disclosure of Greenhouse Gas Emissions (DFARS Case 2024-D021)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a section of the National Defense Authorization Act for Fiscal Year 2024.

DATES: Effective [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: David Johnson, telephone 202-913-5764.

SUPPLEMENTARY INFORMATION:

I. Background

This final rule revises the DFARS to implement section 318 of the National Defense Authorization Act for Fiscal Year 2024 (Pub. L. 118-31). Section 318 prohibits DoD contracting officers from requiring, as a condition of contract award, nontraditional defense contractors to disclose a greenhouse gas

inventory or any other report on greenhouse gas emissions, unless DoD determines that requiring such disclosure is necessary to verify a voluntary disclosure relating to greenhouse gas emissions. A waiver is permitted on a contract-by-contract basis, provided that the information relating to greenhouse gas emissions is directly related to the performance of the contract. Section 318 defines the terms "greenhouse gas" and "greenhouse gas inventory."

To implement section 318, this rule adds subpart 223.5, Greenhouse Gas Emissions, to DFARS part 223. In addition to prohibiting required disclosure of greenhouse gas emissions from nontraditional defense contractors as a condition of contract award, this rule also prohibits DoD contracting officers' consideration, as a condition of contract award, of greenhouse gas emission information that offerors might otherwise provide in annual representations and certifications in response to certain Federal Acquisition Regulation (FAR) solicitation provisions. Additionally, in accordance with section 318, this rule allows a waiver from the disclosure prohibition where the disclosure directly relates to contract performance.

II. Publication of This Final Rule for Public Comment Is Not Required by Statute

The statute that applies to the publication of the FAR is 41 U.S.C. 1707, Publication of Proposed Regulations. Subsection (a)(1) of the statute requires that a procurement policy, regulation, procedure, or form (including an amendment or

modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure, or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because the rule merely limits the ability of DoD contracting officers to require and to consider greenhouse gas disclosures from certain offerors or contractors as a condition of contract award. The rule does not contain any requirements for offerors or contractors. Therefore, this limitation affects only the internal operating procedures of DoD.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT), for Commercial Products (Including Commercially Available Off-the-Shelf (COTS) Items), and for Commercial Services

This final rule does not create any new solicitation provisions or contract clauses. It does not impact any existing solicitation provisions or contract clauses or their applicability to contracts valued at or below the simplified acquisition threshold, for commercial products including COTS items, or for commercial services.

IV. Expected Impact of the Rule

This rule is not expected to have an impact on offerors or contractors, because the rule merely prohibits DoD contracting

officers from requiring, as a condition of contract award, nontraditional defense contractors to disclose a greenhouse gas inventory or any other report on greenhouse gas emissions. The statute allows for an exception and the possibility of a waiver. In other words, this rule places a particular limit on the source selection scheme contracting officers might select for a given procurement. This limitation affects only the internal operating procedures of the Government.

In addition, this rule also prohibits DoD contracting officers' consideration, as a condition of contract award, of greenhouse gas emission information that offerors might otherwise provide in annual representations and certifications in response to the solicitation provision at FAR 52.223-22, Public Disclosure of Greenhouse Gas Emissions and Reduction Goals—Representation. The representations under this provision allow the Government greater insight into the greenhouse gas management practices of the Federal supplier base. However, the representations under the FAR provision require only that offerors indicate whether and where, i.e., a publicly accessible website, they publicly disclose greenhouse gas emissions and greenhouse gas reduction goals. The provision neither requests nor requires specific greenhouse gas emission information.

V. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select

regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, as amended.

VI. Executive Order 14192

This rule is not subject to E.O. 14192, because this rule has a de minimis impact on the public. See discussion in section IV, Expected Impact of the Rule, of this preamble.

VII. Congressional Review Act

As required by the Congressional Review Act (5 U.S.C. 801-808) before an interim or final rule takes effect, DoD will submit a copy of the interim or final rule with the form, Submission of Federal Rules Under the Congressional Review Act, to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule under the Congressional Review Act cannot take effect until 60 days after it is published in the **Federal Register**. The Office of Information and Regulatory Affairs has determined that this rule is not a major rule as defined by 5 U.S.C. 804.

VIII. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because this final rule does not constitute a significant DFARS

revision within the meaning of FAR 1.501-1, and 41 U.S.C. 1707 does not require publication for public comment.

IX. Paperwork Reduction Act

This final rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Part 223

Government procurement.

Kimberly R. Ziegler,

Editor/Publisher, Defense Acquisition Regulations System.

Therefore, the Defense Acquisition Regulations System amends 48 CFR part 223 as follows:

PART 223—ENVIRONMENT, SUSTAINABLE ACQUISITION, AND MATERIAL SAFETY

1. The authority citation for 48 CFR part 223 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

2. Add subpart 223.5 to read as follows:

SUBPART 223.5—GREENHOUSE GAS EMISSIONS

Sec.

223.501 Policy.

223.501-70 Disclosure of greenhouse gas emissions.

SUBPART 223.5—GREENHOUSE GAS EMISSIONS

223.501 Policy.

223.501-70 Disclosure of greenhouse gas emissions.

(a) *Scope.* This section implements section 318 of the National Defense Authorization Act for Fiscal Year 2024 (Pub. L. 118-31).

(b) *Definitions.* As used in this section—

Greenhouse gas means carbon dioxide, methane, nitrous oxide, nitrogen trifluoride, hydrofluorocarbons, perfluorocarbons, or sulfur hexafluoride.

Greenhouse gas inventory means, with respect to an entity or individual, a quantified list of the annual greenhouse gas emissions of the entity or individual.

(c) *Prohibition.* (1) Contracting officers must not require, as a condition of contract award, nontraditional defense contractors to disclose a greenhouse gas inventory or any other report on greenhouse gas emissions, unless an exception is made or a waiver is granted in accordance with paragraph (d) or (e) of this section, respectively.

(2) Contracting officers must not consider, as a condition of contract award to nontraditional defense contractors, greenhouse gas emission information that may otherwise be provided in annual representations and certifications in response to the following provisions:

(i) FAR 52.204-7, System for Award Management.

(ii) FAR 52.204-8, Annual Representations and Certifications, paragraph (c)(1)(xix), Public Disclosure of Greenhouse Gas Emissions and Reduction Goals—Representation.

(iii) FAR 52.212-3, Offeror Representations and Certifications—Commercial Products and Commercial Services, paragraph (t), Public Disclosure of Greenhouse Gas Emissions and Reduction Goals.

(iv) FAR 52.223-22, Public Disclosure of Greenhouse Gas Emissions and Reduction Goals—Representation.

(d) *Exception.* The prohibition at paragraph (c) of this section will not apply if a contracting official at least one level above the contracting officer determines that such disclosure is necessary to verify a voluntary disclosure of a greenhouse gas inventory or other report.

(e) *Waiver.* The head of the contracting activity may issue, on a contract-by-contract basis, a waiver to the prohibition at paragraph (c) of this section, provided that the information relating to greenhouse gas emissions is directly related to the performance of the contract. In issuing such a waiver, the head of the contracting activity must ensure that any such required information is clearly delineated in the contract.