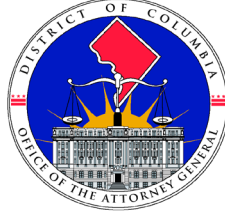




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**ANDREA JOY CAMPBELL
ATTORNEY GENERAL**

February 13, 2023

Via Electronic Transmission

Regulatory Secretariat Division
U.S. General Services Administration
1800 F Street NW
Washington, DC 20405

RE: Federal Acquisition Regulation: Disclosure of Greenhouse Gas Emissions and Climate-Related Financial Risk

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

Dear Regulatory Secretariat Division:

On behalf of the undersigned Attorneys General, we submit these comments on the proposed rule of the Department of Defense (“DoD”), General Services Administration (“GSA”), and National Aeronautics and Space Administration (“NASA”), collectively, the Federal Acquisition Regulatory Council (the “FAR Council”), entitled *Federal Acquisition Regulation: Disclosure of Greenhouse Gas Emissions and Climate-Related Financial Risk*, Docket Number FAR Case 2021-015 (“Proposed Rule”).¹ We write in support of the Proposed Rule to revise the Federal Acquisition Regulation (the “FAR”) to help ensure the resilience of the federal government’s supply chain as its contractors face changing industry conditions in light of legislative, policy, and technology changes associated with climate change (“transition risks”) and acute and chronic physical impacts from climate change (“physical risks”).²

¹ 87 Fed. Reg. 68,312 (Nov. 14, 2022).

² The classification of “transition risks” and “physical risks” is consistent with the Proposed Rule’s recognition of these two types of climate risks. *See id.* at 68,318. Although the Proposed Rule proposes to require disclosure of climate-related financial risks only of “major contractors,” in light of the

The disclosures required by the Proposed Rule will bolster the federal government’s ability to exercise prudent management of its contracts. With the disclosed information, the federal government will be in a better position to manage its resources and make well-informed procurement decisions. This, in turn, will increase the efficiency and resilience of the federal procurement system.

I. SUMMARY

Transparency about climate impacts and risks is critical to promoting efficiency and stability across the economy. For this reason, many of the undersigned Attorneys General have supported requiring publicly registered companies to disclose their greenhouse gas emissions and climate-related financial risks, and we have advocated for the consideration of environmental, social, and governance factors (“ESG”)—including greenhouse gas emissions and climate risks—in investing.³ This transparency is also vital to the wise and efficient allocation of federal resources within the procurement and contracting process.

Federal entities are increasingly cognizant of the need for improved disclosure to protect against growing climate-related transition and physical risks.⁴ The U.S. Financial Stability Oversight Council recently identified climate change as an increasing threat to U.S. financial stability and recommended that federal agencies enhance climate-related disclosures and assess climate-related financial risks.⁵ Outside of the United States, there is a growing awareness of the value of disclosures to help protect market participants from the climate-related risks faced by corporations.⁶ The Proposed Rule is a critical step in protecting the federal supply chain from such risks and associated disruptions.

significant risks, the undersigned Attorneys General support mandating that “significant contractors” also make these disclosures.

³ See Letter from Rob Bonta, Cal. Atty. Gen., et al., to Vanessa A. Countryman, Secretary, Sec. & Exch. Comm’n (“SEC”) (June 14, 2022), <https://www.sec.gov/comments/climate-disclosure/cll12-8915221-244800.pdf> (commenting in support of SEC’s proposed rule titled “The Enhancement and Standardization of Climate-Related Disclosures for Investors”); Letter from Karl A. Racine, D.C. Atty. Gen., et al. to Senator Brown, et al. (Nov. 21, 2022), https://oag.dc.gov/sites/default/files/2022-11/ESG%20Letter_Final_11.18.22.pdf (explaining that consideration of environmental, social, and governance (ESG) factors is often part of prudent investment strategy).

⁴ See, e.g., COMMODITY FUTURES TRADING COMM’N CLIMATE-RELATED MARKET RISK SUBCOMM. OF THE MARKET RISK ADVISORY COMM., MANAGING CLIMATE RISK IN THE U.S. FINANCIAL SYSTEM i, 99-101 (2020), <https://perma.cc/UT9M-FG2Y> [hereinafter “CFTC REPORT”]; BD. OF GOVS. OF THE FED. RESERVE SYS., FINANCIAL STABILITY REPORT 58-59 (Nov. 2020), <https://perma.cc/95HG-2NXS>; BD. OF GOVS. OF THE FED. RESERVE SYS., SUPERVISION AND REGULATION REPORT 26 (2020), <https://perma.cc/8SV5-5K2E> (recognizing climate risk in the context of banks’ financial health).

⁵ FIN. STABILITY OVERSIGHT COUNCIL, REPORT ON CLIMATE-RELATED FINANCIAL RISK (Oct. 2021), <https://home.treasury.gov/system/files/261/FSOC-Climate-Report.pdf>.

⁶ See, e.g., Eur. Banking Authority, *EBA publishes binding standards on Pillar 3 disclosures on ESG risks* (Jan. 24, 2022), <https://www.eba.europa.eu/eba-publishes-binding-standards-pillar-3-disclosures-esg-risks> (requiring European banks to disclose climate-related risk information); Press Release, Council of the European Union, Council gives final green light to corporate sustainability

The comments are organized as follows: First, we describe why the Proposed Rule is a valid exercise of the President’s authority under the Procurement Act. Second, the comments detail the climate-related transition and physical risks that federal contractors and the federal supply chain will face. Finally, we highlight how the Proposed Rule’s required disclosures will benefit the federal procurement process as well as provide broader benefits to U.S. businesses and taxpayers.

II. THE PROPOSED RULE IS A VALID EXERCISE OF AUTHORITY UNDER THE PROCUREMENT ACT

The Proposed Rule is a routine and valid exercise of executive authority under the Federal Property and Administrative Services Act, otherwise known as the Procurement Act.⁷

Congress passed the Procurement Act in 1949 with the intention of “provid[ing] the Federal Government with an economical and efficient system” for the procurement of goods and services.⁸ The Procurement Act authorizes the President to “prescribe policies and directives that the President considers necessary to carry out” the statute.⁹ In other words, the statute empowers the executive branch to regulate the federal government’s acquisitions system to ensure that the federal government wisely manages its resources.

Historically, presidents have exercised this authority to, among other things, prohibit discrimination in federal contracting,¹⁰ require federal contractors to comply with wage and price standards,¹¹ and require federal contractors to inform workers of their rights under federal labor laws.¹² Courts have ratified these requirements, and others, as valid exercises of executive authority under the Procurement Act.¹³

The Proposed Rule falls well within the executive authority prescribed under the Procurement Act. On May 20, 2021, President Biden directed the FAR Council to “consider amending the [FAR] to ... require major Federal suppliers to publicly disclose greenhouse gas

reporting directive (Nov. 28, 2022), <https://www.consilium.europa.eu/en/press/press-releases/2022/11/28/council-gives-final-green-light-to-corporate-sustainability-reporting-directive/> (adopting the Corporate Sustainability Reporting Directive, which requires EU and non-EU companies to conduct ESG reporting).

⁷ 40 U.S.C. §§ 101 *et seq.*

⁸ 40 U.S.C. § 101.

⁹ *Id.* § 121(a). To aid the president in exercising this authority, Congress established the Office of Federal Procurement Policy (“OFPP”) within the Office of Management and Budget (“OMB”) in 1974 and authorized the OFPP to establish unified procurement regulations. *See* 41 U.S.C. § 1101. These unified procurement regulations are codified in the FAR, *see* 48 C.F.R. § 1.101 *et seq.*, which the FAR Council maintains.

¹⁰ *See Contractors Ass’n of Eastern Pa. v. Sec’y of Labor*, 442 F.2d 159, 162-64 (3d Cir. 1971); *Farkas v. Texas Instrument, Inc.*, 375 F.2d 629, 631 (5th Cir. 1967).

¹¹ *See AFL-CIO v. Kahn*, 618 F.2d 784, 785-86 (D.C. Cir.1979).

¹² *See UAW-Labor Emp. & Training Corp. v. Chao*, 325 F.3d 360, 362 (D.C. Cir. 2003).

¹³ *See id.* at 366-67; *Kahn*, 618 F.2d at 792-93; *Contractors Ass’n of Eastern Pa.*, 442 F.2d at 170-71; *Farkas*, 375 F.2d at 632 n.1.

emissions and climate-related financial risk and to set science-based reduction targets.”¹⁴ With the Proposed Rule—which would require federal contractors to inventory and disclose greenhouse gas emissions, evaluate their climate-related risk exposure, and implement a plan to reduce that climate-related risk exposure with science-based reduction targets—the FAR Council implements this directive. Such measures promote the Procurement Act’s purpose of providing “an economical and efficient system” for government procurement by allowing the government to analyze and mitigate risks to its supply chain efficiently and effectively, as further discussed below.¹⁵ Therefore, the Proposed Rule easily falls within the “broad-ranging” and “flexib[le]” authority granted by the Procurement Act.^{16 17}

The Fifth, Sixth, and Eleventh Circuits’ recent decisions enjoining the use of the FAR to mandate COVID-19 vaccination for federal contractors do not counsel otherwise.¹⁸ Unlike the Executive Order mandating COVID-19 vaccination, the Proposed Rule does not purport to govern the behavior of federal contractors’ *employees*.¹⁹ Instead, it ensures that contractors

provide information about important aspects of their operations and risk exposure and promotes risk reduction within contracting companies’ operations based on specific standards to help the federal government ensure that “its acquisitions have the features [it] wants.”²⁰ In addition, the

¹⁴ Exec. Order 14030 § 5(b)(i).

¹⁵ See *infra* Section B(i).

¹⁶ See *UAW-Labor Emp. & Training Corp.*, 325 F.3d at 366; *City of Albuquerque v. U.S. Dep’t of Interior*, 379 F.3d 901, 914 (10th Cir. 2004).

¹⁷ Moreover, the Procurement Act should be interpreted broadly in line with case law upholding governments’ authority to impose conditions on counterparties where, as here, they are acting as market participants rather than market regulators. See, e.g., *White v. Mass. Council of Const. Employers, Inc.*, 460 U.S. 204, 206-07 (1983) (“Insofar as the city expended only its own funds in entering into construction contracts for public projects, it was a market participant and entitled to be treated as such.”); *Hughes v. Alexandria Scrap Corp.*, 426 U.S. 794, 810 (“Nothing in the purposes animating the Commerce Clause prohibits a State, in the absence of congressional action, from participating in the market and exercising the right to favor its own citizens over others.”); *Bldg. & Const. Trades Dept., AFL-CIO v. Allbaugh*, 295 F.3d 28, 35 (2002) (executive order limitation on federal contractor project labor agreements “embodies just the type of decision regarding the use of labor agreements that a private project owner would be free to make” and therefore appropriate under NLRA); see also *Louisiana v. Biden*, 55 F.4th 1017, 1040 (5th Cir. 2022) (Graves, J., *dissent*) (“[T]here are reasons to think that the government has *greater* control in designing their contracts than private businesses.”).

¹⁸ See *Louisiana*, 55 F.4th at 1033; *Kentucky v. Biden*, 23 F.4th 585, 603-10 (6th Cir. 2022); *Georgia v. Biden*, 46 F.4th 1283, 1292-301 (11th Cir. 2022).

¹⁹ Cf. *Louisiana*, 55 F.4th at 1030-31 (emphasizing the “significant[.]” distinction between past exercises of Procurement Act Authority governing the conduct of employers with that of the vaccine mandate, which “purports to govern the conduct of *employees* – and more than their conduct, purports to govern their individual healthcare decisions.”); *Kentucky*, 23 F.4th at 605 (explaining that while “Section 101...authorizes the President to implement systems [governing] the government’s entry into contracts,...it does not authorize him to impose a medical mandate directly upon contractor employees themselves”); *Georgia*, 46 F.4th at 1296 (“creating an ‘economical and efficient system’ for federal contracting...is worlds away from conferring general authority for every agency to insert a term in every solicitation and every contract establishing health standards for contractors’ employees”).

²⁰ *Id.* at 1295.

Proposed Rule acts directly on the efficiency of the procurement *system* by facilitating and streamlining the process of evaluating contractors' exposure to climate-related risks.²¹ The Procurement Act thus amply supports the President's authority to guide procurement and contracting decisions by mitigating risks to the federal government's supply chain.

III. COMMENTS ON THE IMPORTANCE OF THE PROPOSED RULE TO PROTECT AGAINST CLIMATE-RELATED RISKS

A. Federal Contractors Already Face Climate-Related Risks.

Climate change presents novel challenges, including transition and physical risks, to federal contractors. Clarity about those risks is essential to the federal government's ability to evaluate its supply chain. Climate-related changes in the regulatory landscape and physical climate impacts are not hypothetical; they are already affecting corporate operations across industries.

i. Transition Risks

Governments at all levels are reacting to the impacts of climate change, and as a result, federal contractors are already facing risks to their operations from regulatory, technological, and market changes.²² The federal government needs information about contractors' greenhouse gas emissions to understand their vulnerability to economic, regulatory, and legal risks.

On the regulatory score, for example, numerous states have adopted greenhouse gas emissions reduction laws,²³ with accompanying regulations, policies, and plans that mandate

²¹ See 23 F.4th at 604.

²² See AG Letter to SEC supporting adoption of proposed rule requiring climate-related disclosures for additional details about state, municipal, federal, and international climate-related regulations and policies that are also likely to affect federal contractors. See *supra* note 3.

²³ See, e.g., Colo. Clim. Action Plan to Reduce Pollution, H.B. 19-1261 (2019), http://leg.colorado.gov/sites/default/files/2019a_1261_signed.pdf (requiring 50% reduction in statewide greenhouse gas emissions by 2030, 90% reduction in statewide greenhouse gas emissions by 2050); Act Concerning Conn. Global Warming Solutions, 2008 Conn. Acts 98 (Reg. Sess.), <https://www.cga.ct.gov/2008/ACT/PA/2008PA-00098-R00HB-05600-PA.htm> (80% greenhouse gas emissions reduction by 2050); Clim. Solutions Now Act of 2022, 2022 Md. Laws Ch. 38, https://mgaleg.maryland.gov/2022RS/Chapters_noln/CH_38_sb0528e.pdf (net-zero greenhouse gas emissions by 2045); Mass. Gen. Laws ch. 21N, § 3(b) (establishing statewide greenhouse gas emissions limits, including net-zero emissions by 2050); New Jersey Global Warming Response Act, N.J. Stat. Ann. § 26:2C-37 *et seq.* (West 2007), <https://www.nj.gov/dep/aqes/docs/gw-responseact-07.pdf> (reduce greenhouse gas emissions by 80% by 2050); N.Y. Env't Conserv. Law § 75-0107 (McKinney 2020), <https://www.nysenate.gov/legislation/laws/ENV/75-0107> (reduce greenhouse gas emissions by 85% from 1990 levels by 2050); 42 R.I. Gen. Laws § 42-6.2-9 (West 2021), webserver.rilin.state.ri.us/Statutes/TITLE42/42-6.2/42-6.2-9.htm (achieve net-zero emissions by 2050); Wash. Rev. Code § 70A.45.020 (2020), <https://apps.leg.wa.gov/rcw/default.aspx?cite=70A.45.020#:~:text=RCW%2070A.45.020%20Greenhouse%20gas%20emissions%20reductions%20%E2%80%94%20Reporting,achieve%20the%20following%20emission%20reductions%20for%20Washington%20state%3A> (reduce overall greenhouse gas emissions

emissions reductions in particular sectors, such as transportation, fuel consumption, and energy production.²⁴

Additionally, the federal government's 2021 Bipartisan Infrastructure Law and the 2022 Inflation Reduction Act both direct substantial federal investment into renewable energy technology and infrastructure, which is likely to change the efficiency, cost-effectiveness, and markets for not only renewable energy sources, but also fossil fuels.²⁵ And the European Union has agreed to adopt a "carbon border adjustment mechanism" that taxes imported goods from countries without strict greenhouse gas emissions standards.²⁶

These are just a few examples of the many actions that governments are taking to address climate change and bolster low-emission technology that may change the operational and business landscape for federal contractors. The Proposed Rule ensures that the federal government has the information it needs regarding risks related to these and other regulatory, technological, and market changes to maintain the resilience of its supply chain.

in the state by 95% from 1990 levels by 2050); 38 M.R.S. § 576-A (setting forth Maine's greenhouse gas reductions of 45% below 1990 gross annual greenhouse gas levels by 2030 and 80% by 2050).

²⁴ See, e.g., Cal. Exec. Order N-79-20 (Sept. 2020), <https://www.gov.ca.gov/wp-content/uploads/2020/09/9.23.20-EO-N-79-20-Climat.pdf> (setting goal of zero sales of combustion engine vehicles in California by 2035); Cal. Air Res. Bd., *Advanced Clean Cars Prog.* (last visited June 3, 2022), <https://ww2.arb.ca.gov/our-work/programs/advanced-clean-cars-program>; Cal. Air Res. Bd., *States That Have Adopted California's Vehicle Standards Under Section 177 of the Fed. Clean Air Act* (May 13, 2022), https://ww2.arb.ca.gov/sites/default/files/2022-05/%C2%A7177_states_05132022_NADA_sales_r2_ac.pdf; Cal. Air Res. Bd., *Low Carbon Fuel Standard* (last visited June 3, 2022), <https://ww2.arb.ca.gov/our-work/programs/low-carbon-fuel-standard/about>; Mass. Exec. Off. of Energy & Env't Aff., *Determination of Statewide Greenhouse Gas Emissions Limits and Sector-Specific Sublimits for 2025 and 2030* (June 30, 2022), <http://bit.ly/3ggrZg9> (establishing statewide greenhouse gas emissions limits of 33 percent below 1990 levels for 2025 and 50% below 1990 levels for 2030, with sector-specific sublimits, including for residential heating and cooling, transportation, and electric power); N.J. Exec. Order No. 28 (May 23, 2018), <https://www.nj.gov/infobank/eo/056murphy/pdf/EO-28.pdf>; Ore. Dep't of Env't Quality, *Clean Fuels Program Overview*, https://www.oregon.gov/deq/greenhouse_gasp/cfp/Pages/CFP-Overview.aspx; Press Release, State of Ore., Gov. Kate Brown Signs Clean Energy Bills, Sets Goal for 100% Clean Energy by 2040 (July 27, 2021), <https://www.oregon.gov/newsroom/pages/newsdetail.aspx?newsid=64162>; Wash. Dep't of Ecology, *Clean Fuel Std.*, <https://ecology.wa.gov/Air-Climate/Climate-change/Reducing-greenhouse-gases/Clean-Fuel-Standard>.

²⁵ Fact Sheet, The White House, *The Inflation Reduction Act Supports Workers and Families* (Aug. 19, 2022), <https://www.whitehouse.gov/briefing-room/statements-releases/2022/08/19/fact-sheet-the-inflation-reduction-act-supports-workers-and-families/>; Fact Sheet, The White House, *The Bipartisan Infrastructure Deal* (Nov. 6, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/11/06/fact-sheet-the-bipartisan-infrastructure-deal/>.

²⁶ Emma Bubola, *Europe Reaches Deal for Carbon Tax Law on Imports*, N.Y. TIMES (Dec. 13, 2022) <https://www.nytimes.com/2022/12/13/world/europe/eu-carbon-tax-law-imports.html>. The United States has also recently proposed to the European Union the creation of a consortium that would impose tariffs on metals produced in countries without sufficient greenhouse gas emissions controls. See Ana Swanson, *U.S. Proposes Green Steel Club That Would Levy Tariffs on Outliers*, N.Y. TIMES (Dec. 7, 2022) <https://www.nytimes.com/2022/12/07/business/economy/steel-tariffs-climate-change.html>.

ii. Physical Risks

Federal contractors also are increasingly faced with physical disruptions from climate change related extreme weather events.²⁷ In the United States in 2021, for example, there were twenty extreme weather disasters that resulted in costs of \$1 billion or more, a large jump from the average of 3.1 such events per year in the 1980s.²⁸ The average cost per year from climate disasters has also markedly increased, even when adjusted for inflation: the average cost per year in the 1980s was \$19.5 billion; the average cost per year in the 2010s was \$89.2 billion; and the cost in 2021 was \$148 billion.²⁹

The potential economic impacts on federal contractors from climate change extend beyond physical destruction. Contractors face an economic reality where climate change results in increased insurance or self-insurance costs, added energy expenses, and diminishing worker health, safety, and productivity.³⁰ Wildfires, for example, often result not only in massive costs from physical destruction, but also in considerable healthcare expenses,³¹ with one estimate putting the healthcare costs from California's 2018 wildfires at \$7.85 billion.³² The economic

²⁷ INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE ("IPCC"), CLIMATE CHANGE 2022: IMPACTS, ADAPTATION, & VULNERABILITY SUMMARY FOR POLICYMAKERS 11 (2022), https://www.ipcc.ch/report/ar6/wg2/downloads/report/IPCC_AR6_WGII_SummaryForPolicymakers.pdf [hereinafter "IPCC, CLIMATE CHANGE 2022"].

²⁸ NAT'L OCEANIC & ATMOSPHERIC ADMIN., NAT'L CTRS. FOR ENV'T INFO., BILLION-DOLLAR WEATHER & CLIMATE DISASTERS (2021), <https://www.ncdc.noaa.gov/billions/summary-stats> (defining drought, flooding, freeze, severe storm, tropical cyclone, wildfire, and winter storm as "weather and climate disasters").

²⁹ *Id.*; see also JESSICA WHITT & SCOTT GORDON, BARCLAYS, GLOOMY FORECAST: THE ECONOMIC COSTS OF EXTREME WEATHER (May 4, 2022), <https://www.cib.barclays/our-insights/extreme-weather/The-economic-costs-of-extreme-weather.html> ("While extreme events have increased more than five times over the same number of decades, our Research analysts note the cost of extreme events has increased nearly eight times globally, inflation-adjusted, since the 1970s.").

³⁰ See generally CFTC Report, *supra* note 4, at 25-39; TASK FORCE ON CLIMATE-RELATED FIN. DISCLOSURES ("TCFD"), FINAL REPORT: RECOMMENDATIONS OF THE TASK FORCE ON CLIMATE-RELATED FINANCIAL DISCLOSURES 10 (2017) ("TCFD Recommendations"), <https://tinyurl.com/5m9ncwa2>.

³¹ See Env't Prot. Agency, Research Shows Health Impacts & Economic Costs of Wildland Fires (Sept. 28, 2017), <https://www.epa.gov/sciencematters/research-shows-health-impacts-and-economic-costs-wildland-fires> (estimating that wildfires between 2008 and 2012 resulted in short-term exposure healthcare costs of \$63 billion and long-term exposure healthcare costs of \$450 billion (both in 2016 dollars)).

³² BAY AREA COUNCIL ECON. INST., THE TRUE COST OF WILDFIRES: ANALYZING THE IMPACT OF WILDFIRES ON THE CALIFORNIA ECONOMY 12 (Nov. 2021), <http://www.bayareaeconomy.org/report/the-true-cost-of-wildfires/#:~:text=Wildfires%20across%20California%20in%202018,an%20increase%20in%20polluted%20air>. The same study estimated that total expenses in 2018 from California's wildfires was \$24.6 billion: \$16.8 billion from indirect economic losses; \$7.85 billion from healthcare costs; and \$4 billion in capital losses.

impact of chronic weather events, like drought and increased heat, reverberate through the U.S. economy, through higher healthcare costs and reduced labor productivity.³³ These costs are likely already affecting federal contractors in industries such as construction and delivery services.³⁴

In short, climate change is here, it is accelerating, and so are its economic impacts.³⁵ The federal government needs information about how its contractors and suppliers are exposed to, tracking, and managing these enormous risks.

B. The Proposed Rule Will Benefit the Federal Government and the American Market.

Despite the increasing salience of climate-related transition and physical risks, federal contractors' degree of exposure and preparedness to address these risks remain largely obscure to the federal government. In 2021, 125 of the top 200 federal contractors disclosed no information about their transition or physical risks from climate change; 93 of those contractors made no disclosures regarding their greenhouse gas emissions; and 99 of those contractors offered no public greenhouse gas emissions targets.³⁶ In other words, for half of its largest contractors, the federal government has no insight into whether and what kind of climate-related risks they face because it currently does not require disclosures from its contractors.³⁷ By increasing

³³ ATL. COUNCIL, EXTREME HEAT: THE ECONOMIC AND SOCIAL CONSEQUENCES FOR THE UNITED STATES 2 (Aug. 2021), <https://www.atlanticcouncil.org/wp-content/uploads/2021/08/Extreme-Heat-Report-2021.pdf> (“Extreme heat-related labor productivity losses already affect all regions and sectors of the US economy.”); Env’t Prot. Agency, *Climate Change Indicators: Heat Waves*, <https://www.epa.gov/climate-indicators/climate-change-indicators-heat-waves> (December 22, 2022); DALE MANNING ET AL., AN ANALYSIS OF THE IMPACT OF DROUGHT ON AGRICULTURE, LOCAL ECONOMY, PUBLIC HEALTH, AND CRIME ACROSS THE WESTERN UNITED STATES 2 (Sept. 2021), <https://www.drought.gov/sites/default/files/2021-09/Analysis-Drought-Impacts-Western-US-September2021.pdf> (“Prolonged drought has a negative and statistically significant impact on corn, hay, sorghum and wheat production.”).

³⁴ See, e.g., CAL. LEGIS. ANALYST’S OFF., CLIMATE CHANGE IMPACTS ACROSS CALIFORNIA: WORKERS AND EMPLOYERS (Apr. 5, 2022), [https://lao.ca.gov/Publications/Report/4587#:~:text=Affected%20workers%20face%20increased%20occupational,adapt%20safely%20to%20climate%20change](https://lao.ca.gov/Publications/Report/4587#:~:text=Affected%20workers%20face%20increased%20occupational,adapt%20safely%20to%20climate%20change;); Livia Albeck-Ripka, *UPS Drivers Say ‘Brutal’ Heat Is Endangering Their Lives*, N.Y. Times (Aug. 4, 2022), <https://www.nytimes.com/2022/08/20/business/ups-postal-workers-heat-stroke-deaths.html>; see also GSA, *GSA Federal Contractor Climate Action Scorecard*, <https://d2d.gsa.gov/report/gsa-federal-contractor-climate-action-scorecard> (December 22, 2022) (listing largest federal contractors, which include companies in construction and delivery service industries).

³⁵ IPCC, CLIMATE CHANGE 2022, *supra* note 27, at 17.

³⁶ See GSA, *Federal Contractor Climate Action Scorecard*, *supra* note 34.

³⁷ Because of the critical nature of these disclosures to the federal government’s assessment of its supply chain resilience, we also support the proposal to deem noncompliant contractors “nonresponsible.” See 87 Fed. Reg. at 68,316, 68,327; 48 C.F.R. § 9.103(a) (“Purchases shall be made from, and contracts shall be awarded to, responsible prospective contractors only.”).

transparency about climate-related risks and impacts, the Proposed Rule will not only will help the federal government's procurement process operate more efficiently, but also will create broader benefits to American businesses and taxpayers.

i. The Proposed Rule Will Increase the Efficiency and Resilience of the Federal Procurement System.

The federal government must consider preparedness of its contractors for climate-related risks and impacts within its procurement decision-making process. As mentioned above, climate change already threatens the stability of the federal government's supply chain through both transition and physical risks, and those risks will only continue to grow. But without disclosure, the federal government's ability to exercise prudent management by balancing, reducing, and mitigating those risks and impacts is limited. In addition to offering greater insight into contractors' respective risk exposure, disclosure of this information will encourage federal contractors to prepare for climate-related impacts, which will make our federal supply chain—and thus our federal government—more resilient. Furthermore, the Proposed Rule's requirement that major contractors set science-based targets will further reduce transition risks and improve supply chain resilience.

Climate change threatens many industries that serve critical government needs. For example, companies in the aerospace industry, a major supplier of federal government goods and services, can expect new performance and operational requirements associated with a number of climate-related regulatory and physical shifts. Aircraft will require more fuel to take off due to higher temperatures, and aircraft equipment will experience increasing depreciation as extreme weather events accelerate wear and tear.³⁸ At the same time, as one of the largest sources of greenhouse gas emissions in the U.S. economy,³⁹ the aerospace industry is likely to have to undertake significant operational changes due to the need to shift to lower-carbon means of transport.⁴⁰ These simultaneous changes will stress the industry, and in turn, our nation's preparedness to take on national security challenges. With standardized and public disclosures from significant and major federal contractors, the federal government will be better poised to evaluate the risk of such disruptions from different contractors and to encourage adequate preparation.

The health insurance industry, another source of large federal contractors, likewise faces substantial financial risks due to the increasing impacts of climate change. As mentioned above, the nation's health care needs and associated costs will likely skyrocket as rising temperatures lead to increased morbidity and mortality, from mosquito-borne illnesses like West Nile virus

³⁸ INT'L CIVIL AVIATION ORG. (ICAO), CLIMATE CHANGE: CLIMATE RISK ASSESSMENT, ADAPTATION AND RESILIENCE, KEY CLIMATE CHANGE VULNERABILITIES FOR AVIATION ORGANISATIONS (2022).

³⁹ Nat'l Oceanic & Atmospheric Admin., *Aviation is Responsible for 3.5 Percent of Climate Change, Study Finds* (Sept. 3, 2020).

⁴⁰ DELOITTE INSIGHTS, DECARBONIZING AEROSPACE: A ROAD MAP FOR THE INDUSTRY'S LOWER-EMISSIONS FUTURE (2021).

and Zika to respiratory and pulmonary diseases associated with wildfire pollution.⁴¹ Health insurance companies are likely to face increased expenses, potentially putting their financial stability in jeopardy,⁴² or increasing the insurance premiums that corporate clients (who may also be federal contractors) must pay. The federal government must understand how insurance companies, some of the largest federal contractors, are assessing these climate-related risks and the degree to which those risks threaten these contractors' core business.

In addition, the Proposed Rule will increase the efficiency of the federal procurement process because it will streamline the process of evaluating contractors' exposure to climate-related risks. Currently, while some contractors inventory and disclose their climate-related financial risks and greenhouse gas emissions,⁴³ the absence of a standard methodology makes using this data cumbersome and its interpretation less useful. In sum, the many benefits of the Proposed Rule will advance the efficiency and resilience of the federal procurement system.

ii. The Proposed Rule Also Promises Broader Benefits for the U.S. Market and General Public.

Along with securing an economic and efficient government procurement process, the Proposed Rule's mandatory disclosures are also an important step in safeguarding American markets as well as the broader U.S. economy, which are critical for our States as well as our residents.⁴⁴

A market operates most efficiently when participants have access to all information relevant to their transactions.⁴⁵ Public disclosure requirements, such as in the Proposed Rule, can elicit useful climate risk information that levels the playing field for all market participants.⁴⁶

⁴¹ Vijay S. Limaye et al., *Estimating the Health-Related Costs of 10 Climate-Sensitive U.S. Events During 2012*, 3 GEOHEALTH Issue 9 237, 255 (Sept. 17, 2019), <https://agupubs.onlinelibrary.wiley.com/doi/10.1029/2019GH000202>; see also Winston Choi-Schagrin, *Medical Journals Call Climate Change the 'Greatest Threat to Global Public Health,'* N.Y. TIMES (Sept. 4, 2021), <https://www.nytimes.com/2021/09/07/climate/climate-change-health-threat.html>; U.S. GLOB. CHANGE RSCH. PROG., *THE IMPACTS OF CLIMATE CHANGE ON HUMAN HEALTH IN THE UNITED STATES* 7 (2016).

⁴² See Limaye, *Estimating the Health-Related Costs*, at 255; CERES, *INSURER CLIMATE RISK DISCLOSURE SURVEY REPORT AND SCORECARD* 6 (2014).

⁴³ See GSA, *Fed. Contractor Climate Scorecard*, *supra* note 34.

⁴⁴ If a policy prescribed under the Procurement Act has a "sufficiently close nexus" to values of "economy" and "efficiency," it may also have broader social benefits. See generally *UAW-Labor Emp. & Training Corp.*, 325 F.3d at 366; *Kahn*, 618 F.2d at 788-91.

⁴⁵ See CFTC REPORT, *supra* note 4, at 87 (finding the benefits of improved disclosure for companies includes an improved ability "to identify, assess, manage, and adapt to the effect of climate change on operations"); Madison Condon et al., *Mandating Disclosure of Climate-Related Financial Risk*, 23 N.Y.U. J. LEGIS. & PUB. POL'Y 789 (2021).

⁴⁶ It is standard for disclosures required under FAR to be made publicly available. See FAR 4.603 (a) ("In accordance with the Federal Funding Accountability and Transparency Act of 2006), all unclassified Federal award data must be publicly accessible").

Participants can use that information to arrive at an economically rational response to climate-related risks, thereby further bolstering the resilience of the overall market.⁴⁷ Without sufficient disclosure, market actors may be forced to rely on inaccurate information about climate risks which, in turn, could result in significant economic disruptions.⁴⁸ Given the nature of climate-related risks to the market, robust, comparable, and publicly available information is essential to building a more resilient economy. Efficient and resilient markets are important components in ensuring public pension funds, including state and municipal public pension funds, have sufficient assets to meet their obligations.⁴⁹ Efficient markets are also critical for the millions of our residents who invest as a way to save for retirement, for educational goals, and to help pay for healthcare costs.⁵⁰

Taxpayers are also likely to benefit from the proposed public disclosures. First, the required public disclosures will increase transparency and public accountability in the government contracting process. The disclosures will give citizens the information to have a better understanding as to how the federal government is spending and managing public funds.⁵¹ Second, these disclosures are likely to save taxpayer dollars through the increased efficiency and supply chain resilience described above.⁵² Under the Proposed Rule, the federal government will

⁴⁷ CFTC REPORT, *supra* note 4, at 91.

⁴⁸ Condon, *supra* note 45, at 789-90.

⁴⁹ See, e.g., Letter from Marcie Frost, CEO, Cal. Pub. Empl. Ret. Sys. to Vanessa Countryman, Sec’y, SEC (June 15, 2022) (“CalPERS’ motivation to address climate change is to ensure we meet our long-term requirements to provide retirement, disability and health benefits for our 2 million members.”); Letter from Shawn T. Wooden, Treasurer, State of Conn. to Gary Gensler, Chair, SEC (June 17, 2022) (“From the perspective of a universal owner, with exposure to every sector of our global economy, I view climate change as one of the most significant systemic risks to the long-term value of our investments.”).

⁵⁰ Inv. Co. Inst., *529 Plan Program Statistics, Dec. 2020* (Mar. 23, 2021), https://www.ici.org/research/stats/529s/529s_20_q4; Devenir Rsch., *2018 Year-End Devenir HSA Research Report* (Feb. 27, 2019), <https://www.devenir.com/research/2018-year-end-devenir-hsa-research-report/>; Bureau of Lab. Stat., *National Comparative Survey: Emp. Benefits in the U.S., Mar. 2021* 4 (Sept. 2021), <https://www.bls.gov/ncs/ebs/benefits/2021/employee-benefits-in-the-united-states-march-2021.pdf>; Inv. Co. Inst., *ICI Research Perspective: The Role of IRAs in U.S. Households’ Sav. for Ret., 2020* 1 (Jan. 2021), [https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3789270#:~:text=In%20mid-2020%2C%2037%20percent%20of%20US%20households%20owned,plan%20accumulations%20or%20had%20defined%20benefit%20plan%20coverage; see also Condon, *supra* note 45, at 786-88](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3789270#:~:text=In%20mid-2020%2C%2037%20percent%20of%20US%20households%20owned,plan%20accumulations%20or%20had%20defined%20benefit%20plan%20coverage;see%20also%20Condon%20supra%20note%2045%2C%20at%20786-88) (lack of adequate disclosures about climate risks have led investors to misprice assets and obtain less favorable returns).

⁵¹ See GSA, *Fed. Contractor Climate Scorecard*, *supra* note 34; Federal Funding Accountability and Transparency Act of 2006 (PL 109-282) (Sept. 26, 2006), 120 Stat 1186 (requiring federal contracts or other financial assistance awards of more than \$25,000 to be displayed on a publicly accessible and searchable website to give the American public access to information on how their tax dollars are being spent).

⁵² The Off. of Fed. Procurement Policy, Off. of Mgmt. & Budget, <https://www.whitehouse.gov/omb/management/office-federal-procurement-policy/> (Dec. 22, 2022) (noting approximately one out of every ten dollars of federal spending is goes to contractors).

operate on a more level playing field with the contractors on which it relies for goods and services. Information concerning the climate-related risks faced by vendors will allow it to analyze procurements, make informed decisions, and ultimately negotiate better contract values, saving taxpayers money and improving the quality of goods delivered on each federal dollar spent. The Proposed Rule will also ensure a more resilient supply chain, less subject to unexpected climate-related transition and physical impacts. Thus, the Proposed Rule will benefit taxpayers through increased transparency and accountability.

IV. CONCLUSION

We appreciate the opportunity to comment on this important proposal. For all of the reasons discussed above, we support the Proposed Rule and encourage the DoD, GSA, and NASA to adopt it.

Sincerely,



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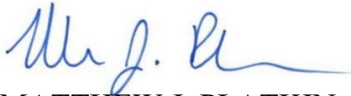
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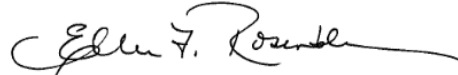
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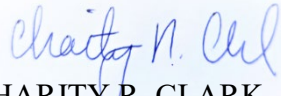
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