



February 13, 2023

Jennifer Hawes  
Procurement Analyst  
Regulatory Secretariat Division  
1800 F Street, NW  
Washington, DC 20405

RE: FAR Case 2021-015 “Federal Acquisition Regulation: Disclosure of Greenhouse Gas Emissions and Climate-Related Financial Risk”

Dear Ms. Hawes:

Thank you for providing the opportunity to comment on the “Federal Acquisition Regulation: Disclosure of Greenhouse Gas Emissions and Climate-Related Financial Risk” (the “Proposed Rule” or “Proposal”) proposed by the U.S. General Services Administration, Department of Defense, and National Aeronautics and Space Administration (collectively, the “agencies”). The National Association of Convenience Stores (NACS), National Association of Truck Stop Operators (NATSO) and Society of Independent Gasoline Marketers of America (SIGMA) have strong concerns about the Proposal and the negative impacts it would have for the industry, particularly for small businesses. The industry takes seriously its role in reducing carbon emissions. In our view, however, the Proposal exceeds the statutory authority of the agencies, conflicts with the policy goals of giving small businesses opportunities for contracting and subcontracting opportunities, creates unwieldy economic burdens even on businesses that do not contract with the government, and takes contract regulation into a political sphere that would be harmful to the objective administration of competition for government contracts.

#### Background on the Convenience and Fuel Retailing Industry

NACS is an international trade association representing the convenience store industry with more than 1,500 retail and 1,600 supplier companies as members, the majority of whom are based in the United States.<sup>1</sup> NATSO currently represents approximately 5,000 travel plazas and truck stops nationwide, comprised of both national chains and small, independent locations. SIGMA represents a diverse membership of approximately 260 independent chain retailers and marketers of motor fuel.

The convenience and fuel retailing industry’s sole objective is to sell legal products, in a lawful way, to customers who want to buy them. Among those products are motor fuels. Fuel retailers are generally independent businesses. Although some might bear the name of a large oil company, this is not indicative

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<sup>1</sup> All data in in this section comes from the NACS, State of the Industry Annual Report of 2021 Data available at <https://nacsannualreport.convenience.org>.

of any ownership stake in the business or the real estate, but simply of a marketing relationship or announcement to passing motorists that a certain company's product is available for purchase at that location (comparable to a soft drink advertisement in a grocery store window).

The convenience and retail fuels industry employed approximately 2.34 million workers and generated more than \$705 billion in total sales in 2021, representing more than 3 percent of U.S. gross domestic product. Of those sales, approximately \$427 billion came from fuel sales alone.

The industry, however, is truly an industry of small business. More than 60 percent of convenience stores are single-store operators. Less than 0.2% of convenience stores that sell gas are owned by a major oil company and about 4% are owned by a refining company. More than 95% of the industry, then, are independent businesses.

Members of the industry process more than 165 million transactions every single day. That means about half the U.S. population visits one of the industry's locations on a daily basis. In fact, ninety-three percent of Americans live within 10 minutes of one of our industry's locations. These businesses are particularly important in urban and rural areas of the country that might not have as many large businesses. In these locations, the convenience store not only serves as the place to get fuel but is often the grocery store and center of a community.

### The Retail Fuel Industry's Approach to Climate Regulations

The retail fuel industry is an indispensable asset to lowering the carbon footprint of the transportation sector in the United States. Fuel retailers should be viewed as surrogates for the consumer in that they identify the most reliable, lowest cost transportation energy available, and deliver that energy to every community in the country. Fuel consumers are extraordinarily price-sensitive, often driving well out of their way to save pennies on a gallon of motor fuel. Successful fuel retailers are extraordinarily attuned and responsive to their customers' demands. Although the "green premium"<sup>2</sup> for cleaner transportation fuels is declining, in the absence of government incentives it generally remains more expensive for consumers to purchase more environmentally attractive fuels.

Well-crafted climate disclosure obligations can help "right-size" these economics and encourage consumers – and thus fuel retailers – to transition to lower carbon intensity fuels because those fuels are less expensive than the alternative. The Associations have long maintained that the most expeditious and economical way to achieve environmental advancements in transportation energy is through market-oriented, consumer-focused policies that encourage our membership to offer more lower-emission alternatives. Fuel retailers have demonstrated in recent years that they are prepared to invest in *any* transportation energy technology that their customers desire. And consumers desire inexpensive, competitively priced, and reliably available fuels.

The proper role of government is to develop policies that make energy technologies with more desirable emission characteristics cost-competitive with other sources of energy. The Associations have historically supported policies that do just that.<sup>3</sup>

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<sup>2</sup> The Green Premium is the additional cost of choosing a clean technology over one that emits a greater amount of greenhouse gases. *See generally* Bill Gates, *How to Avoid a Climate Disaster: The Solutions We Have and the Breakthroughs We Need*. (Random House Inc, 2021).

<sup>3</sup> For example, the Associations have for years supported robust incentives for incorporating biofuels and

Unfortunately, proposals such as this one impose significant cost burdens on our industry without the offsetting benefit of making lower-carbon fuels more attractive. The result will be increased costs to our businesses, the federal government and our customers without creating a tangible climate benefit.

### The Proposed Rule Creates Unfair Burdens on Regulated and Unregulated Businesses, Small and Large

The emissions disclosures required by the Proposed Rule create substantial burdens. Emissions data for business operations are not something within the ability of most businesses to track. Doing so requires hiring expert consultants who have the technical skills and knowledge to collect and analyze the relevant information. This is particularly true for small businesses that do not have the capacity to measure emissions from their operations.

The Proposed Rule, however, adds significant difficulty and cost in addition to the challenge of measuring their own emissions. The Proposed Rule also requires disclosing so-called “scope 3” emissions. This aspect of the Proposal will require government contractors to gather extensive information from businesses that do not contract with the government. And, the information being sought is of a type that those businesses do not have and cannot reasonably gather. In effect, the Proposal would create a brand new regulatory scheme requiring many small and large businesses that do not do business with the federal government at all to collect and document emissions information at great expense.

Disclosing scope 3 emissions requires the collection and reporting of data relating to companies with which contractors do business. The vast majority of these other businesses in the value chain are small, private entities. They do not have information regarding the emissions associated with their operations. For them to collect and report such emissions would be expensive as they would need to hire outside experts to provide reliable data – even though they do not do business directly with the federal government.

These indirect requirements render the Proposal’s analysis of affected parties insufficient and inaccurate. Many businesses that have no experience with the Federal Acquisition Regulations and do not need to have any knowledge of them will be negatively impacted by the Proposed Rule because those businesses will be required to provide detailed emissions information to government contractors in order for those government contractors to be able to comply with the scope 3 requirements in the Proposed Rule. The vast majority of businesses – mostly small businesses – are not covered by any climate disclosure rules with respect to their current operations. The first requirement they would face to gather and report emissions relating to their operations would come about if the Proposal were finalized.

This would be particularly burdensome for the retail fuels industry. As noted, the major integrated oil companies only own 0.2 percent of retail fueling stations around the nation. But, around 50 percent of the industry contracts with such companies to display their branding and sell their fuel. A full 60 percent of the industry are single-store operators and many more own ten stores or fewer. These small businesses do not have the expertise to gather emissions information and would have to hire outside experts to do that on their behalf simply because they contract with large firms that have contracts with the federal government. This would be a substantial burden on businesses that operate on narrow profit margins between 2 and 3 percent.

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other alternative fuels into the fuel supply. More recently, the Associations actively supported the electric vehicle charging infrastructure grant programs included within the Infrastructure Investment and Jobs Act, and are currently working with the U.S. Department of Transportation and state agencies to deploy EV charging infrastructure throughout the country.

The Proposed Rule is likely to subject many of these small businesses to a growing number of compliance requirements. Many retailers may do business with multiple different government contractors to supply them fuel. And, that same small retailer may deal with multiple suppliers including wholesalers as well as manufacturers of individual products such as soft drinks, snacks and other items. This could mean that one small retailer needs to provide climate information under scope 3 to several companies – more than one of which may have federal government contracts. Given the complexity of the Proposed Rule, it is likely that each of those contractor companies will ask for different information and ask for it in different ways. That will multiply the burdens imposed by the rule on small businesses in a way that is not contemplated in the Proposal.

We note and are disappointed that the Proposal does not consider or present any data regarding the burdens of requiring scope 3 emissions on small businesses. The impacts are substantial for the more than 90,000 small businesses in the convenience industry. These businesses do not have the professional or financial wherewithal to determine their emissions as required by scope 3 of the Proposed Rule. Many would lose their ability to contract with government contractors or absorb significant financial losses trying to comply with the rule to provide emissions information. These dislocations would not only hurt these small businesses, but would increase costs in the motor fuel supply chain and thereby significantly increase the retail prices of gasoline and diesel fuel. This financial hardship, therefore, would be felt not only by the small businesses in the convenience industry but also by the 165 million American consumers that they serve every day. Unfortunately, none of this analysis appears in the Proposed Rule.

The scope 3 requirements will create a bias for government contractors to move their business away from smaller companies and toward larger ones that might have some experience or the resources to track emissions data. That loss of business would be difficult for small firms and would not only impede but would likely roll back federal policy efforts to increase the numbers of small business contractors and subcontractors.

In our view, all of this means that the Proposal has not met the requirements of the Small Business Regulatory Enforcement Fairness Act (SBREFA) and the Regulatory Flexibility Act (RFA). There must be a full assessment of small business impacts taken into account before there can be any regulation in this area.

### The Proposed Rule Results in Counting the Same Emissions Multiple Times

The scope 3 reporting requirements noted above will also result in counting the same emissions multiple times. As noted, only 0.2 percent of retail motor fuel outlets are owned and operated by the major integrated oil companies but nearly half of the industry contracts with such companies to sell their motor fuels. Several integrated oil companies are or have been government contractors relating to the strategic petroleum reserve and other federal programs. These and other such contractors will be required to report on the carbon emissions associated with the fuels they sell under the Proposal – and then the retailers that sell those fuel brands will need to report on the same fuels and emissions under scope 3. There are also pipeline, trucking, and wholesale companies that may have to report on the same fuels and associated emissions. Retailers deal with a number of different wholesalers as well. And, many retailers deal with multiple fuel suppliers. Some of these companies may be government contractors while others may not be. The result will be an overlapping patchwork in which multiple companies may report on the same fuels and emissions. This will create a confusing and unrealistic picture for the government and the public capturing more fuel and emission volumes than occur in reality. This problem is precisely why projects of this sort should be left to an agency with expertise in this field and an understanding of the distribution and supply chains relating to fuels such as the EPA.

Similar problems come into play with franchise businesses, joint ventures, and similar business arrangements. The Proposal creates the likelihood that franchisors and franchisees, multiple joint venture partners, and other business partners all report the same fuels and emissions multiple times. The Proposal should ensure that there is a process to avoid these duplication problems as they decrease accuracy, needlessly increase the costs of compliance and may add to unsupported concerns about the volumes of emissions reported.

### The Proposed Rule Risks Political Speculation

The Proposal takes the Federal Acquisition Regulations into an area that risks pushing government contractors into making determinations of political risk. The Proposal specifically notes that government contractors must “develop disclosures aligned with the Recommendations of the Task Force on Climate Related Financial Risk.”<sup>4</sup> But, those recommendations include, “To stem the disastrous effects of climate change within this century, nearly 200 countries agreed in December 2015 to reduce greenhouse gas emissions and accelerate the transition to a lower-carbon economy. The reduction in greenhouse gas emissions implies movement away from fossil fuel energy and related physical assets. This coupled with rapidly declining costs and increased deployment of clean and energy-efficient technologies could have significant, near-term financial implications for organizations dependent on extracting, producing, and using coal, oil, and natural gas.”<sup>5</sup>

Requiring reports based on the implications of policy decisions and assumptions about future policy decisions invites unsound speculation and threatens to infect government contracting decisions with political considerations – exactly the type of thing that the Federal Acquisition Regulations are designed to avoid.

It simply is not the role of the agencies to decide what the future of politics and regulation may bring with respect to climate - an area that is not within their expertise. The agencies cannot under their current legal authority, and should not as a matter of institutional policy, require all contractors to accept a political assumption and make disclosures based on that assumption.

If the government takes this step now, it will set the government on a future path in which later agencies are likely to use the precedent to pursue very different political ends that the current agencies would find highly objectionable. One could imagine a future regulation requiring contractors to make disclosures about any number of other speculative political risks – for example, the potential future regulation of health care choices and how that might impact health care providers. But speculative political risk is not within the expertise of the agencies or contractors. If the government wades into such waters, it will create a damaging precedent that may lead to a long line of similar requirements that burden contractors, roil the political world, and fail to provide any positive outcomes.

### The Agencies Cannot Decide What is Best for Businesses and Then Require it

It is not within the purview of the agencies proposing this rule to decide on a business practice that the agencies think will benefit the business of all government contractors and then make it a requirement. Unfortunately, the Proposal takes exactly that approach. It states, “More than 3,600 companies globally, representing over one third of the global economy's market capitalization, have voluntarily committed to setting science-based targets for reducing emissions (see

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<sup>4</sup> 87 Fed. Reg. 68312, 68326 (Nov. 14, 2022).

<sup>5</sup> “Recommendations of the Task Force on Climate Related Financial Risk, Final Report” at ii (June 2017) (available at [FINAL-2017-TCFD-Report.pdf \(bbhub.io\)](https://www.bbhubs.org/2017/06/20/TCFD-Report.pdf))

<https://sciencebasedtargets.org/>). A 2018 survey of 185 company executives from SBTi-committed businesses found that 79 percent of companies experienced a brand reputation boost, 63 percent saw an increase in innovation, 55 percent reported that preparing for a low-carbon transition led to a newly earned competitive advantage (see <https://sciencebasedtargets.org/blog/six-business-benefits-of-setting-science-based-targets>).<sup>6</sup> The agencies should not be making these business decisions for government contractors. Such decisions should be made by those businesses based on their own evaluations of the relevant costs and benefits.

It is also worth noting that the above-cited data regarding such commitments and the survey data comes principally from large businesses. Small businesses simply do not have the resources to make similar claims and measure them accurately. Here too, the Proposed Rule falls short of what is required to analyze the small business impacts of its implementation.

Yet, the agencies apply the same rationale of substituting their own business judgment for that of small businesses with respect to the Proposal's analysis of potential regulatory alternatives. One alternative that the agencies considered was a small business exemption. But, the agencies decided against such an exemption because "It was determined that the limited Scope 1 and 2 reporting will be beneficial for these small businesses and the Government."<sup>7</sup> That conclusion with respect to small businesses is mistaken given the large costs to those small businesses. The agencies should not substitute their judgment for small businesses – especially small businesses that are not even government contractors but will be required to report on scope 3 emissions.

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We appreciate the opportunity to comment on the Proposed Rule. We hope that the agencies will consider these comments, withdraw the Proposal, and consider other approaches that would be more beneficial, consistent with the agencies' traditional areas of responsibility, and their consideration of the desire to incentivize more small business contracting.

Sincerely,

National Association of Convenience Stores  
National Association of Truck Stop Operators  
Society of Independent Gasoline Marketers of America

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<sup>6</sup> 87 FR at 68320.

<sup>7</sup> 87 FR at 68325.