General Services Administration
Regulatory Secretariat Division (MVCB)
ATTN: Jennifer Hawes
Procurement Analyst
1800 F Street NW, 2nd Floor
Washington, DC 20405

Re: Federal Acquisition Regulation: Minimizing the Risk of Climate Change in Federal Acquisitions (FAR Case 2021-015)

Dear Ms. Hawes,

The undersigned coalition of the nation's leading vehicle rental and leasing companies appreciates the opportunity to provide the following comments to the Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA) regarding its proposed rule to amend the Federal Acquisition Regulation (FAR).

Commenting Organizations

Founded almost seventy years ago, **the American Automotive Leasing Association (AALA)** is a national industry association comprised of commercial automotive fleet leasing and management companies. Membership includes domestic and international companies as well as family-owned businesses. AALA also has an associate member category that is open to any company or organization with an institutional interest in the automotive leasing industry.

Each year, the commercial automotive fleet leasing industry purchases approximately 900,000 new domestic vehicles for long-term use across the United States. These purchases account for a substantial percentage of the annual commercial output of vehicles sold by the Big Three

domestic auto manufacturers. While these vehicles are used predominately for sales and service functions, the range of commercial usage is broad. AALA members provide comprehensive fleet consulting and management services to businesses of all sizes, non-profit organizations, and governmental agencies. Approximately 33% of these vehicles are replaced every year with safer and more fuel-efficient vehicles and, to an increasing extent, Zero Emission Vehicles.

The **American Car Rental Association (ACRA)** is the national representative for over 98% of our nation's car rental industry. ACRA's membership is comprised of over 300 car rental companies, including all of the brands you would recognize such as Alamo, Avis, Budget, Dollar, Enterprise, Fox, Hertz, National, Sixt and Thrifty. ACRA members also include many system licensees and franchisees, mid-size, regional and independent car rental companies as well as smaller, "mom & pop" operators. ACRA members have almost 2 million registered vehicles in service in the United States, with fleets ranging in size from one million to ten cars.

ACRA members on average purchase one in every ten new light duty vehicles sold in the United States each year. In 2021, ACRA members purchased over 800,000 new light duty vehicles, down over 50% from pre-pandemic levels due to constraints on motor vehicle manufacturing caused by supply chain challenges. 25% of all light duty vehicle miles travelled in the United States each year are in a rented vehicle. Thus, the car rental industry is a key participant in the drive for sustainable mobility. In many instances, a driver's first experience in a Zero Emission Vehicle will be in the rental car context. Combining all these factors, the car rental industry likely is the most important shared mobility stakeholder for converting "motor vehicle trips" by an individual to "zero emission vehicle trips" – even more important than individually-owned vehicles. Several ACRA members have made public announcements regarding plans to purchase hundreds of thousands of zero emissions vehicles in the coming years – providing hard evidence that the U.S. car rental industry is leading the way to a future sustainable mobility system.

The **Truck Renting and Leasing Association (TRALA)** is a national trade association that serves as the unified and focused voice for the truck renting and leasing industry. As the national representative of the truck renting and leasing industry, TRALA is interested in state and federal regulatory requirements that affect TRALA members and their customers.

TRALA's mission is to foster a positive legislative and regulatory climate for companies engaged in leasing and renting vehicles and trailers, as well as related businesses, operating in the North American marketplace. TRALA's regular membership includes more than 500 companies representing almost the entirety of truck renting and leasing operations in the United States. TRALA represents more than 30% of the new truck sales each year, and our members our industry leaders in incorporating new technologies into their fleets, including being early adopters of Zero Emission Vehicles in applications where feasible.

Members of all the aforementioned associations currently engage in, or may opt to engage in, federal contracting and procurements governed by the Federal Acquisition Regulations. For example, many of the members rent or lease vehicles to various government agencies to assist in their transportation needs. In light of this activity, and given their reliance on federal procurements, these businesses feel it is important to address the following concerns regarding the proposed rule.

Summary of Major Concerns

AALA, ACRA, and TRALA members recognize the Administration's commitment to combating climate change and acknowledging the impact that its contracting decisions can have on the government's attempts to address GHG emissions. However, if finalized, the proposed changes to the FAR will have serious implications for all existing and potential Federal contractors, including the vehicle rental and leasing companies represented by the undersigned associations.

Over the last decade, automobile manufacturers have taken robust, voluntary actions to make substantial progress in the area of environmental sustainability, with particular focus on GHG emissions reductions. This progress is evident by the productive partnership between our members and the automobile manufacturers that has resulted in the increasingly rapid transition from vehicles powered almost exclusively by internal combustion engines to a Zero Emission Vehicle focus, including electric vehicles. In order to allow this progress to continue, future regulations must balance the rule's overall goals with the burden of compliance, consider the negative impacts of relying on third-party standards, provide contractors with enough time to familiarize themselves with changes to reporting requirements, and clarify certain ambiguities. As DoD, GSA, and NASA consider further rulemaking, we urge the agencies to consider the following concerns and recommendations.

Ambiguous Definitions of "Significant Contractor" and "Major Contractor"

First, the text of the proposed rule does not clearly define "significant contractor" and "major contractor." The agencies propose using a contractor's "Federal contract obligations" to differentiate between the two levels of contractors. The proposed rule says "Federal contract obligations" is defined in the OMB Circular A-11. Despite this, it is unclear whether the threshold amounts are determined by contract awards or contract obligations. Given that the proposed rule says figures will be based on the amounts recorded in the System for Award Management (SAM), which does not record contract obligations, it would seem as though the calculation is based on contract awards. However, the proposed rule refers to threshold amounts as "contract obligations." The proposed rule's use of the phrase "Federal contract obligations" and its omission of a clear definition could cause reporting confusion. It also leaves many unanswered questions, for example, whether indefinite delivery/indefinite quantity contracts will be counted toward a Federal contractor's size. The rule should provide clarity for Federal contractors. This is especially important for contractors who are close to the proposed demarcation for a "major contractor" and therefore may need to report Scope 3 emissions and submit Science Based Target Initiative (SBTi)-validated science-based targets.

Compliance and Financial Burdens

Second, the proposed rule creates serious compliance burdens for contractors of all sizes. The mandated GHG emissions reporting and disclosure requirements in the proposed rule would likely require enlisting the support of technical consultants to assist with the complex calculations and ensure compliance with the rule. For larger entities, these resources would be required in addition to the company's other routine environmental, health, and safety compliance teams. For mid-size to smaller entities, many of which may not have separate staff capable of

addressing these matters, the resources required to comply with the proposed rule would be especially burdensome.

Under the proposed rule, significant and major contractors would be required to disclose annual Scope 1 and Scope 2 GHG emissions. Major contractors will also face additional burdens, including the disclosure of relevant Scope 3 GHG emissions. The proposed rule describes Scope 3 emissions as, "emissions that are a consequence of the operations of the reporting entity but occur at sources other than those owned or controlled by the entity." Providing this disclosure would require a Federal contractor to gather information from various different entities throughout the contractor's supply chain, many of which are not independently required to disclose GHG emissions. This is an untenable task, even for the most well-intentioned Federal contractor.

Additionally, this requirement would almost certainly result in disclosure of an enormous volume of unreliable information. In the Securities Exchange Commission's (SEC) proposed rule on reporting greenhouse gas emissions, which also requires disclosure of Scope 3 emissions, the SEC admits, "depending on the size and complexity of a company and its value chain, the task of calculating Scope 3 emissions could be challenging" and that it "may be difficult to obtain activity data from suppliers and other third parties in a registrant's value chain, or to verify the accuracy of the information." 87 Fed. Reg. 21,380, 21,390. Given the inherent nature of the highly subjective data relevant to Scope 3 emissions, disclosing such data would not lead to the sort of reliable information needed to meaningfully assess responsibility under the FAR standards. While our members appreciate the Administration's commitment to combating climate change and reducing GHG emissions, the enormous burden that reporting Scope 3 emissions places on Federal contractors does not outweigh the minimal benefit gained from the potentially inaccurate data this requirement will produce.

Major contractors will also face the added burden of not only setting science-cased reduction targets, but having those targets validated by the SBTi. According to the SBTi 2021 Progress Report, only 401 companies in North America had either set standards or committed to set standards by December 31, 2021.[1] Given this, it is inevitable that many Federal contractors – even those that had already been reporting Scope 1, 2, and 3 emissions – will be setting SBTi-validated targets for the first time and therefore will need to put systems and personnel in place in order to meet compliance requirements.

The new reporting requirements are also accompanied by financial burdens. The proposed rule estimates that the cost of compliance with the proposed rule is $604,702,840 in the initial year of implementation. As detailed in the text of the proposed rule, this number was calculated by adding the cost of regulatory familiarization, making annual representations, completing inventory of Scope 1 and Scope 2 emissions, as well as the cost of setting science-based targets for major contractors. This involved multiplying the time authors of the proposed rule predict each category will take to complete by the hourly rate of the staff members needed in each category. We respectfully submit that the proposed rule likely significantly underestimates the time necessary for compliance, and therefore, also underestimates the financial resources that

[1] Science Based Targets Initiative Annual Progress Report, 2001, Science Based Targets (Version 1.2 - Updated June 2022), https://sciencebasedtargets.org/resources/files/SBTiProgressReport2021.pdf

contractors will need to spend as a result of the proposed rule. Even the most basic burdens associated with this rule are unrealistic. For example, the proposed rule estimates that individuals tasked with reviewing the rule will spend only 6 minutes per page becoming familiar with the rule and another 6 minutes to determine whether a contractor meets the definition of a "significant" or "major" contractor. While the estimates are unrealistic for all impacted entities, they are especially unrealistic for mid-size to smaller entities who may not already have the necessary staff or resources available for a proper and thorough review. In practice, compliance with the rule will be much more costly than the rule predicts in terms of both dollars and time spent by the reporting contractor.

The additional resources and time required to ensure compliance with the proposed rule will be further exacerbated due to rapidly changing circumstances, such as technological innovations within each industry, updated (and, in some cases, competing) methodologies in GHG emissions calculations, and unpredictable geopolitical issues. Despite even a comprehensive and good-faith effort to do so, the quickly evolving underlying facts and methodologies would likely make the internal processes required to report data outdated soon after a final rule takes effect. The reporting mechanisms and standards will need to be regularly updated in order for the proposed rule to achieve its goal of monitoring and ultimately reducing GHG emissions. This will likely force contractors to re-familiarize themselves with the standards, creating an ongoing burden for all Federal contractors.

Reliance on Third Parties

Third, our members urge the agencies to consider the potential consequences of utilizing third-party standards and systems to ensure compliance with the rule. The proposed rule requires Federal contractors to disclose emissions using the CDP's annual climate change questionnaire, use the GHG Protocol to prepare the required GHG inventory, and also requires major contractors set science-based targets and have those targets validated by SBTi. The agency's proposed rule asserts that levering existing third-party standards will reduce the burden on contractors. While this may be true for a small number of contractors, it will also likely reduce efficiency and create accountability concerns for all contractors.

The agencies claim one of the expected benefits of the proposed rule is "increased efficiency of disclosure via standardization." This efficiency, however, will be offset by the fact that the reporting standards are continually changing. The CDP Climate Change Questionnaire, for example, is updated annually through a lengthy process. As the text of the proposed rule points out, "CDP issues the proposed updates to the questionnaire, which are opened for public consultation in the fall (approximately September) and the finalized questionnaire and guidance are available early in the new year (approximately January)." Utilizing reporting mechanisms controlled by a third-party and which are constantly evolving would arguably decrease efficiency; after each update the Federal government will need to review the changes and decide whether the new standards meet the objective of the proposed rule. Contractors will need to familiarize themselves with the changes and determine how or if they affect internal reporting systems. This, combined with the approximate four months it takes CDP to finalize the updated questionnaire, could leave companies with uncertain requirements for the better part of a year. Even if the process is expedited, utilizing variable reporting mechanisms will lead to outdated

disclosures and data that cannot be compared over time. There is also an inherent risk associated with relying on reporting mechanisms dependent on the continuity of operations of third-party nonprofits.

As discussed above, these standards would also require major contractors to gather downstream emissions data from a potentially large number of third parties in order to disclose Scope 3 emissions. Given the subjectivity associated with calculating downstream emissions, a reality conceded by the CDP and GHG Protocol guidelines, it is inevitable that such calculations will lead to inaccurate and inconsistent disclosures across industries. For example, it is possible that downstream emissions may be double-counted. There is a high likelihood that data will be gathered in a way that applies conflicting assumptions regarding which activities should—and should not—be included in a Federal contractor's calculations. These uncertainties include legislative or regulatory proposals, technological innovations, and consumer preference trends. The purported "increased efficiency via standardization" that the proposed rule hopes to achieve by relying on uncertain third-party standards will be meaningless if the data itself is not accurate.

Moreover, utilizing third-party standards and systems effectively outsources federal policymaking responsibility to third parties. Because these standards for disclosure are regularly updated and because government officials have no authority over these changes, it is impossible to guarantee that future questionnaires and mechanisms will align with the goals and priorities of the FAR.

The proposed rule's reliance on using a nonprofit entity to validate science-based targets is particularly troubling, as it would grant decision-making authority to an unaccountable third-party. SBTi is a private organization made up of CDP Worldwide, the United Nations Global Compact, the World Resources Institute, and the World Wide Fund for Nature. Under the proposed rule, this private organization will be tasked with validating major contractors' science-based targets, ultimately deciding if a Federal contractor is responsible, and therefore eligible, to be awarded a federal contract. Yet, government officials will have no authority over this decision, or even the criteria for determining validation. The proposed rule does not even mention a process by which a Federal contractor can appeal SBTi's decision. Instead, SBTi sets the criteria, which includes some sector-specific guidance that major Federal contractors in certain industries are expected to follow.

Notably, the SBTi's guidance for the "transport sector," which our members would rely on in setting their science-based emissions targets, is still "in development." In fact, as of January 22, 2023, guidance has only been finalized for half of the sectors listed on the "Sector Guidance" page of the Science Based Targets website.[2] It is impossible for impacted industries to be able to fully comment on proposed rules that utilize guidance that has not been finalized. Agencies should not propose amendments to the FAR that are utilizing, and therefore endorsing, guidance that is still being developed.

[2] Sector Guidance, Science Based Targets (accessed Jan. 22, 2023), https://sciencebasedtargets.org/sectors

Unfair Standard for Contractor Responsibility

Finally, the proposed rule creates an unfair standard for contracting responsibility. As the proposed rule is currently written, a significant or major contractor is "presumed to be nonresponsible" unless it completes a GHG inventory of its annual Scope 1 and Scope 2 GHG emissions and reports the emissions from its most recent inventory in SAM. Likewise, a major contractor is also "presumed to be nonresponsible" unless it submits an annual climate disclosure and develops SBTI-validated science-based emissions targets.

Given the concerns discussed above, particularly those pertaining to the outsourcing of federal policymaking responsibility, it would be unfair to use a prospective Federal contractor's compliance with the proposed rule as a determination of "responsiveness." This is especially true for major contractors that need to rely on SBTi's validation process in order to meet complete compliance. Companies like our members work diligently to demonstrate compliance with the full spectrum of federal requirements that enable them to be eligible for Federal contracting. Under this proposal, this one aspect of regulatory compliance related to GHG emissions would be placed in the hands of a third-party non-profit with no accountability for the timeliness of necessary approvals, or little understanding of any particular company's overall efforts to address ESG concerns. The failure to satisfy the SBTi's review and being deemed "nonresponsible" could inflict huge economic consequences on an entity that heavily relies on its federal procurements as part of its business model. It is not a determination that should be dependent on criteria set by a third-party -- especially a third party with a board of directors made up of multiple corporations and no U.S. government control.

The proposed rule states that a prospective contractor that fails to meet the requirements above can prove it is responsible if it can show the "noncompliance resulted from circumstances properly beyond the contractor's control," if the prospective contractor provides documentation that "demonstrates substantial efforts to comply," or if the prospective contractor makes "a public commitment to comply as soon as possible on a publicly accessible website (within one year)." In the "Alternatives Considered" section, the agencies frame this as a way of providing officers with flexibility in determining what actions a noncompliant contract has taken to comply with the proposed rule. However, in reality this framework places the burden on the contractor to overcome a presumption of nonresponsibility. Putting the onus on the contractor to overcome this presumption would be incredibly costly and will undoubtedly add to the uncertainties and already high burdens associated with the proposed rule.

Specific Comments and Recommendations

1. Clarify to what extent contractors will be required to obtain information from third parties in order to collect information on potential indirect Scope 3 emissions.

As currently drafted, the proposed rule does not specify to what extent contractors will be required to collect third-party emissions data in order to be considered in full compliance with their own reporting obligations for indirect Scope 3 emissions. Will the affected Federal contractors be required to collect data from their subcontractors, suppliers, and other third-parties throughout their supply chain? Will Federal contractors need to verify this information from third parties? If a subcontractor, supplier, or other third-party within the contractor's supply

chain is unable or unwilling to provide Scope 3 data, will the contractor's Scope 3 obligation be satisfied if it demonstrates a good-faith effort to collect such information?

2. Provide an appeal process for Federal contractors who fail to receive SBTi approval.

Should the final rule include the provision that requires major contractors to submit SBTi-validated science-based targets, the final rule should also provide an appeal process by which Federal contractors can contest SBTi's decisions. This appeal process should be completed through the Agencies and completely independent of STBi. The proposed rule does provide a way for a prospective contractor that fails to meet the rule's requirements to prove it is responsible by showing the "noncompliance resulted from circumstances properly beyond the contractor's control." However, that process is meant to be a comprehensive review of a prospective contractor's responsibility and places the burden on the contractor to overcome a presumption of nonresponsibility. Instead, a Federal contractor should have the opportunity to separately contest the SBTi's decision as an initial matter.

3. Contract amounts for classifying "significant" and "major" contractors should be increased beyond the proposed $7.5 million and $50 million thresholds.

The dollar amounts used to classify contractors as "significant" and "major" should be updated to more accurately reflect industry standards. Regardless of whether the calculation includes Federal contract obligations or not, the minimum amount to classify a Federal contractor as "major" should be more than $50 million.

4. The initial reporting deadline should be extended.

Under the proposed rule, "[s]tarting one year after publication of a final rule, a significant or major contractor (itself or through its immediate owner or highest-level owner) must have completed a GHG inventory and the significant or major contractor must have disclosed the total annual Scope 1 and Scope 2 emissions from its most recent inventory in SAM." Our members recommend extending this deadline to provide entities with more time to familiarize themselves with the rule and hire management analysts and business specialists, as needed. For smaller entities who have not previously been required to report GHG emissions, this extra time will allow them to develop and implement effective reporting systems. Similarly, an entity that is on the border between "significant contractor" and "major contractor" will require additional time to determine its classification. Extending the initial reporting deadline will help ease the compliance burdens laid out above.

5. Provided both this rule and the SEC's proposed rule on reporting GHG emissions become final, this rule should include a provision that allows compliance under this rule to satisfy compliance with the SEC rule.

As discussed above, complying with the rule will place a burden on entities of all sizes. In an effort to minimize this burden, our members recommend allowing reporting under this proposed rule to satisfy the reporting obligations under other rules with similar reporting goals and

requirements. For example, as acknowledged in the text of this proposed rule, there are many similarities between this proposed rule and the Securities Exchange Commission's (SEC) proposed rule on reporting greenhouse gas emissions, The Enhancement and Standardization of Climate-Related Disclosures for Investors. Furthermore, many of the publicly reporting companies that will be required to report under the SEC proposed rule will meet the minimum threshold for reporting under this rule as either a major or significant contractor. In the event that both the SEC's proposed rule and this proposed rule become final and a company meets the requirements to report under both, our members recommend that reporting under this proposed rule satisfy an entity's obligation to report under the SEC proposed rule. However, if an entity does not already have science-based emissions reduction targets in place and therefore is not required to disclose such targets under the proposed SEC rule, it may choose to report under both rules if it is classified as a "significant contractor" and therefore not required to establish such standards under this proposed rule.

Conclusion

The breadth of this proposed GHG reporting and disclosure rule has the potential to substantially increase compliance costs and adds a high level of regulatory uncertainty for most Federal contractors. For the reasons discussed above, our members respectfully urge DoD, GSA, and NASA to revisit several major elements of the proposed rule as reflected in the comments and recommendations provided in this letter.

Sincerely,

Mike Joyce, Executive Director
American Automotive Leasing Association

Sharon Faulkner, Executive Director
America Car Rental Association

Jake Jacoby, President & CEO
Truck Renting and Leasing Association