

February 13, 2023

William F. Clark

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy

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

FAR Case 2021–015, Docket No. FAR–2021–0015, RIN 9000–AO32

Via: Regulations.gov

Dear Mr. Clark,

Thank you for the opportunity to provide comments on the proposed rule in this docket regarding the Federal Acquisition Regulation (FAR). In the proposed rule, the Department of Defense, General Services Administration, National Aeronautics and Space Administration (DoD, GSA, and NASA; together, the FAR Council)¹ are proposing to revise the FAR to implement section 5(b)(i) of Executive Order (EO) 14030, *Climate-Related Financial Risk*, to require that major federal suppliers publicly disclose greenhouse gas (GHG) emissions and climate-related financial risk and set science-based GHG reduction targets.²

EXECUTIVE SUMMARY

The FAR Council should pause its implementation of the FAR Rule because the rule would:

1. Distract from the core missions of the FAR Council agencies;
 - a. Weaken the DoD mission by:
 - i. Diverting billions of dollars from national defense priorities;
 - ii. Lowering the quality of materiel; and
 - iii. Weakening the defense industrial base.
2. Violate rulemaking procedures;
3. Establish arbitrary and capricious compliance thresholds;
4. Rely on unsupported assumptions regarding climate-related financial risk;
5. Violate the Administrative Procedure Act (APA) by imposing new requirements that private companies:
 - a. Use a specific tool for GHG emissions disclosure; and
 - b. Develop “science-based” GHG emissions targets.³
6. Implicate the Major Questions Doctrine.

¹ The Federal Acquisition Regulatory Council membership consists of: the Administrator for Federal Procurement Policy and — (A) the Secretary of Defense, (B) the Administrator of National Aeronautics and Space; and (C) the Administrator of General Services. See <https://www.acquisition.gov/far-council-members>

² In these comments we refer to the proposed rule as the FAR Rule.

³ The rule defines a “science-based” target as “in line with reductions that the latest climate science deems necessary to meet the goals of the Paris Agreement to limit global warming to well below 2 °C above pre-industrial levels and pursue efforts to limit warming to 1.5 °C.”

Considering the above problems with the FAR Rule, and because compliance with EO 14030 is voluntary, the FAR Council should decline to move forward with any final rule in this matter.

THE FAR RULE WOULD DISTRACT FROM THE CORE MISSIONS OF THE FAR COUNCIL AGENCIES

If the FAR Council seeks to advance the mission of its respective agencies, it must not use an expansive interpretation of its agencies' missions and authorities to force compliance with the political aspirations of the current administration. Specifically, EO 14030, the Paris Agreement (which the U.S. Senate has not ratified with its advice and consent), and their related climate goals do not support the core missions of the DoD, NASA, or GSA. In fact, the goals of the FAR Rule run counter to the core missions of the FAR Council agencies.

Mission of the DoD

The mission of the DoD is “to provide the military forces needed to deter war and ensure our nation's security.”⁴ The FAR Rule would significantly undermine the DoD's mission.

The FAR Rule Would Divert Billions of Dollars from National Defense Priorities

The proposed rule would, according to documentation, cost an estimated \$3.945 billion to implement.⁵ This cost figure, of course, is merely an estimate, and in the current inflationary environment, cost estimates projected over years of implementation are likely too low. Even so, \$3.9 billion is a massive amount of money that is desperately needed to fund defense capabilities. That sum could purchase an *America*-class amphibious assault ship,⁶ or 42 F-35 fighter jets.⁷

The United States faces an increasingly threatening global security environment in which the People's Republic of China and the Russian Federation are actively challenging U.S. interests. The United States military is ill-positioned to defend against these threats. The Heritage Foundation's 2023 *Index of U.S. Military Strength* provides the following assessment:

“As currently postured, the U.S. military is at growing risk of not being able to meet the demands of defending America's vital national interests. It is rated as weak relative to the force needed to defend national interests on a global stage against actual challenges in the world as it is rather than as we wish it were. This is the logical consequence of years of sustained use, underfunding, poorly defined priorities, wildly shifting security policies, exceedingly poor discipline in program

⁴ See <https://www.defense.gov/About/>

⁵ Federal Register, “Proposed Rules,” Vol. 87, No. 218, November 14, 2022, p. 68324.

⁶ An *America*-class amphibious assault ship costs \$3.539 billion. See U.S. Department of Defense, “Fiscal Year 2023 Budget Justification Book: Shipbuilding and Conversion, Navy,” Vol 1-303, https://www.secnav.navy.mil/fmc/fmb/Documents/23pres/SCN_Book.pdf (accessed February 10, 2023).

⁷ An F-35 fighter jet costs \$91.559 million. See U.S. Department of Defense, “Fiscal Year 2023 Budget Justification Book: Aircraft Procurement, Air Force,” Vol 1-7, https://www.saffm.hq.af.mil/Portals/84/documents/FY23/PROCUREMENT_/FY23%20Air%20Force%20Aircraft%20Procurement%20Vol%20I.pdf?ver=G7mDgA6gGUT-vbPL4Xs1jA%3d%3d (accessed February 10, 2023).

execution, and a profound lack of seriousness across the national security establishment even as threats to U.S. interests have surged.”⁸

In this context, diverting \$3.9 billion away from military capabilities in order to implement the proposed rule is irresponsible and threatens U.S. national security interests, undermining the very mission of the U.S. Department of Defense.

The FAR Rule Would Lower the Quality of Materiel

If implemented, the proposed FAR rule would threaten the quality of materiel procured by the DoD, as contracting decisions may be predicated on a supplier’s reported GHG emissions rather than quality, cost, or schedule considerations. In its Advance Notice of Proposed Rulemaking, the FAR Council included the question, “How might the Federal Government give preference to bids and proposals from suppliers, both domestic and overseas, to achieve reductions in greenhouse gas emissions or reduce the social cost of greenhouse gas emissions most effectively?”⁹

Giving preference to suppliers with lower GHG emissions, rather than choosing the supplier with the most effective product, would undermine the DoD’s ability to compete more effectively with China and other bad actors. The U.S. national defense depends on the U.S. military’s using the most effective tools available. In making procurement decisions, the DoD must balance certain considerations, weighing the effectiveness of a given tool against its cost and its delivery schedule. These three factors are difficult enough to balance; emissions levels are not pertinent to the DoD’s mission, and their consideration would detract from the considerations that matter to national defense.

The FAR Rule Would Weaken the Defense Industrial Base

The FAR rule, if implemented, would risk adding fragility to the defense industrial base, as additional onerous regulations drive firms from the defense market. The defense industrial base is already shrinking: in the last five years, the defense ecosystem has lost a net 17,045 firms. The DoD estimates the number of small businesses in the defense industrial base has declined by over 40% in the last ten years.¹⁰ As a result, the defense industry is less able to provide for U.S. military needs, defense acquisition is plagued with program delays, and China threatens to overtake the U.S. in technological superiority.

The Pentagon’s current business practices—with complex procurement processes, long contract timelines, and costly certification requirements—already “strain the industrial base and reduce incentives to supply to DoD,” according to a 2018 interagency task force report on the U.S. defense industrial base.¹¹ The proposed FAR rule would only further strain the defense industrial

⁸ The Heritage Foundation, *2023 Index of U.S. Military Strength*, “Executive Summary”, October 18, 2022, <https://www.heritage.org/military-strength/executive-summary>.

⁹ Federal Register, “Proposed Rules,” Vol. 86, No. 197, October 15, 2021, p. 57404.

¹⁰ National Defense Industry Association, “Vital Signs 2023,” February 2023, p. 5, https://www.ndia.org/-/media/vital-signs/2023/vitalsign_2023_final_v3.pdf?download=1?download=1 (accessed February 13, 2023).

¹¹ “Assessing and Strengthening the Manufacturing and Defense Industrial Base and Supply Chain Resiliency of the United States: Report to President Donald J. Trump by the Interagency Task Force in Fulfillment of Executive Order 13806,” September 2018, <https://media.defense.gov/2018/Oct/05/2002048904/-1/-1/1/ASSESSING-AND-STRENGTHENING-THE-MANUFACTURING-AND%20DEFENSE-INDUSTRIAL-BASE-AND-SUPPLY-CHAIN-RESILIENCY.PDF> (accessed February 13, 2023).

base, as firms choose to exit the defense market rather than make the investments necessary to comply with the new regulations.

Mission of the GSA

The mission of the GSA is to “deliver the best customer experience and value in real estate, acquisition, and technology services to the government and the American people.”¹² At best, the FAR Rule’s single-minded focus on GHG emissions will have unintended consequences on the GSA’s performance of its mission by diverting the financial and human resources of the GSA to comply with the FAR Rule instead of accomplishing its basic functions of real estate, acquisition, and technology services to the government. If the GSA must comply with EO 14030, it would be doing exploratory work on behalf of climate activists rather than providing useful services to the federal government and to the American people.

Further, if the GSA imposes the FAR Rule’s compliance regime on its major contractors, it will risk the same negative outcomes as outlined above regarding the DoD and its functions. Specifically, the GSA would face a decrease in quality and an increase in cost of the entire suite of real estate, acquisition, and technology services it provides via contractors to the government.

Mission of NASA

Viewing the mission of NASA through the lens of EO 14030 and the Paris Agreement reveals the backwardness of the FAR Rule. NASA offers this mission statement: “NASA explores the unknown in air and space, innovates for the benefit of humanity, and inspires the world through discovery.”¹³ When so much of the work of an agency requires extreme levels of energy density, as is the case with any spacecraft designed to achieve the escape velocity necessary to reach Earth orbit,¹⁴ GHG emissions may be unavoidable. In other words, if NASA and its contractors limit themselves to “green” rockets, they might as well have no rockets at all.¹⁵

THE FAR RULE WOULD VIOLATE NECESSARY RULEMAKING PROCEDURES

The FAR Rule Does Not Comply with EO 12866

As required by EO 12866, *Regulatory Planning and Review*, the FAR Council must send the FAR Rule for review by the Office of Information and Regulatory Affairs (OIRA) within the White House Office of Management and Budget because the FAR Rule is a “significant regulatory action” under the definition laid out in EO 12866. We agree with the finding in the FAR Rule that it “is anticipated to be an economically significant regulatory action,” but we feel compelled to outline our reasoning in the event the FAR Council chooses to forgo OIRA review

¹² See <https://www.gsa.gov/about-us/mission-and-background>

¹³ See <https://www.nasa.gov/careers/our-mission-and-values>

¹⁴ See https://www.vanderbilt.edu/AnS/physics/astrocourses/AST101/readings/escape_velocity.html

¹⁵ In the race to develop alternatives to existing rocket fuels, “liquid methane appears to be in the lead.” Notably, methane is a hydrocarbon whose combustion releases carbon dioxide, a GHG. See <https://www.bbc.com/future/article/20220713-how-to-make-rocket-launches-less-polluting>

in the final rule or continues to evade certain requirements of EO 12866, as does the proposed FAR Rule.

The FAR Rule satisfies all four of the definitions of a significant regulatory action, although it should face OIRA review if it satisfies just one of the four definitions. Section 3(f) of EO 12866 reads:

(f) “Significant regulatory action” means any regulatory action that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in this Executive order.

The FAR Rule satisfies definition (1) almost automatically, given that the rule applies to all significant and major contractors (“major” being defined as receiving “more than \$50 million in Federal contract obligations in the prior Federal fiscal year”), and the fact that hundreds of such significant and major contractors exist. But to emphasize the economic effect of the FAR Rule, we can simply look at the largest DoD contractor, whose 2021 contract obligations were on the order of \$65 billion. Clearly, the FAR Rule would have an annual economic effect of \$100 million or more. As a percentage of the total DoD contractor budget, the \$100 million threshold is a mere 0.025 percent of the more than \$400 billion spent on contractors annually. Finally, the FAR Rule estimates the total cost of the rule to be between \$462 million and \$466 million per year. So, by the FAR Rule’s own estimates, it satisfies the definition of a “significant regulatory action” and must go through all relevant review processes under EO 12866 for significant regulatory actions.

The FAR Rule satisfies definition (2) because the mitigation of GHG emissions is an environmental regulation, which relates to the authorities of the Environmental Protection Agency (EPA). Although it’s questionable whether the EPA has authority to promulgate a regulation for GHG mitigation similar to the one proposed here, the potential for interference with EPA’s regulatory program¹⁶ is another reason why the FAR Rule must be reviewed by OIRA.

The FAR Rule satisfies definition (3) because it would clearly alter the rights and obligations of the companies that are the recipients of federal contracts and contract funding from the FAR Council agencies.

¹⁶ See <https://www.epa.gov/climateleadership/ghg-reduction-programs-strategies>

The FAR Rule satisfies definition (4) because, although previous rules implementing EO 14030 guidance were also inappropriate (for example, related rules promulgated by the Securities and Exchange Commission and the Commodity Futures Trading Commission), the FAR Rule inexplicably goes one step beyond those previous rules to require that contractors submit GHG mitigation plans and have those plans approved by the Science-Based Target Initiative (SBTi). This new requirement is inconsistent with previous rules and should trigger review by OIRA.

We emphasize the FAR Rule’s status as a “significant regulatory action” because there are many processes that flow from such a designation that help inform the public and protect Americans from costly or ineffective regulations. Specifically, the public deserves a formal cost-benefit analysis of the FAR Rule, and the Regulatory Impact Analysis (RIA) of the FAR Rule does not give us that.

Section 1 of EO 12866 offers the following guidance: “In deciding whether and how to regulate, agencies should assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating.” The FAR Council should consider whether the alleged climate benefits of the FAR Rule could ever conceivably outweigh the immense costs—which, as we have established, would include (1) rendering the DoD more distracted and significantly less effective, (2) impairing American national security by reducing the quality of materiel, and (3) reducing the DoD’s options if some contractors choose to leave the business rather than comply with the FAR Council’s mandates.

However, rather than quantifying the alleged benefits of the FAR Rule and comparing them to the costs, the FAR Rule and the supporting RIA make a haphazard attempt at quantifying the benefits¹⁷ and do not compare benefits to costs in any meaningful way. In balancing the national security interest at stake in this rulemaking, the FAR Council should acknowledge its error in proposing this FAR Rule and either retract it outright or decline to issue a final rule.

The Administration’s shortcomings regarding cost-benefit analysis will become public if there is a final rule. Section V of the FAR Rule states: “This is anticipated to be an economically significant regulatory action and, therefore, was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.” It is unclear to what extent the FAR Rule was in fact reviewed by OIRA or what provisions may have been returned by the OIRA Administrator to the FAR Council. Nevertheless, we note that Section 6(b)(4)(D) requires disclosure of all correspondence between OIRA and the FAR Council agencies: “After the regulatory action has been published in the Federal Register or otherwise issued to the public, or after the agency has announced its decision not to publish or issue the regulatory action, OIRA shall make available to the public all documents exchanged between OIRA and the agency during the review by OIRA under this section.” At that time, should the FAR Council move forward with a

¹⁷ There is a passing reference in the RIA to the *CDP Global Supply Chain Report 2021*, which is the source in footnote 11 of the RIA for the assertion that “in 2021, companies (including, but not limited to, Federal contractors) disclosing emissions and climate risk through the CDP disclosure system independently reported emissions and cost savings from emissions reduction activities implemented in the given reporting year; in aggregate, these benefits collectively amounted to 1.8 billion metric tons (MT) CO₂e in emissions reductions with over \$29 billion in associated cost savings for those suppliers.” The *CDP Global Supply Chain Report 2021* does not support the \$29 billion savings estimate, and the RIA does not state what portion of the \$29 billion estimate might apply to federal contractors.

final rule, the public will have more information about the FAR Council's compliance with EO 12866.

The biggest missed opportunity when it comes to regulatory oversight is that Section 8 of the RIA (Alternatives Considered) does not mention the alternative of not regulating. If in considering a rulemaking the proposing agency is unable to determine whether the public may be better served without the proposed rule, the case for the rule is obviously extremely weak.

The FAR Rule Does Not Comply with the Unfunded Mandates Reform Act

The FAR Rule, as with any rule that meets the UMRA criteria, must satisfy section (a)(3)(B) of the Unfunded Mandates Reform Act (UMRA).¹⁸ The UMRA establishes that “before promulgating any general notice of proposed rulemaking that is likely to result in promulgation of any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted annually for inflation) in any 1 year ... the agency shall prepare a written statement” containing five categories of analysis, including “a qualitative and quantitative assessment of the anticipated costs and benefits of the Federal mandate,” “any disproportionate budgetary effects of the Federal mandate upon any particular regions of the nation or particular State, local, or tribal governments, urban or rural or other types of communities, or particular segments of the private sector,” and “a description of the extent of the agency’s prior consultation with elected representatives ... of the affected State, local, and tribal governments.”

As we established above, the FAR Rule would have major financial impacts. If the FAR Council moves forward with a final rule, it should explain why it finds that the federal mandates included in the FAR Rule would not result in the expenditure by the private sector of \$100 million in any one year. As drafted, the proposed FAR Rule fails to mention the UMRA and does not attempt to detail how the FAR Rule has satisfied the above procedural requirements of the UMRA. Although the FAR Rule does exempt state and local governments and tribes from direct compliance with the rule, it does not indicate that the FAR Council has undertaken any of the required analysis of the impacts on states and local governments and tribes of compliance with the rule by private companies. The FAR Rule also does not explain why, given the compliance costs outlined in the proposed rule, it would not result in the expenditure by the private sector of \$100 million in any one year.

THE FAR RULE’S PROPOSED COMPLIANCE THRESHOLDS ARE ARBITRARY AND CAPRICIOUS

In Section 8.2 of the RIA, the discussion of the government’s decision-making process regarding the selection of compliance thresholds is as follows:

The Government settled on dual thresholds to ensure smaller Federal suppliers (i.e., “significant contractors” with \$7.5 million to \$50 million in obligations in the prior FY) take steps to understand their GHG emissions and the larger Federal suppliers (i.e., “major contractors” with more than \$50 million in obligations in

¹⁸ 2 U.S.C. 1532. Available at: <https://www.law.cornell.edu/uscode/text/2/1532>

the prior FY) take steps to disclose climate-related financial risks and to reduce their GHG emissions.

That’s all the decision-making information available in the RIA. We take this thin explanation to mean that the government arbitrarily and capriciously chose the targets that achieved the political outcomes desired by the current administration, not the outcomes that best serve America’s national security interests or maximize net benefits to society. Much like what we found in the section above regarding EO 12866, the FAR Rule’s regulatory justification—in this case the apparently random selection of compliance thresholds—simply does not stand up to scrutiny and does not constitute reasoned decision-making.

THE FAR RULE WOULD RELY ON UNSUPPORTED ASSUMPTIONS REGARDING CLIMATE-RELATED FINANCIAL RISK

The objective quantification and measurement of climate-related financial risks is often impossible. Climate risk assessments depend on multiple assumptions fraught with uncertainties, and speculative risk guestimates are of little financial value to investors.

EO 14030 and the FAR Rule are based on questionable premises. Specifically, the studies informing the FAR Rule:

1. Favor climate risk assessments based on warm-biased models run with warm-biased emissions scenarios.
2. Attribute to climate change damages that chiefly reflect societal factors such as increases in population and exposed wealth.
3. Overlook the increasing sustainability of our chiefly fossil-fuel-powered civilization.
4. Assume away the capacity for adaptation to mitigate climate change damages.
5. Underestimate the resilience of financial markets to climate-related risks.
6. Exaggerate the political prospects of the NetZero agenda.
7. Ignore the vast potential of climate policies to destroy jobs, growth, and, thus, shareholder value.
8. Overlook the economic, environmental, and geopolitical risks of mandating a transition from a fuel-intensive to a material-intensive energy system.
9. Downplay the regulatory impediments to building a “clean energy economy.”
10. Ignore the systemic risks that could be created if the FAR Council pursues an extreme anti-fossil-fuel policy agenda—an ideologically-charged, mandate- and subsidy-fueled “green” investment bubble.¹⁹

Although the FAR Rule cites the need for “significant global mitigation efforts,” assuming the entire United States (not just federal agencies and their contractors) could eliminate all GHG

¹⁹ For a detailed explanation of each of these flawed premises, see: <https://cei.org/wp-content/uploads/2022/06/CEI-Lewis-Comments-SEC-Climate-Risk-Disclosure-June-17-2022-Final-Amended-Version-with-changes-accepted.docx.pdf>

emissions immediately, the leading climate models predict that doing so would only mitigate global temperatures by less than 0.2 degrees Celsius by the year 2100.²⁰

THE FAR RULE WOULD VIOLATE THE APA BY IMPOSING A NEW REQUIREMENT THAT PRIVATE COMPANIES USE THE CDP (FORMERLY CARBON DISCLOSURE PROJECT)

The FAR Rule attempts to mandate that contractors use a specific system established by a private group (the CDP) when accounting for their GHG emissions disclosures. This action goes beyond the requirements included in the rule implementing EO 14030 that was recently promulgated by the SEC, which allowed for different methods of accounting for and disclosing GHG emissions. Any decision to depart from precedent—even a precedent like the SEC’s proposed rule, which is itself spurious—must be accompanied by a reasonable and adequate explanation of the reasons for the departure. Instead, the FAR Rule introduces inconsistency with previous rules without explanation, which violates the APA and makes the FAR Rule arbitrary and capricious.

THE FAR RULE WOULD VIOLATE THE APA BY IMPOSING A NEW REQUIREMENT THAT PRIVATE COMPANIES DEVELOP GHG EMISSIONS TARGETS

As mentioned above, the U.S. Senate has not ratified the Paris Agreement or its related climate goals. Presently, the goals of the Paris Agreement apply only to companies who choose to adopt them on a voluntary basis. Applying the goals of the Paris Agreement now to companies who support the work of the DoD, NASA, or GSA—and making them mandatory—is a new policy without reasoned basis under the statutes of any of the FAR Council agencies (or any federal agency, to our knowledge).

The FAR Rule provides no reasoning, other than a reference to EO 14030, for its departure from the well-established policy that corporate compliance with the Paris Agreement is entirely voluntary. Any new requirement that private companies must now fall in line with the GHG emissions targets laid out in the Paris Agreement should be accompanied by reasoned decision-making and a connection to the underlying statutes of the relevant agencies. Importantly, EO 14030 (as is the case with all EOs), is the cited justification for the FAR Rule but is not binding on any agency.

THE FAR RULE WOULD IMPLICATE THE MAJOR QUESTIONS DOCTRINE

The new requirement that any major contractor have its “science-based” targets validated by the SBTi, a private organization, would grant the SBTi undue authority over large private corporations to alter the business decisions and reorient company priorities. The result essentially would

²⁰ Kevin Dayaratna, Katie Tubb, and David Kreutzer, “The Unsustainable Costs of President Biden’s Climate Agenda,” The Heritage Foundation, *Backgrounder* No. 3713, June 16, 2022, https://www.heritage.org/sites/default/files/2022-06/BG3713_0.pdf

be a takeover of corporate planning by a non-profit group whose interests may not align with those of the companies involved, the American people, the executive branch agencies, or Congress. To offer a glimpse into the size of the takeover, more than half of the DoD's annual budget of over \$800 billion goes to contractors.²¹

The budget priorities of the DoD are established by Congress. Yet, with one rulemaking, the FAR Council could establish new priorities for approximately half the DoD's budget by conscripting major contractors into a war on fossil fuels that was never voted on by Congress. Ultimately, the risk in going down this path is that all major contractors will be subject to the whims of the climate commissars at the SBTi who could dictate major planning and investment decisions, some of which would certainly be contrary to the DoD's national defense mission, as outlined above. The immense size of the policy change in the FAR Rule and its far-reaching implications make this an "extraordinary grant[] of regulatory authority" and a "fundamental change to a statutory scheme," which would likely trigger judicial review under the Major Questions Doctrine.²²

The FAR Council, in implementing any FAR Rule, must not attempt to mitigate climate change without considering limits on its statutory authority. Otherwise, its rulemaking will be successfully challenged in court.

CONCLUSION

Thank you for the opportunity to comment on the proposed FAR Rule. For the foregoing reasons, we urge the FAR Council not to move forward with a final rule in this matter.

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²¹ See <https://www.defense.gov/News/Releases/Release/Article/2819472/dod-releases-report-on-defense-spending-by-state-in-fiscal-year-2020/>

²² See *West Virginia v. EPA*, 597 U.S. ____ (2022), No. 20-1530, slip op. at 18 (June 30, 2022) https://www.supremecourt.gov/opinions/21pdf/20-1530_n758.pdf.