

Dan K. Fordice, III, President
Lester C. Snyder, III, Senior Vice President

An outline of AGC's comments on the Proposed GHG Rule are as follows:

- I. Background on the Construction Industry and Environmental Stewardship
- II. AGC's General Business Concerns with the Proposed GHG Rule
- III. Proposal Increases False Claims Act Risks Assumed by Federal Contractors
- IV. AGC's Construction-Specific Concerns with GHG Emissions Reporting Generally
- V. AGC's Concerns with the Proposed Scope 3 Emissions Reporting Requirement
 - A. The Construction Industry Faces Unique Challenges in Collecting GHG Emissions Data
- VI. Proposal Exceeds Statutory Limits
- VII. Additional Concerns
 - A. The Paperwork Reporting Burden Is Understated
 - B. More Research is Needed on the Analysis of the Public Burden
 - C. More Research is Needed to Understand the Potential Impact on Business Participation, Including Small Businesses and Small Disadvantaged Businesses
 - D. Flawed Compliance Cost Analysis Ignores the Strain this Unfunded Mandate will have on Public and Private Resources
- VIII. If the FAR Council Rejects AGC's Recommendation to Rescind the Proposed GHG Rule, it Should Implement Steps to Minimize the Disruption to the Procurement of Federal Construction
- IX. Conclusion

AGC provides the following comments to ensure that the Proposed GHG Rule does not upend the expeditious and efficient distribution of taxpayer dollars, while ensuring the efforts to reduce greenhouse gas emissions do not jeopardize U.S. economic competitiveness, supply chain readiness, and energy security.

- I.

customers and clients. AGC expects the demand for, and company disclosure of, information about climate change risks, impacts, and opportunities to continue to grow—even without the Proposed GHG Rule.

IV. AGC's Construction-Specific Concerns with GHG Emissions Reporting Generally

The U.S. Environmental Protection Agency (EPA) estimates that the construction industry emits around 1-2 percent of the total U.S. manmade GHG emissions.¹⁹ These emissions come from equipment use and energy consumption on jobsites. In discussions with AGC, contractors have provided multiple examples of strategies to reduce emissions through choices about equipment and vehicles, efficient lighting and jobsite facilities (e.g., trailers), and even the power tools used on projects. For example, routine equipment maintenance and voluntary “no idling” policies could lead to reduced fuel consumption and related emissions.

AGC members have varied sources of emissions and likewise varied and limited options that are feasible for them to reduce emissions. On top of the unique attributes for each individual construction project (scope, purpose, materials used), each construction firm itself will have unique equipment and energy needs, so much so that meaningful comparisons in carbon performance will be impossible—regardless of the amount of data collected. Furthermore, as discussed below, many of these variables are outside the scope of a contractor's control.

AGC recently conducted a sustainability reporting and practices survey²⁰ and the results are illustrative about the challenges the construction industry would face if Scope 3 reporting requirements are implemented. Of the respondents to the survey:

- Only 14 percent currently report GHG emissions on project (emphasis added). Six percent report their GHG emissions voluntarily, and eight percent are required to do so.
- Only 11 percent calculate embodied carbon of materials used on a project.
- 61 percent have full-time, in-house employees dedicated to sustainability (e.g., greenhouse gas reporting, ESG, green building, sustainable purchasing, etc.). An additional 15 percent have an employee with part-time responsibilities only.

As the survey shows, most construction firms do not currently have systems in place to collect and meaningfully report GHG emissions data to registrant companies in order to comply with the proposed Scope 3 emissions reporting requirements. For commercial construction companies, climate data is not easily aggregated or consistently measured throughout the business's footprint. Many construction firms manage a highly fragmented multi-employer workforce that uses downstream vendors and materials suppliers across multiple jobsites. Some of those businesses may already report GHG estimates. For others, their data collection and analysis processes may be nonexistent or evolving. Data collection and analysis

¹⁹ There is not a definitive percentage of GHG emissions for the construction industry. AGC uses the estimate of 1-2% of U.S. total emissions based on two resources. The U.S. EPA inventory of GHG emissions and sinks indicates that the equipment from construction and mining combined emitted 1.1 percent of total U.S. manmade GHG emissions in 2019. This does not reflect electricity use onsite. <https://www.epa.gov/sites/production/files/2021-04/documents/us-ghg-inventory-2021-main-text.pdf>. Another report from the U.S. EPA focuses solely on construction and estimates that construction industry accounts for 1.7 percent of total U.S. GHG emissions. U.S. Environmental Protection Agency, Potential for Reducing Greenhouse Gas Emissions in the Construction Sector, February 2009, archived copy available online at <https://archive.epa.gov/sectors/web/pdf/construction-sector-report.pdf>. This report is dated; however, it is the only comprehensive look at the construction industry's emissions as well as the intensity of those emissions. The construction industry's carbon intensity is low, meaning a small amount of emissions come from many discrete sources (i.e., equipment, project sites).

²⁰ AGC conducted the survey during May 2022. At the time of this writing, it is currently unpublished. AGC will make available a summary of the findings upon request.

processes continue to evolve, as do the standards for auditing and assurance of climate and ESG information. A requirement to collect information from suppliers, subsidiaries, purchasers, or consumers would impact the reliability of the relevant data. There could also be significant roadblocks related to data accessibility, sharing, or privacy—creating problems for both reporting and assurance.

Specifically in the case of commercial construction, it is difficult to quantify direct mobile source emissions from equipment on the jobsite that the contractor owns or directly controls, as testing methods and calculations are subjective and inaccurate at best. Moreover, it becomes nearly impossible for a contractor to independently collect and verify emissions data associated with material inputs or the outputs of a completed project.

V. AGC's Concerns with the Proposed Scope 3 Emissions Reporting Requirement

AGC's primary concern with the proposed regulations is the inclusion of a new Scope 3 reporting regime for Major contractors, which would have the effect of mandating emissions tracking and disclosure for many, if not most, commercial construction firms. The Scope 3 emissions standard developed by GHG Protocol is still relatively new and there remains significant uncertainty about the data and methodologies necessary to achieve a robust Scope 3 reporting system.

- Construction firms conduct most of their work on project-specific job sites, most of which are not owned/operated by the firm. Each project and job site are unique, including, for example the equipment, subcontractors, and materials used for the project. Whereas there could be fewer variables when tracking GHG emissions at fixed facilities, collecting that data on construction job sites has proven to be challenging.
- Included in the challenges of collecting GHG emissions data from job sites are the job and contract specific use of, for example, on-site energy usage. If a contract specifies that the project owner pays for electricity usage on project, a contractor would have to rely on the owner to willingly provide them with information about the electricity usage on the site. Some contractors have relayed to AGC that this information can be difficult to obtain.
- Additionally, on any given project there could be hundreds, if not thousands, of pieces of equipment and tools used that are not easily tracked—or where the technology to track use or resultant emissions is not widespread or does not yet exist.
- AGC members familiar with tracking have shared with AGC their challenges with Scope 1 and 2 emissions: including availability of data, staff to track down and manually process/enter data, expense and availability of qualified consultants, and the time it took to initiate this type of analysis. Several of these firms are large, multi-billion-dollar businesses, and, even so, they do not have the resources and in-house expertise to effectively track and report the vast scope of Scope 3 emissions.
- General contractors vary in their use of subcontractors compared to work that is self-performed. For contractors that perform as a construction management firm, very little work is self-performed. Collecting GHG emissions data from subcontractors can be very challenging.
- Environmental product declarations (EPDs) for materials used in construction projects are increasing in use and availability. They are not, however, currently available for every product. Even if EPDs were universal, capturing and extrapolating that data across an entire portfolio of projects would be a herculean task—and one that could have to be repeated anew each year with varying results depending on the projects themselves for that reporting period.
- Furthermore, EPDs or sourcing of materials thought of as “green” may not tell the whole story. For example, materials may have supply chain and availability concerns resulting in longer shipping distances (and associated emissions). Other materials may have better environmental performance under a life cycle assessment approach than EPDs.
- Climate policies, such as the Proposed GHG Rule, that would encourage wide-spread reporting of non-material (and even speculative, especially when conducting medium- or long-term analysis) climate risks, can impact material selection and supply chains leading to shortages of common materials or creating demand for products that are not widely available. This may increase costs for capital expenditures.
- Across industries, the cost for compliance will likely be passed on to consumers. In the construction of infrastructure, that can mean passing along the cost to public owners—which is a detrimental unintended consequence of the rule on the public.

For the above reasons, AGC recommends the FAR Council rescind the Proposed GHG Rule, conduct further outreach and research on the consequences to and feasibility of implementing such a proposal upon industry, and refrain from mandating a rigid approach to reporting on greenhouse gas emissions.

VI. Proposal Exceeds Statutory Limits

B. More Research is Needed on the Analysis of the Public Burden

The Proposed GHG Rule dramatically expands the time and capital expenses associated with compliance

C. More Research is Needed to Understand the Potential Impact on Business Participation, Including Small Businesses and Small Disadvantaged Businesses

Transparency and clear requirements are important for providing free and open competition to our nation's businesses and accountability to the American people. However, the Proposed GHG Rule mandates and the predictably burdensome reporting requirements will undermine the significant infrastructure investments recently enacted into law. It will preclude many businesses from participating in the federal market, lowering competition in the federal market. It is important to note that the federal construction industry has long been a well-regulated industry, ensuring that workers are safe, taxpayer dollars are properly spent, and the environment is protected. Businesses of all types—especially small businesses—are confronted with an unparalleled crisis that threatens them both financially as well as the health, safety, and welfare of themselves and their employees. These businesses should not be burdened or distracted with vague regulations and reporting requirements, especially during the crisis brought about by the COVID-19 pandemic and accompanying supply chain disruptions that continue to contribute to higher construction material costs and longer lead times for their delivery, if they are even available.²⁶

Federal construction contracting, in general, is a challenging market to participate. Businesses in the federal area must comply with numerous regulations, rep 1 Tf11.52 0 0 11.52Gegu that cre3 rr.6 (10.8 (uirements ard 10.8 (u (ses)1

AGC is concerned that the Proposed GHG Rule represents an unfunded mandate that will diminish the economy and efficiency of many federal construction projects and needlessly require federal employees to spend significant time to comply with the Proposed GHG Rule. As explained above, the Proposed Rule will significantly increase the number of written communications between interested parties—taking significant time to review—with little tangible benefit for the federal agency procuring construction services. There will be a significant increase in public comments that will require an increase in time to review whether one of the exceptions the Proposed GHG Rule applies in determining whether or not a federal contractor is developing science-based targets for reducing GHG emissions. AGC members currently experience

