U.S. Chamber of Commerce

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HEARING BEFORE THE UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON SCIENCE, SPACE, AND TECHNOLOGY
INVESTIGATION AND OVERSIGHT SUBCOMMITTEE

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Chairman Lucas, Ranking Member Lofgren, and members of the Subcommittee. I am Chad Whiteman, Vice President, Environment and Regulatory Affairs for the Global Energy Institute at the U.S. Chamber of Commerce. Thank you for the opportunity to testify at today's hearing.

The U.S. Chamber of Commerce appreciates the opportunity to offer its views to the Subcommittee concerning the Federal Acquisition Regulatory Council's proposal ("Proposed Rule") to require significant and major contractors to make climate-related disclosures and to require major contractors to set targets to reduce greenhouse gas ("GHG") emissions. Under the proposal, satisfying these requirements would be a condition of eligibility for federal government contracts.

The Chamber's members range from the small businesses and local chambers of commerce that line the Main Streets of America to leading trade associations and Fortune 500 companies, to growing startups in emerging and fast-growing industries that are shaping our future. Chamber members include federal contractors large and small, that provide products and services across diverse industries such as aerospace and defense, telecommunications, information technology, engineering services, food and hospitality, pharmaceuticals, biotechnology, healthcare, energy, and many more.

We work with our members and other stakeholders to promote practices, policies, and technology innovations across industry and government to address the climate challenge. Our particular focus has been on facilitating the development, deployment and commercialization of technologies needed to meet our energy demands while accelerating the transition to a cleaner economy. It is vital that citizens, governments, and businesses work together to reduce the risks associated with climate change and ensure a sustainable and prosperous future. American companies are already playing a crucial role in developing innovations and approaches to reduce GHG emissions while also spurring the evolution of climate disclosures. Companies are also

increasingly reporting more information to the public about their efforts to reduce their GHG emissions. Many have also made forward-looking statements and commitments to reduce their emissions over time. These commitments have helped drive progress to address climate change over the last decade.

While the private sector is making significant progress, regulatory decisions must always be informed by a careful analysis of the available alternatives, outcomes, and cost-benefit tradeoffs to ensure that optimal policies are implemented. Such regulatory decisions also must be made within the bounds of agencies' legal authorities. We are concerned that the Proposed Rule fails to strike the right balance. While the Federal Acquisition Regulatory Council ("Council") seeks to further the worthwhile end of mitigating the potential effects of global climate change, the Proposed Rule itself is an inappropriate and inefficient means of doing so, for several reasons.

First, the Proposed Rule would impose immense costs on government contractors of all sizes, costs that would be passed on to the government and ultimately to taxpayers. This would undermine rather than advance the goal of an economic and efficient system of contracting that underpins the Federal Property and Administrative Services Act. Detailed disclosure of climate-risk assessment processes and risks, inventorying and disclosing scope 1, 2, and 3 GHG emissions, developing and implementing science-based emissions-reduction targets, and paying fees to the private entities to whom the Council requires many of the disclosures be submitted, among other things, would require thousands of employee hours and saddle contractors with billions of dollars in added implementation and compliance costs. The government's acquisition costs would rise as a consequence, and some contractors, and companies in the supply chain, would likely drop out of the market entirely, weakening the competitive forces that keep prices down. Although the Council suggests that the proposed disclosures may lead to a reduction in GHG emissions, the Proposed Rule provides no evidence for that suggestion. Even if it did, the Council provides no "reasoned determination that the benefits of the intended regulation justify its costs."[1]

Second, the Council's pursuit of goals beyond economic and efficient contracting exceeds its legal authority. While the Council can promulgate specific, output-related standards to help ensure that the government acquires the goods and services it needs at appropriate prices, the Council lacks the statutory authority to use government contracts as a vehicle for furthering other policy goals like addressing climate change, even if well intended. The Council's attempt to do that here not only exceeds the Council's statutory authorization, but also raises significant issues under the Constitution. Among other things, the Proposed Rule would force contractors to associate with, and likely follow, the speech guidelines of certain private organizations whom the Council would deputize to do most of the standard setting and verification. This unusual arrangement would violate contractors' First Amendment rights and would

[1] Exec. Order No. 12,866, 58 Fed. Reg. 51,735, 51,736 (Oct. 4, 1993).

transgress longstanding legal limitations on delegating legislative and rulemaking authority to private entities.

Third, the Proposed Rule would violate the Administrative Procedure Act in several respects. Most significantly, the Council's cost-benefit analysis is flawed and vastly underestimates the costs. It misreads or overlooks estimates, relies on stale data, ignores millions of dollars of costs altogether, and inconsistently and inaccurately frames the costs that it does consider. For example, the Council alludes to benefits from potential GHG reductions, but fails to acknowledge or quantify the costs required to achieve such reductions. The actual costs of the Council's proposal would exceed their estimate of $1 billion per year. The benefits side of the ledger fares no better. The cost savings the Council cites are speculative and unlikely to materialize. The Council also fails to grapple with the duplicative, and even conflicting, requirements the Securities and Exchange Commission (SEC) is simultaneously proposing to impose on public companies.

Other aspects of the proposal are equally troubling. The Council fails to account for the disproportionate burden that the Proposed Rule would impose on small businesses, both directly as federal contractors and indirectly as suppliers of major contractors. The rule would outsource most of the standard setting to private entities that the federal government does not control, regulate, or monitor. It would require contractors, at significant cost, to collect and analyze data to fill out detailed mandatory filings. It would undermine national-security interests. It would set compliance deadlines that are impossible to meet. It would require contractors to set science-based targets, even if they do not have a viable means of meeting the targets in the short timeframe allowed, and it would do all of this without the Council having adequately considered numerous less restrictive ways of pursuing the Council's interests.

These and other flaws counsel in favor of abandoning the proposal, as we explained in further detail in the written comments that we submitted to the Council on February 13, 2023.[2] Thank you for the opportunity to testify, and I look froward to your questions.

[2] *See* https://www.uschamber.com/small-business/u-s-chamber-of-commerce-comments-on-federal-acquisition-regulation-disclosure-of-greenhouse-gas-emissions-and-climate-related-financial-risk.