COMMITTEE ON SCIENCE, SPACE, and TECHNOLOGY

HEARING CHARTER

"A Bar Too High:
Concerns with CEQ's Proposed Regulatory Hurdle for Federal Contracting"

Wednesday, *September 20, 2023*
10:00 a.m.
2318 Rayburn House Office Building

Purpose:

On Wednesday, September 20, 2023, the Investigations and Oversight subcommittee will hold a hearing to examine the Administration's recently proposed regulation titled "Disclosure of Greenhouse Gas Emissions and Climate-Related Financial Risk." The proposed regulation would require that federal contractors disclose their greenhouse gas emissions (GHG) to a foreign entity and set science-based targets to reduce their GHG emissions. The hearing will examine the practical, financial, and national security implications of this proposed regulation as well as the proposed rule's constitutionality.

The Committee also plans to discuss the Administration's responsiveness to Congressional oversight into the process used for drafting this proposed rule. The hearing will also discuss these matters as it specifically relates to the selection of Science Based Target Initiative (SBTi), a private, foreign based company, as the single source vendor for all federal contractors.

Witnesses:

- Ms. Brenda Mallory, Chair, Council on Environmental Quality (CEQ) (invited)
- Ms. Christine J. Harada, Chair, Federal Acquisition Regulation Council (FAR) (invited)
- Mr. Eric Fanning, President and Chief Executive Officer, Aerospace Industries Association
- Mr. Chad Whiteman, Vice President, U.S. Chamber of Commerce
- Mr. Steven Rothstein, Managing Director, Ceres Accelerator for Sustainable Capital Markets
- Ms. Victoria Killion, Legislative Attorney, Congressional Research Service

Overarching Questions:

- What impact will the proposed rule have on federal contractors?
- Will compliance with science-based target-setting impose an unnecessary burden on contractors?
- What are the national security implications of allowing a foreign-based company to validate science-based targets for U.S. contractors?
- What legal questions are implicated by this proposed rule and the no-bid selection of a single source vendor?

Background:

On May 20, 2021, President Biden issued Executive Order 14030 (E.O. 14030), Climate-Related Financial Risk.[1] E.O. 14030 seeks to require major federal suppliers to, "publicly disclose greenhouse gas emissions and climate-related financial risks."[2] On November 14, 2022, the Federal Acquisition Regulation Council (FAR Council) in coordination with the Council on Environmental Quality (CEQ) published a notice of proposed rulemaking (NPRM) to amend the Federal Acquisition Regulations to implement E.O. 14030.[3] If implemented, the proposed rule would separate major federal suppliers into two categories: significant contractors and major contractors. The proposed rule loosely defines a significant contractor as a contractor that received between $7.5 million and $50 million in federal funds during the prior fiscal year.[4] A major contractor is defined as a contractor that received more than $50 million in fiscal funds during the prior fiscal year.[5] The rule would require both significant and major contractors to disclose Scope 1 and Scope 2 GHG emissions, while requiring major contractors to disclose Scope 3 GHG emissions and set science-based reduction targets.

EPA Guidance. The Environmental Protection Agency published guidance that explained scopes of emissions that companies must disclose.[6] Scope 1 GHG emissions include emissions from sources that are owned or controlled by the contractor or company submitting the disclosure. Scope 2 covers emissions associated with generating electricity, such as the heating and cooling of manufacturing or office space. Scope 3 covers GHG emissions as a consequence of operating a business, but which occur at facilities that are controlled by others. Only major contractors are required to disclose Scope 3 emissions.

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[1] 3 Exec. Order No. 14,030, 86 Red. Reg. 27967 (May 20, 2021), https://www.federalregister.gov/documents/2021/05/25/2021-11168/climate-related-financial-risk.

[2] *Id*.

[3] Federal Acquisition Regulation: Disclosure of Greenhouse Gas Emissions and Climate-Related Financial Risk, 87 Red. Reg. 218 (proposed on Nov. 14, 2022) (to be codified 48 C.F.R pt. 1,4,9,23,52), https://www.federalregister.gov/documents /2022/11/14/2022-24569/federal-acquisition-regulation-disclosure-of-greenhouse-gas-emissions-and-climate-related-financial [hereinafter *FAR: Climate-Related Financial Risk*].

[4] *Id*.

[5] *Id*.

[6] Environmental Protection Agency, *GHG Inventory Development Process and Guidance*, agency guidance, December 6, 2022, https://www.epa.gov/climateleadership/ghg-inventory-development-process-and-guidance; *see* EPA, *Scope 1 and Scope 2 Inventory Guidance*, EPA Center for Corporate Climate Leadership, August 21, 2023, https://www.epa.gov/climateleadership/scope-1-and-scope-2-inventory-guidance; see also EPA, *Scope 3 Inventory Guidance*, EPA Center for Corporate Climate Leadership, August 3, 2023, https://www.epa.gov/climateleadership/scope-3-inventory-guidance.

NPRM Requirements. Under this proposed rule, major contractors would also be required to set science-based targets to reduce GHG emissions and have those targets validated by an outside private entity known as the Science Based Target Initiative (SBTi). As the name suggests, science-based targets are attempts to set targets, based on scientific data to reduce the GHG emissions by a certain amount in a certain period of time. For example, Company A may set a target of reducing their GHG emissions by 25 percent by the year 2030.

This proposed regulation leans heavily on private industry for implementation by delegating important governmental authorities to the private sector. For example, significant and major contractors must report GHG emissions by using CDP's (formerly Carbon Disclosure Project) Climate Change Questionnaire. Major contractors are then required to set GHG reduction targets and pay SBTi to validate those targets.

The proposed rule would impact over 670 U.S. contractors and steer at least $1.2 million in yearly fees to SBTi.[7]

Science Based Target Initiative. SBTi was formed in 2015 as a collaborative initiative between the CDP, the World Resources Institute (WRI), the World Wide Fund for Nature (WWF), and the United Nations Global Compact following the Paris Climate Agreement.[8] The We Mean Business Coalition later joined the initiative, while the U.N. Global Compact currently serves as a permanent observer.[9] SBTi's purpose is to develop standardized guidance, criteria, and tools for entities to voluntarily use when establishing their emissions baseline, then set reduction targets.[10] All of this is done, however, for a fee.[11] In 2022, SBTi received approximately 35 percent of its funding from its validation services, with the rest of their funding coming in the form of donations from philanthropic groups and businesses.[12] Despite operating since 2015, SBTi did not officially exist as a corporation until June 26, 2023, when it incorporated in London, UK, nearly eight years after its launch and months after the publication of the proposed rule and the initiation of the Committee's oversight efforts.

Both CEQ Chair Mallory, and FAR Council Chair Christine Harada were invited to attend this hearing, but did not confirm their attendance.

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[7] *Id*.
[8] Letter from Karen Elizabeth Christian, Counsel, Akin Gump Strauss Hauer & Feld LLP, on behalf of Sci. Based Targets Initiative, to Frank Lucas, Chairman, H. Comm. Sci., Space, and Tech. (Aug. 9, 2023) (on file with Committee).
[9] Letter from Karen Elizabeth Christian, Counsel, Akin Gump Strauss Hauer & Feld LLP, on behalf of Sci. Based Targets Initiative, to Frank Lucas, Chairman, H. Comm. Sci., Space, and Tech. (Aug. 9, 2023) (on file with Committee).
[10] *Id*.
[11] *Id*.
[12] Science Based Target Initiatives, *How are We Funded*, https://sciencebasedtargets.org/about-us/funders (last visited Sept. 15, 2023).