

United States Senate

WASHINGTON, DC 20510

April 19, 2024

The Honorable Lloyd J. Austin III
Secretary of Defense
U.S. Department of Defense
1000 Defense Pentagon
Washington, DC 20301-1000

The Honorable Robin Carnahan
Administrator
General Services Administration
1800 F Street NW
Washington, DC 20405

The Honorable Bill Nelson
Administrator
National Aeronautics and Space Administration
300 Hidden Figures Way SW
Washington, DC 20546

Dear Secretary Austin, Administrator Carnahan, and Administrator Nelson,

It has come to our attention that your agencies are contemplating finalizing an environmental social governance (“ESG”) regulation¹ that would impact all contractors for the U.S. Department of Defense (“DOD”), National Aeronautics and Space Administration (“NASA”), and the General Services Administration (“GSA”). The Federal Supplier Climate Risks and Resilience Rule (“Contractor Climate Rule”) would be a disaster, severely distracting your agencies from critical tasks of securing our nation from foreign adversaries and of exploring our universe. Simply put, this Administration should not use procurement policy in order to meet its radical environmental justice goals.

Under the proposed rule,² certain federal contractors and suppliers will be forced to publicly disclose their greenhouse gas (GHG) emissions and climate-related financial risks and set science-based emissions reduction targets. The largest federal contractors must disclose their Scope 1, 2, and 3 greenhouse gas emissions and climate-related risk assessments, while also setting emissions reduction targets.³ Contractors who fail to comply with these environmental justice conditions will be deemed “nonresponsible” and unable to receive federal contracts.⁴

¹ Federal Acquisition Regulation: Disclosure of Greenhouse Gas Emissions and Climate-Related Financial Risk, 87 FR 68312 (Nov. 14, 2022).

² *Id.*

³ *Id.* at 68313-68314.

⁴ *Id.* at 68314; FAR 9.103, available at https://www.acquisition.gov/far/part-9#FAR_9_000.

When one reads the proposed ESG rule, it is simply astounding what is missing from the pages and pages of bureaucratic jargon: any discussion of how this regulation relates to the underlying missions of your agencies. DOD’s mission is “to provide the military forces needed to deter war and ensure our nation's security.”⁵ Nowhere in this rule is there any discussion of how this rule supports our men and women serving in uniform, ensures readiness, or promotes a more lethal fighting force. If anything, this rule harms recent efforts to invest in our defense industrial base. A recent 59-page report by DOD detailed the needs of our defense industrial base to meet the production demands posed by evolving threats.⁶ Appropriately, DOD’s defense industrial strategy does not promote environmental justice goals. Instead, the report specifically highlights how regulations can create barriers and prevent small businesses from contracting with DOD, preventing diversification of our defense production activities and further harming our national security.⁷ The Contractor Climate Rule would only add to the cacophony of “convoluted regulations” that DOD warns about in its defense production strategy. As the United States responds to the existential threat posed by the rapid military modernization of the People’s Republic of China, this geopolitical moment calls for rapidly closing preparedness gaps—not widening them by imposing ill-considered climate justice rules.

Similarly, with NASA, this rule seems to run counter to the agency’s mission and recent goals to explore our universe. In its mission statement, NASA “explores the unknown in air and space, innovates for the benefit of humanity, and inspires the world through discovery.”⁸ NASA intends to achieve this bold vision, for example, by returning to the Moon and sending crewed missions to Mars with the Artemis campaign.⁹ NASA recently conducted an audit of its management of the Artemis campaign’s supply chain.¹⁰ As expected, the audit did not mention “climate change” or “environmental justice” as barriers to landing on the Moon. Instead, the audit cited inflation and the impact of COVID-19 as specific causes for supply chain disruptions.¹¹ If this Administration determines to add regulatory costs from this Contractor Climate Rule on top of out-of-control inflation, it will only create another hurdle for NASA from exploring the Moon and Mars.

Even if the Contractor Climate Rule squarely fit within the missions of your agencies, the rule fails to pass a simple cost-benefit test. Though this rule often references benefits of unlisted

⁵ U.S. Department of Defense, *About* (accessed Mar. 28, 2024), <https://www.defense.gov/about/>.

⁶ U.S. Department of Defense, National Defense Industrial Strategy (Jan. 12, 2024), <https://www.defense.gov/News/News-Stories/Article/Article/3644527/dod-releases-first-defense-industrial-strategy/>.

⁷ *Id.* at 15 (“Regulations and business practices can be difficult to understand, costly to implement, and in a myriad of ways often create barriers to doing business with DoD.”).

⁸ NASA, *Life at NASA* (accessed Mar. 28, 2024), <https://nasa.gov/careers/life-at-nasa/#:~:text=Diversity%20Drives%20Innovation-,Mission%20and%20Values,in%20all%20that%20we%20do.>

⁹ NASA, Office of Inspector General, *NASA’s Management of the Artemis Supply Chain* (Oct. 19, 2023), <https://oig.nasa.gov/docs/IG-24-003.pdf>.

¹⁰ *See id.*

¹¹ *Id.* at 13.

“efficiencies,” the effect of this rule is clear. It will impose hundreds of millions of dollars in new regulatory costs on our defense industrial base and our space industrial base. Legal analysts have already determined that this ESG rule will “trigger significant requirements” for federal contractors.¹² In the first year alone, the rule conservatively estimates that the Contractor Climate Rule will cost over \$600 million in the first year to implement.¹³ These costs will be directly borne by the taxpayer, and the end result will be that every weapons system for DOD and every critical resource for NASA will be more expensive.

Beyond the distracting nature of this Contractor Climate Rule from our nation’s core missions and beyond the astonishing cost of the rule, it is quite concerning that this Administration contemplates moving forward with this rule given recent legislative action. The FY 2024 National Defense Authorization Act expressly prohibits the disclosure of information relating to greenhouse gas emissions.¹⁴ Further, the recent appropriations packages also forbid “any provision in a rule, if that provision requires mandatory reporting of greenhouse gas emissions from manure management systems.”¹⁵ Though DOD’s Office of General Counsel has stated these prohibitions may be¹⁶ “broadly interpreted,” it remains quite clear that Congress has not delegated authority or provided funds for your agencies to promulgate this ESG rule.

In order to conduct proper oversight on behalf of our constituents, I ask you provide the following information:

- Did DOD conduct any analysis or any studies as to whether this Contractor Climate Rule would impact our defense industrial base’s ability to significantly expand in case of war?
- Has DOD considered any ability to wave such onerous requirements imposed under this rule during a time of war?
- Did NASA conduct any analysis or any studies as to whether this rule would cause further delays to the Artemis mission?
- Has any of your agencies determined how many contractors will be unable to participate in future contracting opportunities due to this rule? If not, why has your agency not conducted such analysis?
- Does any of your agencies continue to assert that there is legal authorization to continue with this rule given recent legislative prohibitions?

As you explained in your proposed rule, the Federal Government, being the world's single largest purchaser of goods and services, has the ability to “shift markets, drive innovation, and be a catalyst for adoption of new norms and global standards.”¹⁷ Public procurement objectives

¹² Kelly Sprague and Alison Torbitt, US proposes federal suppliers mandatory evaluation of Climate Risks and Resilience Rule, Nixon Peabody (Jan. 5, 2023).

¹³ 87 FR 68312, 68322.

¹⁴ P.L. 118-31, Division A, Title III, Sec. 318.

¹⁵ P.L. 118-42, Division E, Title IV, Sec. 436.

¹⁶ Stuart Kaplow and Nancy Hudes, *Defense Contractor Prohibition on Greenhouse Gas Emissions Disclosures*, ESG Legal Solutions, LLC (Feb. 18, 2024).

¹⁷ 87 FR 68312, 68318.

should ensure the government can acquire high-quality goods quickly and cheaply. Instead of being distracted by bureaucratic rules and regulations, your agencies should be focused on shooting missiles and shooting stars.

We have long been concerned that this Administration uses federal procurement policies to unilaterally enact massive, societal changes. This Administration's unlawful efforts to force COVID-19 vaccine mandates on federal contractors was rightly suspended due to legal challenges and threatened billions in federal contracts.¹⁸ We do not intend to stand idly by as this Administration again attempts to further a radical agenda through procurement policy—this time directly harming our defense and space industrial bases. If your agencies continue to move forward with this Contractor Climate Rule, Congress will have no choice but to introduce a resolution of disapproval under the *Congressional Review Act* and consider other legislative options to prevent this radical ESG policy.

Sincerely,



Eric S. Schmitt
United States Senator



John Thune
United States Senator



Dan Sullivan
United States Senator



Marco Rubio
United States Senator



Tom Cotton
United States Senator



Ted Budd
United States Senator

¹⁸ Sam Hartle, *Missouri AG Eric Schmitt plans to sue over federal vaccine mandate*, KSHB-TV (Oct. 27, 2021), <https://www.kshb.com/news/local-news/missouri-ag-eric-schmitt-plans-to-sue-over-federal-vaccine-mandate>.



Kevin Cramer
United States Senator



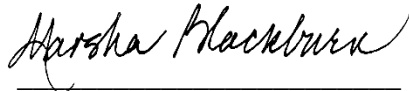
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