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BP America Inc. comments on FAR Case 2021-015, Docket No. FAR-2021-0015, Sequence No. 1: Proposed Rule “Federal Acquisition Regulation: Disclosure of Greenhouse Gas Emissions and Climate-Related Financial Risk.”

Dear Ms. Hawes,

BP America Inc. appreciates the opportunity to comment on the Federal Acquisition Regulatory Council (“FAR Council”) proposed rule on disclosure of greenhouse gas emissions and climate-related financial risk.¹

Introduction and Summary of Comments

bp has a larger economic presence in the United States than anywhere else in the world.² Every major bp global business is active here. Among our more than 65,000 employees in over 65 countries, more than 12,000 work in the US. bp has invested more than \$135 billion in the U.S. since 2005, and bp’s business activities support nearly a quarter million American jobs, contributing about \$60 billion to the national economy in 2021.³

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

² “bp” is used interchangeably herein to refer to BP p.l.c. or any subset of the BP group of companies.

³ https://issuu.com/bpameriggca/docs/bp_us_impact_report_investing_in_america?fr=sYWYxYzU2MzMzMzMyMDA

bp is proud to have subsidiaries that are “major contractors” to the Department of Defense (“DoD”), as defined in the FAR Council proposed rule, predominantly through contracts with the Defense Logistics Agency (“DLA”) to supply bulk petroleum products.⁴ Over the last 5 years, bp has been one of the largest suppliers of bulk petroleum products to DoD globally – consistently in the top 3 suppliers of fuels such as F76 (distillate fuel for Navy ships), JP5 (jet fuel for afloat Navy aircraft operations), and JAA / JA1 (domestic and international grade jet fuels for military aircraft and ground equipment). In 2021, bp entities had four contracts with DLA for approximately \$1.14 billion. These fuels are used to support mission critical DoD activities around the world.

bp supports the Biden Administration’s goal to achieve U.S. net-zero greenhouse gas (“GHG”) emissions by 2050. bp aims to become a net zero company by 2050 or sooner and to help the world to get to net zero.⁵ This ambition is supported by ten, net zero-related aims, which taken together set out a path for bp that is consistent with the goals of the Paris Agreement.⁶

Among bp’s ten net zero aims is an aim to be recognized as an industry leader for the transparency of our reporting.⁷ In February 2020, we declared our support for the recommendations of the Task Force on Climate-related Financial Disclosures (TCFD). Moreover, our chief economist participated in work with the World Business Council for Sustainable Development (WBCSD) – coordinated by the Energy Forum and supported by the TCFD, to develop a Scenario Reference Catalogue to assist with corporate scenario analysis. Since 2021, we have published disclosures consistent with the recommendations and recommended disclosures of the TCFD in our Annual Report and Form 20-F filed with the US Securities and Exchange Commission. We have also submitted a response to the CDP climate change questionnaire annually since 2021.⁸

bp supports climate-related disclosure requirements that provide relevant, material and decision-useful information to stakeholders. We believe it is important to strive for consistency in climate-related disclosures across jurisdictions and programs to the extent possible, and to properly consider cost-effectiveness as it relates to implementation. We also support efforts to encourage behavioral change by companies to reduce GHG emissions through proportionate reporting regarding both emission reduction strategies, targets and aims, and progress against stated targets and aims.

⁴ bp entities that have or currently hold contracts with the Defense Logistics Agency include BP Singapore PTE Ltd, BP Products North America Inc., BP Oil International Ltd, Air BP Ltd.

⁵ <https://www.bp.com/content/dam/bp/business-sites/en/global/corporate/pdfs/sustainability/group-reports/bp-net-zero-aims-at-a-glance.pdf>

⁶ <https://www.bp.com/content/dam/bp/business-sites/en/global/corporate/pdfs/sustainability/group-reports/bp-sustainability-report-2021.pdf>

⁷ *Id.*

⁸ <https://www.bp.com/content/dam/bp/business-sites/en/global/corporate/pdfs/sustainability/group-reports/bp-cdp-climate-change-questionnaire-2022.pdf>

As currently drafted, we believe that by appointing a third-party arbiter of companies' eligibility to be major contractors, the proposed regulation could be damaging and counter-productive, both for the proposal's underlying decarbonization goals, which bp supports, and for the effectiveness and competitiveness of federal major procurements because:

- By forcing companies to choose between eligibility to be a major contractor and retaining control over their own global corporate decarbonization strategy, the proposal could significantly reduce competition – and therefore impede the federal government's ability to attain competitively priced tenders – by closing otherwise qualified contractors out of the process or deterring them from participation altogether. This is a particular risk in sectors such as fuel supply, where a company's climate strategy is inseparable from its overall corporate strategy. While third-party methodologies and validation criteria are entirely legitimate as voluntary standards for GHG emissions reduction target setting, they each represent only one perspective on how a company's targets may be considered Paris-consistent.
- Second, by limiting the available pool of potential major contractors in this way, the proposal could unintentionally miss the opportunity to incentivize the development by the widest range of companies, including those in the most carbon-intensive sectors, of decarbonization strategies that could otherwise support the Administration's broader net zero goals. We believe it would be better to focus on incentives that encourage more companies to set GHG reduction targets and transparently report against them.
- Third, by effectively appointing a third-party arbiter to determine which companies are eligible to be major contractors, without the requisite degree of federal government involvement in or oversight, we believe that the proposal is at variance with recommendations of the Administrative Conference of the United States, presenting risks to the integrity and legal durability of the proposal.
- Fourth, it could limit the ability of companies to supply needed energy to the American people in times of crisis – as the Biden Administration has called for – because increased production could be in direct conflict with the third-party standard and validation process⁹.

⁹ See <https://www.whitehouse.gov/briefing-room/press-briefings/2022/06/22/press-briefing-by-press-secretary-karine-jean-pierre-and-secretary-of-energy-jennifer-granholm/>;
<https://www.politico.com/news/2022/03/09/granholm-calls-oil-companies-increase-production-00015802>

For these reasons, we respectfully encourage the FAR Council to amend the proposal. Specifically, bp recommends:

1. The final rule should aim to be consistent with the transparency principles of other climate-related disclosure efforts underway in the US and internationally (e.g. United Kingdom Financial Conduct Authority “FCA” and International Sustainability Standards Board “ISSB”).
2. The final rule should fully consider the recommendations of the Administrative Conference of the United States with regard to the use of third-party programs to assess compliance with regulations and standards. As explained below, we believe that the proposed rule does not fully adhere to these recommendations.
3. While we support the idea that the setting of Paris-consistent carbon reduction targets / aims by an entity (or the corporate group with which it is affiliated) could be made a potential criterion for eligibility to be a major federal contractor, or be given weight alongside other factors in the selection process, the rule should recognize the need for transparency around the basis for such targets and the importance of flexibility in providing such transparency rather than the prescription of a particular methodology.
4. The rule should not depend on the waiver process for workability and should therefore be modified to limit over-dependence on waivers for major procurements.

The final rule should be consistent with the principles of other efforts underway in the US and internationally.

While bp supports proportionate and consistent climate-related disclosure requirements, we have concerns with areas of the FAR Council’s proposal that present inconsistencies and challenges with existing and proposed internationally recognized standards.

Inconsistent disclosure requirements are an increasing risk with the pending Securities and Exchange Commission (“SEC”) climate disclosure rulemaking, as well as efforts underway internationally (e.g. United Kingdom Financial Conduct Authority “FCA” and International Sustainability Standards Board “ISSB”).

While we support the FAR Council’s interest in contractors’ GHG emissions and management of climate-related financial risks, and the targets they are setting to reduce GHG emissions, we believe the FAR Council should adopt the approach and recommendations utilized by the TCFD framework to acquire this information which, in

common with the ISSB-proposed climate-related disclosure standards, does not include prescribing third-party validation of the organization's strategy, metrics or targets. We believe such an approach is wholly aligned with the directive from EO14057, which directs the FAR Council to leverage existing third-party standards, including TCFD.¹⁰

TCFD is widely recognized as striking the right balance between transparency and strategic corporate flexibility, as demonstrated by the fact that its framework has been chosen to underpin the mandatory TCFD-based reporting requirements of the United Kingdom's FCA Listing Rule, the ISSB's draft climate-related disclosure standard and, to a large extent, the US Securities and Exchange Commission Proposed Rules for the Enhancement and Standardization of Climate-Related Disclosures for Investors. Furthermore, numerous non-governmental organizations (NGOs) have publicly voiced their support for the TCFD framework.¹¹

While bp supports disclosure of climate-related financial risk management and GHG targets, we believe the FAR Council should not relinquish agency authority to third parties with no US agency oversight or involvement.

The proposed rule require major contractors to develop "science-based" emissions reduction targets in line with the Paris Agreement and have these targets validated by the Science Based Targets Initiative (SBTi). If the SBTi is not able to, or chooses to exercise its discretion not to, validate the applicant's plan to achieve these targets, the proposed rule deems a potential contractor "non-responsible" and thus ineligible for contracts.

bp views GHG emissions reduction targets and aims that are designed to drive delivery of an organization's Paris-consistent strategy – whether they are based on absolute emissions or carbon intensity - as themselves being Paris consistent and therefore science-based. We are confident that our strategy, supported by our net zero ambition and aims taken as a whole, is Paris consistent because it: (1) is informed by Paris-consistent energy transition scenarios; (2) enables us to make a positive

¹⁰ <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/12/08/executive-order-on-catalyzing-clean-energy-industries-and-jobs-through-federal-sustainability/>

¹¹ See Ceres SEC comments p. 15

<https://www.ceres.org/sites/default/files/Ceres%20Final%20Comment%20Letter%20to%20SEC%206-17-22.pdf>; Center for Climate and Energy Solutions SEC comments p. 5

<https://www.c2es.org/document/c2es-comments-on-secs-climate-change-disclosures/>; Environmental Defense Fund SEC comments p. 9 – 11 https://blogs.edf.org/climate411/files/2022/06/IPI-EDF-Condon-SEC-Comment-Letter-Reasoned-Explanation-%E2%80%93-06.17.2022.pdf?_gl=1*1paqwuk*_ga*NTYxMDU4MzkyLjE2NjkwNjE3MDc.*_ga_2B3856Y9QW*MTY3NDY3MzU0OC4zLjEuMTY3NDY3MzU1Mi41Ni4wLjA.*_ga_Q5CTTQBJD8*MTY3NDY3MzU0OC4zLjEuMTY3NDY3MzU1Mi41Ni4wLjA

contribution to net zero; and (3) positions us for success and resilience in a Paris-consistent world.

However, as outlined on the SBTi website, SBTi's approach is different. Rather than looking at a company's targets and aims, business plans and strategies overall to develop a rounded understanding of the Paris-consistency of the company's intended contributions to global decarbonization, SBTi's approach is to select preferred GHG metric(s) and compare the company's targets to SBTi's preferred GHG emission reduction trajectory.

The SBTi provides an important way for companies, if they choose, to seek voluntary validation of their targets, and bp was pleased to participate in SBTi's oil and gas sector working group when the group existed. While we recognize that validation through the SBTi, or any other established third-party, methodology may provide one possible route to transparency regarding the robustness of a company's targets, we believe the proposed requirements regarding the mandatory use of a third-party methodology to assess compliance with what that third party determines to be science-based targets are at variance with recommendations of the Administrative Conference of the United States.

While the executive branch has at times, pursuant to Congressional authorization, incorporated by reference – or required compliance with – standards as determined by third parties, as the Administrative Conference of the United States has noted, this partial privatization of governmental functions raises important questions, particularly given the apparent lack of governmental oversight of these programs.¹²

As currently drafted, the proposed rule outsources key determinations regarding the standards to be met with no clear role reserved for the government to participate in or oversee the development of the "standards". Moreover, if a company's targets are deemed by the third party not to satisfy the standards it has set, the company would become ineligible to hold US government contracts. As a result, the federal government would be unable to have certainty that any of its major contractors in a particular sector or procurement area would be able to attain or retain third party validation. As an illustration of the potential risks associated with the proposed requirements, SBTi currently has no oil and gas sector methodology and there is

¹²Administrative Conference of the United States, *Administrative Conference Recommendation 2012-7 Agency Use of Third Party Programs to Assess Regulatory Compliance* (December 6, 2012), available at: [Agency Use of Third-Party Programs to Assess Regulatory Compliance | Administrative Conference of the United States \(acus.gov\)](https://www.acus.gov/publications/agency-use-third-party-programs-to-assess-regulatory-compliance). Although the Administrative Conference recommendations relate to use of third parties in regulatory programs and not procurement, what the FAR Council proposes here is tantamount to a regulatory program as opposed to the well-established technical standards routinely used with respect to procuring goods and services. What the proposed regulations incorporate are not technical standards.

therefore no pathway for any company in the sector to obtain SBTi validation of its targets.

We believe this delegation of fundamental governmental regulatory functions is at variance with recommendations of the Administrative Conference of the United States regarding the importance of governmental oversight.¹³

A key tenet of climate-related disclosure frameworks – at their core intended to provide greater and transparent insights on a company’s climate-related risk management and decarbonization strategies – is flexibility. For instance, the TCFD framework does not dictate how a company should set its strategy, or what the strategy should include. Rather, it provides a framework for a company to disclose how resilient its strategy is to the energy transition. Similarly, it does not dictate by how much a company must reduce its Scope 1, 2 or 3 GHG emissions, instead providing a disclosure framework for those emissions which enables investors, customers and other stakeholders to form their own views on the company and to act accordingly.

This flexibility and focus on transparency, rather than prescription, is deliberate as it recognizes that there are multiple pathways to achieve the goals of the Paris Agreement and therefore each company should be free to choose a decarbonization strategy suited to its circumstances – for example, compatible with an appropriate pathway. Further, it reinforces a core principle of decarbonization strategy which is that there is no single model for all companies, even within a sector. For instance, one oil and gas company may choose to maximize investment in carbon capture and storage, whereas another may pursue diversification into renewables. These decisions fall to the company executives, board and ultimately investors. We do not believe it is the role of a third party external stakeholder to subjectively dictate what is or is not a viable net zero strategy based on its interpretation of what amounts to a “science-based” target.

As an alternative, we recommend that the regulations provide for a robust and realistic approach from the outset, rather than a highly uncertain and subjective pass/fail standard which could, in practice (1) shift much of the substantive consideration of

¹³ See *Id. at 2* “Regulatory third-party programs raise a host of important questions. Because third-party programs represent a partial privatization of the public function of implementing and enforcing regulatory law, they are a form of ‘public-private governance’, in which private actors play roles that are traditionally viewed as governmental in nature. While third-party programs may increase regulatory compliance or otherwise improve the performance of regulated entities and products, these programs also pose risks.” (footnotes omitted)

See also, *Id. at 3-4* “Agencies that establish third-party programs generally cannot or do not delegate their regulatory authority to conformity assessment bodies. Rather, agencies authorize conformity assessment bodies to perform certain technical tasks to assess conformity, and regulatory agencies rely on these assessments in their own enforcement of regulatory requirements. The goal is to leverage private expertise and resources to serve regulatory objectives. **Because the regulatory agency must remain ultimately responsible for achieving regulatory objectives, it is vital to provide public oversight of third-party assessment activities.**” (emphasis added)

these matters to the waiver process, and (2) put many otherwise eligible major contractors into a position where they have no realistic prospect of eligibility, and in so doing forego the opportunity to apply positive influence on those companies to enhance their climate ambitions and progress.

We believe this approach is far preferable to a regulatory approach that would require compliance with evolving methodologies that do not exist for a range of sectors and which depend on outsourcing of key compliance determinations to a non-governmental body with no government oversight.

We urge the FAR Council not to unduly rely on the application of waivers.

While the proposed rule provides agencies with the opportunity to waive the requirements for national security and other purposes, we do not view this as sufficient for business certainty. Waivers can and do often play a role in certain regulatory compliance schemes, and we are not opposed to the role of waivers outright. However, waivers can be litigated and, in any event, require continuous review, analysis and decision-making by contracting agencies regarding waiver requests. This would greatly increase regulatory burdens on contractors and contracting officers, as well as create uncertainty. In the case of bp's fuels contracts, the contracts typically last for no more than one year. This would potentially require annual waivers and would greatly complicate the contracting process. The inevitable result likely could be less competition for the contracts in question, a delayed contracting process, and potentially higher prices for the government as some parties decide it is not worth participating in the tender.

Regulating through waivers due to the fact that the proposed rule would require use of a standard that does not exist for certain sectors, could change at any point and has no government oversight is at variance with sound regulatory policy. Put simply, basing rules on the possible availability of annual waivers is not well-designed policy.

As discussed above, we believe a better alternative is to require major contractors to disclose information against the TCFD framework but not require third-party validation. This approach would help support the objectives of the proposed rule, incorporate pragmatic application of currently available best practice in climate transparency, and protect competitive access to goods and services of critical importance to national security.

Conclusion

As bp continues its transition to an integrated energy company and pursues its net zero ambition, we aim to be an industry leader in the transparency of our reporting. We also aim to be a continued and proud supplier of critical fuels to the Department of Defense. We appreciate the opportunity to provide our thoughts on how to make the FAR Council's proposed disclosure requirements proportionate and workable for major federal contractors, and to avoid potentially material unintended consequences for federal procurement itself. Should you have any questions, please contact me at Downey.Magallanes@bp.com and Isabel Mogstad at Isabel.Mogstad@bp.com.

Sincerely,

/s/ Downey Magallanes

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