



February 13, 2023

Federal Acquisition Regulatory (FAR) Council  
General Services Administration, Regulatory Secretariat Division  
1800 F St., NW  
Washington, DC 20006

**Re: Comments on Federal Acquisition Regulation: Disclosure of Greenhouse Gas Emissions and Climate-Related Financial Risk (FAR Case 2021-015).**

Delek US Holdings, Inc. (Delek) appreciates the opportunity to comment on the proposed rule from the Federal Acquisition Regulatory Council on “Federal Acquisition Regulation: Disclosure of Greenhouse Gas Emissions and Climate-Related Financial Risk.”<sup>1</sup>

Delek is a downstream energy company headquartered in Brentwood, Tennessee. Delek’s footprint consists of petroleum refining, fuel transportation and logistics, asphalt production, and biodiesel production. Delek employed over 3,300 workers as of 2021 and had a total revenue of about \$10.6 billion in 2021. We have refining assets in Texas, Arkansas, and Louisiana, logistics and fuel distribution operations in New Mexico and the Southeast United States, and biodiesel production plants in Texas, Arkansas, and Mississippi. Our extensive operations help deliver reliable domestically produced fuels to thousands of Americans per day.

Delek has made strong commitments to reach the emissions objectives outlined in the Paris Climate Agreement. In November 2021, we were the first U.S. small to mid-cap refiner to announce a commitment to reduce Scope 1 and Scope 2 emissions in line with the Paris Agreement. Our commitment to reduce our emissions by 34% by 2030 compared to a 2012 baseline shows that “Delek is on the Road to Paris.”<sup>2</sup> Our plans to reduce emissions include energy-efficiency measures, transitioning refineries towards chemical production, renewable power purchases, and facility shutdowns. As outlined in our 2021-2022 Sustainability Report, we have a strong commitment to public transparency on our environment, sustainability, and governance objectives.<sup>3</sup> Notably, we have made a voluntary practice of disclosing our Scope 3 emissions. Although these emissions are not directly caused by our corporate activities, we recognize the importance of taking steps to help reduce their impact to reach global climate change targets.

Delek serves both the American public and acts as a contractor for the federal government. For several years, Delek has been a critical partner of the U.S. Air Force through a federal contract to provide jet fuel that serves at least seven different military facilities: Barksdale Air Force Base, Louisiana; Altus Air

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<sup>1</sup> 87 Fed Reg 68,312 (Nov. 14, 2022).

<sup>2</sup> Delek US Holdings, “Delek is on the Road to Paris,” January 3, 2022, <https://www.delekus.com/2022/01/03/delek-is-on-the-road-to-paris/>

<sup>3</sup> Delek US Holdings, “2021-2022 Sustainability Report,” December 2022, <https://www.delekus.com/wp-content/uploads/2022/12/2022-12-27-DK-SR-Website.pdf>



Force Base, Oklahoma; Camp Gruber National Guard Training Center, Oklahoma; Dyess Air Force Base, Texas; Naval Air Station Joint Reserve Base Fort Worth, Texas; Red River Army Depot, Texas; Sheppard Air Force Base, Texas. Through this contract, the Department of Defense relies on Delek to reliably provide nearly 52 million gallons of military-grade jet fuel per year—fuel that is critical to the military and maintaining national security.

## **DELEK’S COMMENTS ON THE PROPOSED RULE**

Delek strives to be an industry leader in ensuring that its operations are conducted in a safe and responsible manner. This includes our commitment to reduce our Scope 1 and Scope 2 emissions by 34% by 2030.<sup>4</sup> The transition, however, must be balanced against the ability to continue to deliver safe and affordable products that meet the needs of our customers. The proposed rule disrupts this balance and could arbitrarily prohibit Delek from providing safe and affordable jet fuel to the U.S. Air Force.

### **I. Proposed Rule Would Limit the Ability of the Federal Government to Procure Fuel**

Delek believes that the proposed rule would limit the ability of the Federal Government to procure fuel that is vital to its continued operation.

The proposed rule creates a greenhouse gas (GHG) emissions disclosure and reduction protocol that distinguishes between “significant” contractors and “major” contractors. Both significant and major contractors would be required to disclose their Scope 1 and Scope 2 GHG emissions. Major contractors, those with more than \$50 million in federal contracts in the past year, also would be required to disclose Scope 3 emissions, climate-related risks, and develop “science-based” GHG emissions targets that are validated by the Science Based Targets Initiative (SBTi). The SBTi is a partnership between CDP, the United Nations Global Compact, World Resources Institute (WRI) and the World Wide Fund for Nature (WWF).

For an emissions target to be validated, the SBTi requires companies to submit a GHG emission reduction plan that sets a net-zero goal by 2050 of Scope 1, 2, and 3 emissions. The emission reduction rate is at a minimum a linear reduction, meaning that the rate of reduction remains constant over time and does not take into account the availability of technology or alternatives.

While the SBTi provides “sector-specific guidance” for setting emissions targets for a variety of sectors, it acknowledges that “the SBTi is unable to accept commitments or validate targets for companies in the oil and gas or fossil fuels sectors.”<sup>5</sup> As a result, the proposed rule provides no pathway for so-called “major” federal contractors operating in the fossil fuel industry to develop GHG emissions targets validated by the SBTi in order to comply with the requirements to be a federal contractor, regardless of any commitments made by the company.

The failure to provide a pathway for validation based on a company’s involvement in the oil and gas sector is on its face arbitrary and capricious. The proposed rule excludes broad categories of industry regardless of the company’s individual commitments to GHG emission reductions. For example, as noted

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<sup>4</sup> Delek US Holdings 2021-2022 Sustainability Report, <https://www.delekus.com/wp-content/uploads/2022/12/2022-12-27-DK-SR-Website.pdf>

<sup>5</sup> Science Based Targets, “Oil and Gas,” <https://sciencebasedtargets.org/sectors/oil-and-gas>.



above, Delek already has committed to reducing its Scope 1, 2, and 3 emissions; yet, this fact would not be sufficient to satisfy the requirement of a validated science-based target under the proposed rule.

Even if the SBTi were to develop guidance for the oil and gas sector, it is unlikely to fix the flaws in the proposed rule. First, because the validation of science-based targets is an elemental part of the proposed rule for major federal contractors, the guidance that would support the validation is a necessary part of the proposal and must be disclosed to the public. Without disclosure of the guidance for the oil and gas sector during the rulemaking process, stakeholders are unable to provide comment—meaningful or otherwise—on the scope of the proposal and the potential impacts.

Second, and even more fundamentally, the SBTi is an inappropriate mechanism for developing GHG emission reduction targets, particularly for the oil and gas sector. The goal of a science-based target is to reach net-zero by 2050 for Scope 1, 2 and 3 emissions. This is done in a linear fashion, without the use of credits and offsets. For the oil and gas sector, the pathway to net-zero is not linear. Technology advancements are occurring, but much of the technology needed to reach net zero is not yet commercially ready or deployable, meaning that more emissions will be reduced later in the time period. Even if technology was commercially available to be deployed to eliminate Scope 1 and 2 emissions, without the use of offsets, Scope 3 emissions from the combustion of fossil fuels by third parties are likely to not reach zero. The fact that the SBTi protocol cannot accommodate the oil and gas industry is almost certainly the reason that the SBTi has chosen to “pause” validation of fossil fuel sector targets.

Third, Delek notes that the proposed rule does provide federal procurement officers the ability to exercise discretion in assessing compliance with the rule. However, it is almost certain that the case-by-case discretion contemplated by the rule would not be exercised consistently. Moreover, it does not provide federal contractors with any certainty as to the process and could expose companies to potential risk and liability upon receiving a contract awarded using this discretion.

If this rule is implemented as proposed, the Federal government would be unable to purchase fuel from companies in the oil and gas sector that held more than \$50 million in federal contracts in the last year. This decision would jeopardize the entire federal vehicle fleet from mail delivery trucks, to vehicles operated by civilian agencies, to military vehicles. As of 2021, there were 656,724 vehicles in the federal fleet, but only 1,799 are described by the GSA as “Zero-Emission Vehicles.”<sup>6</sup> However, that number still includes 1,285 “Gasoline Plug-in Hybrids,” which still rely on fossil-based fuel provided by federal contractors. If this proposed rule were to go into effect, only 0.8% of the current federal fleet (514 vehicles) would be able to receive the fuel it needs. Even if the Federal Government has plans to overhaul the entire federal fleet to zero emission vehicles, that timeline does not align with eliminating the procurement of fossil fuel-based fuels in the short term.

The government’s procurement policy is intended to allow the federal government to purchase the commercial items that it needs to operate the government— that is, the government’s operations drive what the government needs to procure in a commercial transaction. In the fuels context, this means the government has the authority to purchase the fuel demanded by the government’s existing fleet. The proposed rule seeks to flip the order of operations. Instead of looking at the commercial needs of the existing fleet of vehicles, the proposed rule seeks to limit the availability of conventional fuels in order to

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<sup>6</sup> General Services Administration, “Federal Fleet Report: Fuel Inventory Dashboard,” <https://d2d.gsa.gov/report/federal-fleet-report-dashboard>



shift the government's operations away from conventional fuels. By so doing, the proposed rule violates Congressional direction that the government should purchase commercial items on commercial terms.

## **II. Impacts on National Security**

As discussed above, the proposed FAR: Disclosure of Greenhouse Gas Emissions and Climate-Related Financial Risk will severely limit the ability of the Federal Government from procuring the fuel it needs to function. Since the proposed rule applies to both military and civilian contractors, the proposed rule would have significant negative impacts on American national security. In particular, the military relies on fossil derived fuels for nearly all of its air, naval, and land power operations. Of particular concern to Delek's operations, as we supply the Air Force, Navy, Army and National Guard with fuel, is the negative impact this proposed rule will have on the ability of the U.S. military to maintain strategic air power around the globe. Delek believes that to preserve American national security the rule should not be finalized as proposed.

Delek supplies multiple military facilities that perform critical national security functions. The ability to perform these duties would be threatened if the proposed rule is finalized as written, and Delek is not able to supply these bases with jet fuel.

- The Barksdale Air Force Base is home to a variety of bomber fleets that are essential to American air capabilities, including multiple squadrons of B-52 Stratofortress bombers. Our fuel supplies both the 2<sup>nd</sup> Bomb Wing, the country's first aerial bombardment and the Air Force Global Strike Command based out of Barksdale.
- The Altus Air Force Base is a critical training center that trains over 2,000 students annually. Fuel supplied by Delek is necessary to continue fueling specialized training missions, including airdrop efforts from the C-17 Globemaster and in-air refueling via the K-46A Pegasus.
- Camp Gruber is an extensive military installation that has been described as "Oklahoma's premier military training site," known for its Air Assault School. Delek provides the fuel necessary to train National Guardsmen to perform aerial operations that can save lives in both war and peacetime, such as airlift and emergency rescue operations.
- Dyess Air Force Base employs over 5,000 people to support a fleet of B-1B Lancer strategic bombers and C-130 Hercules military transport aircraft. This base is known as being on the "greenest" bases in the Air Force, as it is primarily powered by renewable electricity; however, it's planes could not function without Delek's continued fuel supplies.
- The Naval Air Station Reserve Base Fort Worth Texas houses a wide variety of aircraft and provides training to all branches of the Armed Services. The training operations run at this site by nearly 40 separate commands depend on reliable access to fuels supplied by Delek.
- Red River Army Depot has long served as the Center of Industrial and Technical Excellence (CITE) for Tactical Wheeled Vehicles. Its operations depend on Delek's fuels when fixing and repowering heavy-duty combat equipment.
- Sheppard Air Force Base is the largest and most diverse training base in Air Education and Training Command; it is also the only Air Force base that is home to both technical and flight



training. In order to continue training Airmen, Delek must provide a steady stream of fuels to this Air Base.

The U.S. military has little other option for fuel sources to maintain its air superiority around the globe. The proposed rule as written suggests that companies, such as Delek, would no longer be able to supply the U.S. military with jet fuel and other fossil-based fuels. As far as we understand, the U.S. military must use fossil-based jet fuel to maintain its fleet. Currently, very few planes can fly using non-fossil-based fuels; electric powered planes cannot fly long distances nor carry heavy cargo, hydrogen powered planes are still in early development and are not likely to be commercially viable for decades, and sustainable aviation fuels derived from bio-based feedstocks will not be able to cost effectively or reliably fuel jets around the world. Based on this assessment, there appears to be no rational basis in the proposed rule for foreclosing the ability of fossil-fuel companies from supplying the U.S. military with much-needed jet fuel.

The U.S. Air Force has unique needs, much different than those of commercial and passenger airlines. U.S. Air Force bombers are far larger than commercial planes and must be ready to fly across the entire planet in a matter of minutes. These long-range capabilities are both needed in active combat environments and during peacetime to demonstrate the continued effectiveness of a leg of the American nuclear triad. Additionally, American fighter jets require high-powered aviation fuel to accomplish a variety of missions. Speed, maneuverability, and reliability are paramount in air combat and reconnaissance.

Current jet fuel, derived from hydrocarbons, successfully accomplishes the required missions of the U.S. Air Force, while alternative fuel supplies are far too expensive and could not affordably and reliably fuel the fleet.<sup>7</sup> Even if bio-based aviation fuels could provide a long-term substitute for hydrocarbon derived aviation fuels, it will not be possible to scale up production and global transportation of sustainable aviation fuels to keep the global American Air Force functioning in the near-future.

The U.S. government undertook “the world’s most expensive weapons program” in developing and deploying the F-35 combat aircraft, a program that will ultimately cost American taxpayers trillions of dollars.<sup>8</sup> The F-35 runs on jet fuel procured by the U.S. government from fossil fuel companies. It would be unreasonable to think that the U.S. military had not adequately thought through the unintended consequences brought on by this proposed rule that could be levied upon contractors providing fuel for the use of this technology to keep Americans and democracy safe around the globe.

The U.S. Air Force is an essential component of American power projection, improving both national and international security. The Air Force leverages the impeccable skills of its Airmen alongside an unparalleled set of technological capabilities to both conduct long-range strike missions and to allow American land and maritime forces to operate with freedom of maneuver.<sup>9</sup> By functionally grounding the U.S. Air Force, this proposed rule would undermine American national security and create the conditions

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<sup>7</sup> RAND Corporation, “U.S. Military’s Role with Petroleum Is to Assure Security,” June 19, 2012, <https://www.rand.org/news/press/2012/06/19.html>

<sup>8</sup> <https://www.bloomberg.com/news/articles/2022-09-28/lockheed-f-35-s-cost-grows-modestly-by-its-standards-to-412-billion?leadSource=uverify%20wall>

<sup>9</sup> Mark Welsh III, “Global Vigilance, Global Reach, Global Power for America: The World’s Greatest Air Force - Powered by Airmen, Fueled by Innovation,” *Air and Space Power Journal*, 2014, <https://apps.dtic.mil/sti/citations/ADA602197>.



for conflicts that are being kept in check by American air presence. In order to maintain American national security, the proposed rule should not be finalized.

### **III. Proposed Rule Creates an Arbitrary Distinction Between Significant and Major Contractors**

The proposed FAR: Disclosure of Greenhouse Gas Emissions and Climate-Related Financial Risk relies on arbitrary distinctions based on contract size that are askew from the stated policy goals of this rulemaking. Delek believes that the categories of contractors established cannot be finalized as proposed because it unnecessarily harms medium-sized businesses.

The proposed rule distinguishes between “significant contractors” and “major contractors.” As defined in the proposed rule, “significant contractors” are those that “received \$7.5 million or more, but not exceeding \$50 million, in Federal contract obligations in the prior Federal fiscal year.” “Major contractors” are those that “received more than \$50 million in Federal contract obligations in the prior Federal fiscal year.” Major contractors are subjected to much more stringent requirements under the proposed rule, including disclosing Scope 3 emissions and complying with the SBTi.

The only basis upon which the FAR Council has provided to distinguish between contractors is “to obtain the most responsibility for the management of GHG emissions and climate risks impacting the Federal Government’s supply chains.”<sup>10</sup> However, the proposed rule does not contain a justification as to why companies that receive larger government contracts should be required to disclose additional information or be subject to science-based targets, as there is no information provided to demonstrate that these contractors who receive large contracts are responsible for higher levels of emissions. A company may have major federal contracts but also have a relatively low greenhouse gas emissions profile compared to its competitors. Similarly, a company may have smaller federal contracts with a higher greenhouse gas emissions profile than a larger contractor. Ultimately, this rule creates an artificial double standard, which allows for smaller dollar contractors to avoid meeting these stringent requirements while imposing undue burdens on larger dollar contractors. Companies should be rewarded for providing valuable services to the Federal Government, but this rule instead punishes them for their success in this marketplace.

We question the intent of the proposed rule as it appears that as written it purposefully disincentivizes certain companies from entering into larger dollar contracts because of the science-based target initiative. As we have previously stated, the science-based targets initiative has the impact of excluding fossil fuel companies under this proposed rule. Moreover, it limits the size of contracts that fossil fuel companies could enter into with the federal government, forcing them to be limited to contracts that are less than \$50 million, so as not to trigger the SBTi. Fossil fuel companies should not be unfairly limited in competitive bidding contracts over \$50 million as this proposed rule contemplates. Such limiting appears to be a calculated effort by the government to unfairly punish fossil fuel companies to further policy objectives. This misguided effort will hurt American industry and cost jobs.

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<sup>10</sup> <https://www.federalregister.gov/documents/2022/11/14/2022-24569/federal-acquisition-regulation-disclosure-of-greenhouse-gas-emissions-and-climate-related-financial>



#### **IV. The Proposed Rule Would Impose Additional Reporting Requirements with No Meaningful Value Other Than to Arbitrarily Exclude Some Contractors**

Delek further believes that the proposed rule is duplicative with other similar proposed federal climate reporting requirements currently in the works at other federal agencies. It appears that the FAR proposed rule's only goal is to allow the government to arbitrarily exclude certain types of companies from contracting with the federal government. For example, the U.S. Environmental Protection Agency already requires companies to report greenhouse gas data under the Greenhouse Gas Reporting Program (GHGRP) and the Securities and Exchange Commission (SEC) has propose a regulation that would require companies to disclose their Scope 1, Scope 2, and Scope 3 emissions. Since the FAR Council can already access these data points, Delek believes the additional reporting requirements may be a pretext for FAR to arbitrarily bar certain types such of contractors, such as companies that engage only in fossil fuels, from supplying the federal government in favor of other potential contractors that align with a certain political agenda.

In addition, the differing reporting requirements under each of the federal agencies' proposals creates significant confusion and undue burden for companies that are attempting to comply with varying federal standards. A contractor that fulfills the proposed SEC disclosure requirements may not be deemed to have fulfilled the FAR requirements, as the agencies are likely to evaluate these complicated data points in differing fashions. Ultimately, the proposed rule would force companies to spend significant time and resources collecting and formatting data beyond what are already required by other agencies; this burden will only continue to grow if other agencies establish additional climate disclosure rules. These issues will be magnified by this proposed rule's requirement that companies undergo a third-party review process, such as the Science Based Targets Initiative that does not include mechanisms by which fossil fuel companies can comply.

#### **V. It is Inappropriate and Illegal to Delegate Federal Climate Policy and Contracting Authority to the Science Based Targets Initiative (SBTi)**

The proposed rule requires that major federal contractors develop science-based targets for GHG reductions that are validated by SBTi in order to be considered in compliance with the rule. Because the proposed rule makes SBTi validation a prerequisite to an affirmative determination that an offeror is presently responsible, and SBTi validation is required in order to be an eligible federal contractor. Delek believes that requiring that emissions targets be "validated" by SBTi impermissibly and inappropriately delegates authority to SBTi to determine the eligibility of a company to be a federal contractor.

SBTi is a partnership of policy and advocacy organizations, including CDP, the United Nations Global Compact, World Resources Institute, and the World Wild Fund for Nature. Through their advocacy work, these organizations frequently take policy positions opposed to industry. They seek to influence policy, law, and financial investment in a way that aligns with their mission and objectives. The SBTi, guided by these organizations, seeks to drive ambitious climate action. These organizations by definition are not objective but are instead guided by internal advocacy missions. Despite this, the proposed rule would delegate authority to the SBTi to be the arbiter of which companies may be eligible major federal contractors by requiring that they would be federal contractors subscribe to SBTi's position on climate policy and have an emission reduction target validated by SBTi. Not only would potential major contractors be subject to the approval of a biased authority, they would lack any procedural rights, due process, or other recourse associated with the validation process.



Since this proposed rule applies also to contractors who do business with the U.S. military, subjecting the American Armed Forces' ability to acquire needed products to the decision making of NGOs who may have significant donations, motivations, or other potential connections to foreign adversaries compromises America's national security. To peg important procurement decisions to a group of international NGOs who may have ever-changing leadership and policy objectives is dangerous and allows non-citizens to dictate the policies of the United States of America. The membership body is not beholden to the American people and lacks any oversight mechanism to ensure that their decisions are made to the benefit rather than the detriment of the American people.

Federal policy decisions should be based on standards that are established through rigorous stakeholder engagement with the government, not by cherry picking an NGO's standard and requiring contractors to comply. There is no possibility for the public to provide comments on how the SBTi should be modified or reformed; deferring to this standard for decisions on federal contracting is an abdication of Federal authority to decide which entities are eligible to work with the Federal Government.

## **VI. Conclusion**

Delek appreciates the opportunity to provide feedback on this proposed rule. Should you have any questions on these comments or if you wish to discuss further, please contact me at [michael.ralsky@delekus.com](mailto:michael.ralsky@delekus.com).

Sincerely,

*Michael P. Ralsky*

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