June 17, 2022

Vanessa A. Countryman
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Comments by Ohio Farm Bureau Federation on SEC's Proposed Rules on the Enhancement and Standardization of Climate-Related Disclosures for Investors (File No. S7-10-22)

Dear Ms. Countryman,

Ohio Farm Bureau Federation (OFBF) appreciates the opportunity to submit our comments to the request by the Securities and Exchange Commission (the "SEC" or the "Commission") for public input on the enhancement and standardization of climate-related disclosures for investors (File No. S7-10-22) (the "Proposed Rules").

Ohio Farm Bureau is a grassroots membership organization that is committed to supporting the farm and food community. Our membership is directly responsible for setting our policy agenda at the local, state and national level. We are committed to keeping our farm and food communities strong and successful, and are at the forefront of the top issues impacting agriculture in Ohio. The Ohio Farm Bureau Federation is the largest general farm organization in the state of Ohio with members in all of Ohio's 88 counties. Our policies, developed via a locally driven grassroots process, support the development of programs, policies and regulations that are scientifically sound, based on credible data, practical, realistic, and economically feasible.

Our members are committed to transparency in climate-related matters to inform our stakeholders in a manner consistent with existing practices in the agriculture industry. However, without changes and clarifications, the Proposed Rules would be wildly burdensome and expensive if not altogether impossible for many small and mid-sized farmers to comply with, as they require reporting of climate data at the local level. The rule will only encourage consolidation for those without the resources to comply. Such consolidation would have far-reaching socioeconomic consequences, including further eroding rural tax bases. If further consolidation were to occur, this could seriously impede the ability of local communities to fund education, social services and access to health care. It is important to also realize that farming plays a vital role in the social fabric of rural communities that largely revolve around the agricultural industry, especially small and medium-sized farmers. We do not believe the SEC fully considered nor has sufficiently sought to mitigate the potential socioeconomic impact of the Proposed Rules on agricultural communities.

We also believe that the Proposed Rules will not only adversely impact farmers, but also harm consumers and erode the strength of America's agricultural industry.

Further, proactive efforts already underway by Ohio farmers will make a more significant impact on reducing carbon emissions and promoting carbon capture in agriculture than the proposed rule. In fact, our members are concerned that the rule could have a chilling impact on proactive efforts if farmers are forced to spend more resources on new regulatory compliance.

One example of proactive measures being taken is Ohio Farm Bureau's participation in the Ohio Agriculture Conservation Initiative (OACI). OACI is a partnership between agriculture, conservation, environmental and research communities to recognize farmers for their dedication to advancing methods that improve water quality in Ohio and increasing the number of best management practices being implemented on farms. While focused on water quality improvement, many of these best management practices are also known benefits to capturing carbon and reducing emissions.

Recent research by OACI shows that farmers in the Buckeye State are increasingly adopting conservation practices. For example, in Ohio's Maumee Watershed, a recent study by OACI shows approximately 66% of the fields surveyed were currently enrolled in a cost share conservation program, including both state and federal level programs. Most farmers were testing their soil adequately, with 83% of the fields surveyed being sampled every 3 years. The vast majority of soil samples (87%) were being done using precision agriculture, via grid or zone methods. Nearly 50% of the fields were either no tilled or minimally tilled, and 40% of fields surveyed had phosphorus applied using variable-rate technology (VRT)[1].

Considering these concerns, Ohio Farm Bureau Federation highly encourages the Commission to consider the following:

- remove the "value-chain" concept from the Proposed Rules;
- remove or substantially revise the Scope 3 emissions disclosure requirement to include a carveout for the agricultural industry;
- remove the requirement that registrants provide disclosures pertaining to their climate-related targets and goals;
- provide guidance with respect to the Consolidated Appropriations Act's (2022) (the "CAA") prohibition on mandatory GHG emissions reporting for manure management systems;
- revise the Proposed Rules so that disclosures of GHG emissions operate in unison with existing federal emissions reporting programs;
- ensure the Final Rules do not include location data disclosures for GHG emissions, which may inadvertently disclose the private information of our members; and

[1] See OACI. Ohio Agriculture Conservation Initiative 2021 Assessment Survey Report. https://ohioaci.org/site/assets/files/1310/oaci_2021_assessment_survey_report_white_paper_3_9_22.pdf

1. The Proposed Rules' Focus on the "Value-Chain" Concept Will Place Harmful Burdens and Costs on Farmers.

The requirement in the Proposed Rules for registrants to gather information from their value chain as it relates to climate-related risks and impacts from those risks and Scope 3 emissions will be extremely detrimental to farmers.

The proposal defines "value chain" vaguely, extending upstream to "supplier activities" without a clear limitation and extends to an ill-defined downstream scope. Nearly every farmer, irrespective of size, at some point finds themselves in the upstream or downstream activities of a registrant's value chain. The agriculture supply chain is also extremely diverse in terms of the products produced and the various roles in which the products play in the creation of a variety of other products as well (*e.g.*, corn for livestock consumption as feed versus ethanol production as fuel).[2] Forcing the agriculture industry to disclose the litany of different ways in which our products are used will disproportionately impact our members. Many registrants will receive products from farmers at different steps throughout their value chain. Further, asking registrants to evaluate all the material risks arising from all of the small- and medium-sized farms in their respective value chain will lead to further consolidated supply lines, harming the nation's rural communities in the process.

Moreover, registrants will likely demand additional data and information from farmers or default to engaging only with larger farmers that have more sophisticated data gathering and reporting systems or to simply vertically integrate their supply chains, leading to further consolidation.

In fashioning any Final Rule, the SEC should remove the expansive "value chain" concept, which departs from historical SEC materiality standards, is overly vague, would impose considerable burdens onto registrants and harm farmers.

2. Mandatory Scope 3 Emissions Disclosures Will Squeeze Out Small and Mid-Sized Farmers.

Under the Proposed Rules, a registrant would be required to disclose Scope 3 emissions if such emissions are material or included in a previously disclosed emissions reduction target or goal. The Proposed Rules define Scope 3 emissions as, "all indirect GHG emissions not otherwise included in a registrant's Scope 2 emissions, which occur in the upstream and downstream activities of a registrant's value chain." Our small- and medium-sized farm members are deeply concerned about the indirect economic effects of Scope 3 emissions disclosures and the impact on data privacy.

---

[2] As an example of the complexities in the system, ethanol is generally produced from corn. Its production into ethanol, which happens through fermentation, generates CO_2. Much of that CO_2 is captured and then transformed into dry ice which is often utilized at meat packing plants. As well, distiller grains, a byproduct of the ethanol industry, are routinely sold and consumed as feed for livestock.

The Proposed Rules will inevitably require registrants to pass the costs and burdens of reporting Scope 3 emissions onto farmers. This is particularly problematic for our small- to medium-sized family owned farms, which are already dealing with increased production costs due to inflationary pressure and global supply chain disruptions. The burden of providing such disclosures and the estimation process would be hard for farmers to overcome. The average family farm already must take significant time away from the actual business of farming to demonstrate compliance with a tangled web of federal, state, and local regulation. A farm is not a power plant where a known quantity of fuel produces a known quantity of energy. On any given day, a farm may require more or less water, more or less fertilizer or crop protection products. Tracking such fluctuations in the context of GHG emissions would be daunting. Additionally, the likelihood that estimation methodologies will change over time risks causing confusion.

Further, and as the USDA acknowledges, data shows that the profitability of farmers increases with scale.[3] Meaning, inevitably, a significant cost of the proposed Scope 3 disclosure would be borne by the least able to afford it—small- and medium-sized farms. Because our small- and medium-sized members often deal with thinner profit margins compared to their large peers,[4] the Proposed Rules could lead to a market shift whereby registrants prefer to use only those farms that can afford to invest in the controls and processes necessary to track emissions down to the product level.[5]

We believe that such a consequence would be disastrous for our small- and medium-sized farms, lead to further monopolization and vertical consolidation within the agriculture sector (harming farmers and consumers) and severally erode the gains made by farmers from historically underrepresented backgrounds.

As well, for those farmers that can afford to invest in such technology and controls, they will be less able to invest in renewable or sustainable technology that could actually reduce the environmental footprint of the farm. For example, modernized irrigation systems that would reduce a farm's water consumption, or reduced nitrogen fertilizer applications that would improve farming (land) regeneration, will be put aside in favor of emissions reporting and tracking software so that these farms do not risk losing business with their registrant partners.

Therefore, we believe that the Commission must remove the Scope 3 emissions disclosure in its entirety, or, alternatively, the Commission should provide a specific carveout for the agricultural industry. Such a carveout should explicitly make clear that registrants do not need to

---

[3] *See* Robert A. Hoppe, Profit Margin Increases With Farm Size, U.S. Department of Agriculture (Feb. 2, 2015), available at https://www.ers.usda.gov/amber-waves/2015/januaryfebruary/profit-margin-increases-with-farm-size/.

[4] *See id*.

[5] It is important to realize that not everything produced for sale on a farm emits the same amount of GHG emissions and farms sell multiple products all of which emit varying levels of GHG emissions. Thus, our members will need to individualize their GHG emissions calculations down to the product level, which will cost even more resources than a system that purely tracks all gross emissions for a single product output.

include Scope 3 emissions from the agricultural industry in their respective disclosures. This type of carve out is not unprecedent, and Congress has previously provided similar exemptions for the agricultural industry, such as Section 437 of CAA (discussed in Section 4).[6] By including such a carveout for the agricultural industry, the Commission would avoid the externalities associated with such a complex and difficult reporting regime, while also preserving the competitiveness of the agricultural industry.

3. Location Data About the Source of Emissions May Create Privacy Concerns for Farmers.

Question 108 of the proposing release requests if the SEC should require registrants to provide location data for its GHG emissions in the Final Rules.[7] We urge the SEC not to adopt such a requirement in Final Rules as this may result in serious privacy concerns for farmers. If registrants are required to disclose the location of sources of GHG emissions in their value chain, this may inadvertently reveal to the public data about a farmer at a particular location. Greater access to farmer data creates serious privacy concerns. Courts have protected farmers from disclosure of personal information and have recognized that farmers are uniquely situated in that they generally live on their farm, meaning that business information is also personal information.[8]

4. The Final Rules Should Provide A More Robust Safe Harbor That Precludes All Implied Private Rights of Action for Alleging Defects in Quantitative Scopes 1, 2, or 3 disclosures.

In the Final Rules, the Commission should provide a stronger safe harbor for the disclosures of Scopes 1, 2 and 3 emissions. Under the Proposed Rules, Scope 3 disclosures are deemed not fraudulent unless made or reaffirmed "without a reasonable basis" or disclosed "other than in good faith." However, we don't believe this would serve as a meaningful roadblock to litigation for a plaintiffs' class action counsel, who routinely plead around this requirement.

To remedy these concerns, we believe that the Commission can and should provide a more robust safe harbor that precludes all implied private rights of action alleging defects in quantitative Scopes 1, 2 or 3 disclosures. The Commission's authority to disimply the Rule 10b-5 private right of action for Scopes 1, 2 or 3 disclosures is supported both by prominent legal scholars and the

[6] *See* Consolidated Appropriations Act, 2022, H. R. 2471—372, 117th Cong. §437 (2022).

[7] The Enhancement and Standardization of Climate-Related Disclosures for Investors, 87 Fed. Reg. 21334, 21382 (Apr. 11, 2022).

[8] *See American Farm Bureau Federation v. EPA*, 836 F.3d 963 (8th Cir. 2016) (public disclosure of farmers' personal information would constitute a "substantial" and "clearly unwarranted invasion of privacy" and is therefore exempt from disclosure under the Freedom of Information Act). *See also Campaign for Family Farms v Glickman,* 200 F. 3d 1180 (8th Cir. 2000) (whether acting in a personal capacity or as a shareholder in a corporation, disclosure of financial records of individually owned businesses invokes need of personal privacy exemption, citing *National Parks & Conservation Ass'n v Kleppe*, 547 F.2d 673 (D.C. Cir. 1976)).

Supreme Court.[9] A robust safe harbor of this nature would provide the appropriate level of liability protection for Scopes 1, 2 or 3 disclosures and incentivize registrants to provide voluntary disclosures. As well, the SEC and the Department of Justice would retain the authority to institute proceedings alleging defects in Scopes 1, 2, or 3 disclosures—providing the intended deterrent effect and ability to police against fraud—while minimizing the externalities, both in terms of increased insurance premiums and legal fees associated with such a novel and expansive disclosure regime as the Proposed Rules.

We appreciate the opportunity to provide comments on the Proposed Rules and would be happy to discuss these comments and our members concerns, or provide you with further information to the extent you would find it useful.

Respectfully submitted,

Brandon E. Kern
Senior Director, State and National Policy
Ohio Farm Bureau Federation

---

[9] *See* Joseph A. Grundfest, Disimplying Private Rights of Action Under the Federal Securities Laws: The Commission's Authority, 107 Harvard Law Review 961-1024 (1994); *see also*, *Stoneridge Investment Partners, LLC v. Scientific-Atlanta, Inc., et al.*, 552 U.S. 148 (2008).