June 17, 2022

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

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

Ms. Countryman:

The below signed agricultural associations appreciate 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").

Over the past two decades, farmers and ranchers, many of whom make up the members of our organizations, have worked to reduce per capita agriculture emissions by 20% and reduce greenhouse gas ("GHG") emissions from livestock by 11% for beef, 21% for swine and 26% for dairy, all while increasing productivity and output across the agriculture industry. Just as impressive, over the past three decades cropland has declined by approximately 30 million acres yet productivity has continually risen over the same time period. Compared to 1948, farmers and ranchers are producing 2.78 times more in output per unit of input, according to estimates from the United States Department of Agriculture's ("USDA") Economic Research Service.[1] Increasingly, farmers and ranchers are being asked to produce more using fewer resources all the while decreasing agricultural GHG emissions. This illustrates that *voluntary*, *market-based* incentives are helping farmers and ranchers accomplish these milestones and making real progress on mitigating greenhouse gas emissions.

Without necessary changes and clarifications, the Proposed Rules would be wildly burdensome and expensive if not altogether impossible for many farmers and ranchers to comply with, as they require reporting of climate data at the local level. When farmers and ranchers cannot afford the overhead required to comply, they will have no choice but to consolidate. Such consolidation would have far-reaching socioeconomic consequences, including further eroding rural tax bases. Because of population decline in rural communities, farmers and ranchers are already bearing a greater share of the tax burden for rural communities.[2] If further consolidation were to occur, this

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[1] American Farm Bureau Federation, 2020 EPA Emissions Inventory Demonstrates Agriculture's Advancements in Sustainability, (Apr. 28, 2022), available at https://www.fb.org/market-intel/2020-epa-emissions-inventory-demonstrates-agricultures-advancements-in-sust.

[2] Maureen Manier, *Study: Rural-urban divide grows in response to decades of state overhauls*, Purdue University (Jul. 15, 2020), available at https://www.purdue.edu/newsroom/releases/2020/Q3/study-rural-urban-fiscal-divide-grows-in-response-to-decades-of-state-tax-overhauls.html (Stating that "[r]ising farmland values improve a

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 and ranching plays a vital role in the social fabric of rural communities that largely revolve around the agricultural industry. 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 in the wake of the COVID-19 pandemic and ongoing macro disruptions caused by the war in Ukraine, the Proposed Rules will not only adversely impact farmers and ranchers, but also harm consumers and erode the strength of America's agricultural industry. To avoid these consequences, in the final adopted rules (the "Final Rules"), we highly encourage 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 an exclusion 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 and proprietary information of our members; and
- disimply a private right of action for Scope 1, 2, and 3 disclosures.

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

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 and ranchers.

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 and rancher, 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).[3] Forcing the agriculture industry to disclose the litany of different ways in which our

rural county's ability to fund its basic services, but they also mean that more tax burden is placed on the shoulders of farmers as their county population declines.")

[3] As an example of the complexities in the system, ethanol is generally produced from corn. Its production into ethanol, which happens through fermentation, generates CO2. Much of that CO2 is captured and then transformed into

products are used will disproportionately impact our members. Many registrants will receive products from farmers and ranchers 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 and ranchers or default to engaging only with larger farmers and ranchers that have more sophisticated data gathering and reporting systems or to simply vertically integrate their supply chains, leading to further consolidation. In 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 and ranchers.

2. Mandatory Scope 3 Emissions Disclosures Will Unnecessarily Burden Farmers and Ranchers.

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." Farmers and ranchers are deeply concerned about the indirect economic effects of Scope 3 emissions disclosures and the impact on data privacy.

The Proposed Rules will inevitably require registrants to pass the costs and burdens of reporting Scope 3 emissions onto agricultural producers. This new requirement will impact all farms and ranches across the nation, 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 and ranchers to overcome. The average family farm or ranch already must take significant time away from the actual business of farming or ranching to demonstrate compliance with a tangled web of federal, state, and local regulation. A farm or ranch is not a power plant where a known quantity of fuel produces a known quantity of energy. On any given day, a farm or ranch 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, at best. Additionally, the likelihood that estimation methodologies will change over time risks causing confusion.

As well, for those farmers and ranchers 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 or ranch. For example, modernized irrigation systems that

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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.

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 and ranches do not risk losing business with their registrant partners.

Therefore, the Commission must remove the Scope 3 emissions disclosure in its entirety, or, alternatively, the Commission should provide a specific exemption for the agricultural industry. Such an exemption should explicitly make clear that registrants do not need to include Scope 3 emissions from the agricultural industry in their respective disclosures. This approach is not unprecedented, and Congress has previously provided similar exemptions for the agricultural industry, such as Section 437 of CAA (discussed in Section 4).[4] By including such an explicit exemption 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 and Ranchers.

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.[5] We urge the SEC not to adopt such a requirement in Final Rules as this may result in serious privacy concerns for farmers and ranchers. 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 or ranchers at a particular location. Greater access to agricultural operation data creates serious privacy concerns. Courts have protected farmers from disclosure of personal information and have recognized that farmers or ranchers are uniquely situated in that they generally live on their farm or ranch, meaning that business information is also personal information.[6]

4. The Proposed Rules Should, at Minimum, Accept Publicly Available Datasets to Satisfy Reporting Requirements.

If the SEC resolves to retain Scope 3 reporting requirements, the agricultural organizations urge the SEC to make clear in any Final Rule that it will accept publicly available datasets as sufficient to satisfy Scope 3 reporting requirements. Doing so will provide shareholders with accurate information, while simultaneously eliminating the burden on supply chain market participants.

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

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

[6] *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)).

Currently, multiple federal agencies create annual reports and methodologies related to agricultural industry GHG emissions. The EPA issues an annual GHG emissions and sink inventory which breaks down agricultural industry emissions. Additionally, the U.S. Department of Agriculture (USDA) provides life cycle analyses for individual segments of production agriculture, providing emissions per pound, bushel, or hundred weight (depending on the commodity). Life Cycle Analyses are peer-reviewed and can be trusted by investors, while the EPA GHG emissions inventory is an annually produced, widely trusted report. The combination of these publicly available datasets would be sufficient for registrants to calculate supply chain emissions without asking for individual producer data.

Many of the concerns listed in this comment letter could be resolved by explicitly allowing registrants to use publicly available datasets to satisfy reporting requirements. Concerns related to calculating emissions, risk of liability, risk related to location data, and misalignment with existing reporting programs could be easily remedied by making clear that registrants need not seek information from the supply chain directly but can instead rely on government-developed calculations and inventories.

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,

National Cattlemen’s Beef Association
National Pork Producers Council
Public Lands Council
Alabama Cattlemen’s Association
Alabama Pork Producers
American Angus Association
American Dairy Coalition
American Hereford Association
American Quarter Horse Association
American Sheep Industry Association
Arizona Cattle Feeders' Association
Arkansas Cattlemen’s Association
California Cattlemen’s Association
Colorado Cattlemen's Association
Colorado Livestock Association
Colorado Pork Producers Council
Dairy Producers of New Mexico
Florida Cattlemen’s Association
Georgia Cattlemen’s Association
Hawaii Cattlemen's Association
Idaho Cattlemen's Association
Idaho Dairymens' Association
Illinois Beef Association
Illinois Pork Producers Association
Indiana Beef Cattle Association
Indiana Pork Producers Association
Iowa Cattlemen's Association
Iowa Pork Producers Association
Kansas Livestock Association
Kansas Pork Association
Kentucky Cattlemen's Association
Kentucky Pork Producers Association
Louisiana Cattlemen's Association
Maryland Cattlemen's Association
Michigan Cattlemen's Association
Minnesota Pork Producers Association
Minnesota State Cattlemen's Association
Mississippi Cattlemen's Association

Mississippi Pork Producers Association
Missouri Cattlemen's Association
Missouri Pork Association
Montana Stockgrowers Association
National Cotton Council
NCBA Livestock Marketing Council
Nebraska Cattlemen
Nebraska Pork Producers Association, Inc.
Nevada Cattlemen's Association
New Mexico Cattle Growers' Association
New Mexico Wool Growers' Association
New York Beef Producers' Association
New York Pork Producers Co-Op
North Carolina Cattlemen's Association
North Carolina Pork Council
North Dakota Stockmen's Association
Ohio Cattlemen's Association
Ohio Pork Council
Oklahoma Cattlemen's Association
Oklahoma Pork Council
Oregon Cattlemen's Association
Oregon Dairy Farmers Association
Pennsylvania Cattlemen's Association
Professional Dairy Managers of Pennsylvania
South Carolina Cattlemen's Association
South Dakota Cattlemen's Association
South Dakota Pork Producers Council
South East Dairy Farmers Association
Tennessee Cattlemen's Association
Tennessee Pork Producers Association
Texas & Southwest Cattle Raisers' Association
Texas Association of Dairymen
Texas Cattle Feeders' Association
U.S. Cattlemen's Association
Virginia Cattlemen's Association
Washington Cattle Feeders Association
Washington State Dairy Federation
West Virginia Cattlemen's Association
Wisconsin Cattlemen's Association
Wisconsin Pork Association
Wyoming Stock Growers Association