Before the:

Securities and Exchange Commission
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Comments of the:
AMERICAN TRUCKING ASSOCIATIONS

On the:

The Enhancement and Standardization of Climate-Related Disclosures for Investors
Proposed Rule
(*Federal Register*, April 11, 2022)

Introduction

The American Trucking Associations (ATA) appreciates the opportunity to comment on the Securities and Exchange Commission's *The Enhancement and Standardization of Climate-Related Disclosures for Investors, Proposed Rule* (SEC Rule) published in the *Federal Register* on April 11, 2022, Pg. 21334.

ATA is the national trade association that has represented the interests of the U.S. trucking industry since 1933.[1] ATA is keenly interested in a common-sense approach in the development of the SEC Rule given its potential impact on both fleets and freight brokerage companies.

The trucking industry is composed of both large national enterprises as well as a host of small businesses, all of whom operate in extremely competitive business environments, with narrow profit margins. For small carriers in particular, their livelihood can be dramatically impacted by the financial impacts of regulatory requirements. Few Americans realize that trucking moves nearly 73% of the nation's freight tonnage, worth over $10 trillion. More than 80% of U.S. communities rely exclusively on trucks for their freight needs. The trucking industry employs 7.8 million people accounting for 1 in every 18 jobs in the U.S. Of those employed in private-sector trucking-related jobs, 3.5 million are truck drivers. With more than 892,000 for-hire motor carriers in the U.S., the trucking industry is clearly the driving force behind the nation's economy.

In its capacity as the national representative of the trucking industry, ATA regularly comments on matters affecting trucking's common interests and providing its expertise and understanding of the industry. ATA supports the underlying goals of the SEC Rule in seeking better transparency and disclosure of registrant financial risks but has serious reservations in requiring Scope 3 emissions reporting from the freight sector in SEC filings from the perspective of a SEC registrant or as an upstream or downstream freight transporter.

ATA's comments come from the perspective of trucking companies. The following areas are the focus of our comments:

- Trucking continues its efforts to reduce carbon emissions
- The freight sector is extremely complex and not suited for accurate Scope 3 reporting
- Small trucking companies are without financial resources and expertise to manually report Scope 3 emissions

[1] ATA is a united federation of motor carriers, state trucking associations, and national trucking conferences created to promote and protect the interests of the trucking industry. Directly and through its affiliated organizations, ATA represents more than 34,000 companies encompassing every type and class of motor carrier in the United States and Canada.

- ESG reports should satisfy transparency needs for Scope 3 emissions
- What may be deemed material to one may be deemed immaterial to another
- Safe Harbor provisions must be broadened

Trucking Continues its Efforts to Reduce Carbon Emissions

Running the day-to-day operations of any trucking company is always challenging but trucking is used to addressing challenges head-on. This especially holds true for our industry's efforts in working closely with EPA to reduce its carbon footprint. Beginning in 2002, ATA was among a handful of freight Charter Partners that worked closely with EPA in developing and unveiling the voluntary EPA SmartWay Transport Partnership program in 2004. The program, developed to reduce freight fuel use, greenhouse gas (GHG) emissions, and improve transportation efficiency, to date has saved fleets $45 billion in fuel costs and reduced consumption of 336 million barrels of oil.[2] While touted mainly as a voluntary GHG program, the tremendous fuel savings under SmartWay have also resulted in emission reductions of 2.7 million short tons of NOx, 112,000 short tons of PM10, and 143 million metric tons of carbon dioxide (CO_2) since 2004.

In 2011 and 2016, our industry worked with EPA and supported two separate EPA/NHTSA regulations establishing first-ever standards for truck engine and vehicle GHG emissions and fuel consumption standards (known as Phase 1 and Phase 2 respectively) to promote a new generation of cleaner, more fuel-efficient trucks. While the aim of both rules is to reduce CO_2 emissions and fuel consumption, both Phase 1 and 2 also have tangential emission benefits in that they result in further particulate and nitrogen oxide emission reductions under the basic caveat of "fuel not burned equates to emissions not had."

On August 5, 2021, President Biden issued Executive Order 14037, *Strengthening America Leadership in Clean Cars and Trucks*, directing EPA to finalize its next round of GHG and fuel efficiency standards for new trucks no later than the Summer of 2024. In this much anticipated rulemaking, it is believed that the agency will lay the groundwork for a national zero-emission pathway for the freight sector beginning in 2030 through increasingly stringent carbon metrics for new equipment. The low carbon power units expected to be advanced will likely include battery electric, hydrogen fuel cell, and hybridized powertrains. ATA and its members will work closely with EPA in developing and implementing this transformational step in further decarbonizing the trucking sector.

The Freight Sector is Extremely Complex and not Suited for Accurate Scope 3 Reporting

Scope 3 emissions from the transport sector are extremely hard to estimate and gauge.
To better understand freight movement, one must fully understand the different players within the trucking supply chain. "Shippers" are companies that buy freight services to move goods from one location to another while "carriers" are trucking companies that provide trucking

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[2] U.S. EPA, SmartWay Program Successes.

services and are paid to move such loads. Carriers can either be a company-owned fleet of trucks or an "owner-operator", a driver that typically owns and operates his or her truck.

Carriers are typically classified as either a "truckload carrier" or as a "less-than-truckload" company. A truckload carrier is a trucking company that generally contracts an entire trailer-load to a single customer as opposed to a less-than truckload company (LTL) that generally mixes freight from several customers in each trailer. Some LTL loads may have as few as two products while other LTL loads, such as those on package delivery trucks, have countless varieties of packages having various weights and delivery distances. These loads, as all loads, are transported by different truck sizes with widely varied fuel economies, operating under diverse geographic and climatic conditions, travelling variable speeds, using different fuel types, and delivered by drivers having different driving habits. Granularized and consistent Scope 3 data comparisons between freight hauling companies is just not practical.

"Freight brokers" play the role of intermediaries to help find loads for carriers and to find transporters for shippers. Through brokered loads, the shipper often does not even know which carrier is being contracted to haul the load, the model year and type of vehicle, the type of fuel being burned, or a truck's fuel economy. Approximately 20% of all trucking freight is contracted through brokers. Again, Scope 3 reporting for brokered loads remains a lofty aspiration.

Finally, "intermodal freight" consists of products and raw materials that are transported in a container by a variety of vehicles such as container ships, semi-trailer trucks, and trains. Such goods movements may vary by mode depending on the length of haul, the urgency of delivery, current freight capacity levels, and fuel prices. The layers of complexity in Scope 3 accounting for intermodal loads remains an extremely difficult if not impossible undertaking.

As one can imagine, Scope 3 upstream and downstream emission estimations involving brokered loads, LTL mixed loads, and intermodal transport become extremely complicated and virtually impossible to estimate. Even with a myriad of industry tools and metrics, consistency and reproducibility of Scope 3 emissions profiles remains a work in progress. As one of the nation's top freight haulers described the Scope 3 reporting aspirations, "…[I]t quickly becomes an exercise in futility."

Small Trucking Companies are without Financial, Resources, and Expertise to Manually Report Scope 3 Emissions

In 2022, there were over 1 million for-hire motor carriers registered with the U.S. Department of Transportation (DOT). (See Table 1). The vast majority of these companies are small businesses. These for-hire carriers are fairly evenly split between interstate and intrastate (*i.e.*, carriers operating within a single state). Carriers with a single power unit comprise nearly two-thirds of for-hire motor carriers while carriers with 10 or fewer units comprise 88 percent or nearly 900,000 companies.

TABLE 1

USDOT Registered For-Hire Motor Carriers

Fleet Size (# of Power Units)	U.S. For-Hire Operating Type				Total	
	Interstate		Intrastate			
1	319,635	64%	331,198	63%	650,833	64%
2	65,850	13%	54,606	10%	120,456	12%
3 - 10	76,816	15%	50,363	10%	127,179	12%
11 - 100	25,463	5%	5,750	1%	31,213	3%
>100	2,025	<1%	124	0%	2,149	<1%
No Power Units	6,755	1%	79,731	15%	86,486	8%
Total	496,544	49%	521,772	51%	1,018,316	

Source: Motor Carrier Management Information System Snapshot Date: 04/29/22

Registrants that do report Scope 3 emissions data have the choice to gather such information through industry metric estimates/estimations or through upstream/downstream data submittals. Small trucking companies have neither the expertise nor the resources to conduct Phase 3 assessments or estimates, accumulate and enter data, or contract with third parties. It is not uncommon for the President and CEO of a small trucking company to wear many hats including being a driver, the accountant or mechanic, the dispatcher, or the recruiter. Even if Scope 3 emissions profiles were all done through registrant estimations, small trucking companies will likely still be required to allocate resources to respond to registrant inquiries or verification of specific data.

ESG Reports Should Satisfy Transparency Needs for Scope 3

Shareholder needs for Scope 3 GHG reporting should be satisfied by ESG reports from registrants as should SEC greenwashing concerns. ATA believes that Scope 3 data should be voluntarily furnished but not required to be filed with the Commission. Registrants typically prepare voluntary ESG disclosures because stakeholders and investors request such information. If shareholders demand such information, a company's ESG report will generally provide detailed information on a company's goals, objectives, and progress. Companies report their emission profiles in their ESG reports and use specific metrics based on the best standards that exist today, though such standards and controls are not as universal or mature as those used for financial reporting in Commission filings.

Different companies have different standards, guidelines, and procedures in preparing their ESG reports, not dissimilar to SEC information that is filed. Some companies report on the "E", "S" and "G" in their reports while others may emphasize one element more than the other. Even Scope 3 data categories in filings are not all fully addressed due to the lack of reliable and

accurate data. It is always better to error on the side of caution when filing than to submit data that is suspect or cannot be properly verified.

What May Be Deemed Material to One May Be Deemed Immaterial to Another

The proposed rules would require disclosure of Scope 3 emissions only if those emissions are material, or if the registrant has set a GHG emissions reduction target or goal that includes its Scope 3 emissions. Consistent with the Commission's definition of "material" and Supreme Court precedent, a registrant would be required to disclose its Scope 3 emissions if there is a substantial likelihood that a reasonable investor would consider them important when making an investment or voting decision.

Scope 3 emissions may make up a relatively small portion of a registrant's overall GHG emissions but may still be considered material were Scope 3 emissions to represent a significant risk, a significant regulatory focus, or a substantial likelihood that a reasonable investor would consider it important. Whether Scope 3 emissions are indeed material would depend on the particular facts and circumstances, making it difficult to establish a "one size fits all" standard. Given the subjective definition of materiality, investors cannot truly differentiate financial risk between one investment over another without universal industry metrics, reporting tools, and reliable and accurate data. ATA has serious reservations involving the consistency of material Scope 3 data contained in both filings or in ESG reports.

Safe Harbor Provisions for any Scope 3 Reporting in SEC Filings Must be Broadened

Safe Harbor provisions for Scope 3 disclosures are essential if such emissions are required or voluntarily included in SEC filings. Safe Harbor provisions from liability for Scope 3 reporting should not be deemed fraudulent unless such disclosures are made or reaffirmed without a reasonable basis or disclosed other than in good faith. Safe Harbor from liability should apply to both Scope 3 reporters and registrants estimating Scope 3 emissions. The Private Securities Litigation Reform Act (PSLRA) already affords a Safe Harbor for forward-looking statements so long as statements made are accompanied by meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the forward-looking statement. The PSLRA Safe Harbor, however, does not apply to disclosures in initial public offerings or tender offers or to disclosures made by certain bad actors, among other exclusions.

It is fair to say that due to variabilities in the range of GHG software reporting tools, consistent granularity between tools and methods can vary widely. In other words, while the aim of climate risk transparency is well-intentioned, consistent accounting of Scope 3 emissions will be hard-pressed to achieve. Since mandated Scope 3 disclosures under the rules would be treated as "filed" rather than "furnished," they would be subject to potential liability under Section 18 of the Exchange Act or Section 11 of the Securities Act, as applicable. It is no wonder that registrants shy away from including Scope 3 emissions data. As a matter of fact, only about a

fifth of earnings calls even raise environmental, social, and corporate governance ("ESG") factors in investment decisions which may or may not include Scope 3 emissions.[3] Therefore, expansion of Safe Harbor provisions on Scope 3 data should be afforded to both registrants and Scope 3 data providers. Likewise, Scope 3 data and associated reports under company ESG reports should be granted Safe Harbor from liability as well.

Conclusion

ATA appreciates the opportunity to submit these comments on the proposed SEC Rule. We ask that the SEC proceed in a deliberative manner that accounts for both the burden and accuracy in requiring Scope 3 GHG emission reporting in Commission filings. If you have any questions concerning these comments, please contact me at [redacted].

Respectfully submitted,

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[3] *How ESG Investing Came to a Reckoning,* Financial Times, June 6, 2022.