ASSOCIATION OF AMERICAN RAILROADS

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[redacted]

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Via Electronic Submission

The Honorable Gary Gensler
Chair
United States Securities Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: <u>Public Input on Climate Change Disclosure</u>

Dear Chair Gensler,

On behalf of the U.S. rail industry, the Association of American Railroads ("AAR") appreciates the opportunity to submit this letter in response to the March 15, 2021 request for public comments on the extent to which the U.S. Securities and Exchange Commission's ("the Commission") current disclosure rules and regulations adequately address issues related to climate change.[1]

AAR and its members recognize that the climate is changing, and we are committed to mitigating the potential repercussions for the planet, our economies, our society, and day-to-day railroad operations. Rail is the most fuel-efficient way to move people and freight over land, transporting 40% of U.S. freight but emitting only 1.9% of U.S. transportation-related greenhouse gas emissions. Each of the Class I railroads have established targets to reduce their greenhouse gas emissions as part of their participation in the Science Based Targets Initiative ("SBTi"). To achieve those established goals, research into low- and zero-emission technology for locomotives and other industrial equipment used in rail yards is well underway across the United States, as are investments in operational changes that improve fuel efficiency (and thus reduce greenhouse gas emissions). These efforts underscore the rail industry's commitment to reducing its impact on the environment.

AAR believes that investors should have access to disclosures on material climate-related metrics, risks, and opportunities and supports a principles-based framework that enables publicly traded companies to efficiently report them. As the Commission considers climate-related disclosure requirement, it should focus on climate change metrics that are financially material to the investors in

[1] AAR is a non-profit trade association whose membership includes freight railroads that operate 83 percent of the line haul mileage, employ 95 percent of the workers, and account for 97 percent of the freight revenues of all railroads in the United States. AAR also represents passenger railroads that operate intercity passenger trains and provide commuter rail service.

a specific business. The current materiality standard's emphasis on the reasonable investor focuses disclosures on metrics that actually drive value creation and long-term shareholder return. Therefore, the Commission should only require disclosures that meet this time-tested and well understood standard. The framework should provide clarity to companies and enable them to furnish decision-useful information about their material risks and opportunities to investors in a comparable manner.

Any reporting framework adopted by the Commission should be conducive to flexible and diverse climate change disclosures that reflect the different factors driving a company's business. The adopted disclosure requirements should be designed to communicate information about material drivers to individual investors in individual businesses.

Today there are a variety of voluntary reporting mechanisms available with overlapping and time-consuming requirements. The railroad industry has already taken steps to voluntarily comply with third-party standard setters such as the Sustainability Accounting Standards Board ("SASB") and the Task Force on Climate-Related Financial Disclosures ("TCFD"). However, it is cumbersome and confusing to investors when companies are asked to report under multiple frameworks. The adoption of a single, existing framework will allow investors to evaluate companies' climate change efforts based on an "apples to apples" comparison. Adopting an existing, widely used program would also lessen the transition time needed to implement a framework and standard.

The existing standards provide the climate disclosure frameworks most suitable for Commission adoption. Both SASB and TCFD are sufficiently flexible to adapt to changing market conditions and a wide range of industries. For example, SASB has created industry-specific standards for 77 distinct industries. Both SASB and TCFD focus on material sustainability issues that are likely to impact shareholder value and will continue the Commission's current principles-based disclosure framework. Many companies, including AAR's members, have already invested significant resources in adopting voluntary processes based on SASB or TCFD. Investors and other stakeholders are also already familiar with these frameworks.

AAR recommends that, if the Commission is to require climate-related disclosures, that any such disclosures take the form of a separate report that would be furnished to, but not filed with, the Commission. AAR respectfully suggests that the Commission not impose the strict liability Section 11 of the Securities Act to climate related disclosures by requiring incorporation into companies' periodic reports. *Compare* 17 C.F.R. 240.10b5-1 *with* 15 U.S.C. § 77k. A strict liability standard applied to this type of information would cause undue risk and burden to companies. Some flexibility regarding the timing of the report is also required due to the availability of metrics only at certain periods of the year. To address timing issues, the Commission could require the disclosure be filed at any time during the year but with no more than a 12-month gap between reports.

Given the continually developing and deepening nature of climate science and our understanding of the impacts of climate change on the environment, updates to the adopted framework will be necessary, but should be assessed pursuant to an established timeline – perhaps every 5 years. There must be a "safe harbor" period during the transition to a revised disclosure requirement to allow companies to adapt and, if necessary, gather the appropriate information necessary to comply with the new requirement. The Commission should consider delegating the task of updating or amending the disclosure requirements to the Board responsible for SASB or the task force associated with TCFD – whichever framework is adopted by the Commission.

With respect to Commission assurances for climate disclosures, AAR encourages the Commission not to require the certification, assurance, and internal controls traditionally associated with financial reports. Measurement principles for climate-related data are relatively immature, particularly when compared to financial data. If the Commission were to require traditional certification, assurance, and internal controls, it would trigger significant costs and liability for businesses. Disclosures that are not subject to traditional certification, assurance, and controls, on the other hand, would more accurately reflect the evolving nature of the climate information and assurance infrastructure and of the market's understanding of the impact of climate metrics on company performance.

Finally, in situations where information or data may not be available or where it may be prohibitively expensive to collect, companies should have the flexibility to explain limitations on their ability to include a portion of a disclosure without a standard of liability (as discussed above). This flexibility should apply to all climate disclosures in recognition of differences between companies and industries with respect to climate. Focusing on such material disclosures will also allow companies to provide investors with disclosure that promotes their understanding of the companies rather than unnecessary information, particularly since the current parameters related to such climate disclosure are undefined.

AAR thanks the Commission for the opportunity to provide these comments. Railroads are leading by example in addressing climate change by developing and implementing new technologies, enhancing operating practices, and working with their suppliers, customers, and supply chain partners to create a more sustainable future. AAR believes a reasonable disclosure requirement promoting consistency in climate-related reporting across industries will provide more comparable and reliable information for investors while providing clarity to registrants. Thank you for your consideration.

Respectfully,

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