



MISSOURI FARM BUREAU FEDERATION

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June 17, 2022

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

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

Dear Ms. Countryman:

Missouri Farm Bureau (MOFB) appreciates the opportunity to submit 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").

MOFB is Missouri's largest general farm organization, representing over 143,000 member families. Agriculture is Missouri's largest industry, representing \$93.7 billion in economic activity in our state, ranking 2nd nationally in the number of farms. In addition, many of our agricultural commodities are in the top 10 in comparison to other states.¹

For years, Missouri has been a leader in conservation and climate resilience through its soil and water conservation program, funded by a state sales tax that helps farmers and ranchers leverage their own dollars to put countless conservation practices into use. As an example, our abundant network of farm ponds help store water during dry periods and slow runoff during wet-weather events, aiding in on-farm resilience and yielding environmental benefits for all Missourians. We believe this illustrates that *voluntary, market-based* incentives are helping farmers and ranchers accomplish these milestones, all while making real progress in environmental stewardship.

Missouri Farm Bureau unequivocally opposes the Proposed Rules and believes they 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. When farmers and ranchers cannot afford the overhead required to comply, they may have no choice but to consolidate or exit the business. This would have far-reaching consequences on both rural Missouri and rural America, including further erosion of rural tax bases. Because of population

¹ Missouri Department of Agriculture, "Missouri agriculture at a glance:" [missouriag.pdf\(mo.gov\)](https://www.missouriag.pdf(mo.gov))

decline in rural communities, farmers and ranchers are already bearing a greater share of the tax burden.

Further consolidation will 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 which largely revolve around the agricultural industry, especially through the contributions of small and medium-sized farmers and ranchers. MOFB does not believe the SEC has fully considered, nor has sufficiently sought to mitigate the impact of the Proposed Rules on agricultural communities. We also believe that the Proposed Rules will not only harm farmers and ranchers, but also consumers who are already being negatively impacted by extreme supply chain volatility and inflation. The Proposed Rules will not help with high prices and supply challenges that consumers are facing and will certainly make things worse.

To avoid these consequences, we believe the SEC should withdraw the Proposed Rules entirely, since the unintended effects on rural communities and farms will surely outweigh any social or environmental benefit the Proposed Rules seek to address. In the absence of a decision to withdraw the Proposed Rules, in its final adopted rules (the “Final Rules”), we urge the Commission, at a minimum, to incorporate the following:

- remove the “value-chain” concept from the Proposed Rules;
- remove the Scope 3 emissions disclosure requirement;
- 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;
- ensure the Final Rules do not include location data disclosures for GHG emissions, which may inadvertently disclose the private information of our members.

1. Proposed Rules’ Focus on the “Value-Chain” Concept Will Place Extremely Harmful Burdens and 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 Proposed Rules’ language apparently agrees, as it states: *“Depending on the size and complexity of a company and its value chain, the*

task of calculating Scope 3 emissions could be relatively more burdensome and expensive than calculating Scope 1 and Scope 2 emissions.”²

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, regardless of size, at some point finds themselves in the upstream or downstream activities of a registrant’s value chain. The agricultural supply chain is also extremely diverse in terms of its products and the various roles in which those products play in creating a variety of other products (*e.g.*, corn for livestock consumption as feed versus ethanol production as fuel).

Forcing the agricultural industry to disclose the litany of different ways in which products are used will disproportionately impact our members. Many registrants will receive products from farmers and ranchers at different steps throughout their value chain. In addition, asking registrants to evaluate all the material risks arising from all of the small- and medium-sized farms in their respective value chains will lead to further consolidation of supply lines, harming the nation’s consumers and rural communities in the process.

Further, 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 increased consolidation.

If the SEC moves forward with a Final Rule, it 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 Squeeze Out Small and Mid-Sized 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.*”³ MOFB’s farm and ranch members are deeply concerned about the indirect economic effects of Scope 3 emissions disclosures and the impact on data privacy.

² Securities and Exchange Commission. The Enhancement and Standardization of Climate Related Disclosures for Investors, page 229. March 2022.

³ Securities & Exchange Commission. The Enhancement and Standardization of Climate-Related Disclosures for Investors, page 150. March 2022.

The Proposed Rules will inevitably require registrants to pass the costs and burdens of reporting Scope 3 emissions onto farmers and ranchers. This is particularly problematic for our small- to medium-sized family owned farms and ranches, 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 already must take significant time away from the actual business of farming to demonstrate compliance with a tangled web of federal, state, and local regulations. A farm is not the same as a power plant where a known quantity of fuel produces a known quantity of energy. For example, on any given day, a farm may require more or less water, more or less fertilizer or crop protection products, and more or less diesel fuel necessary to accomplish certain tasks. 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 and ranchers increases with scale.⁴ Meaning, inevitably, a significant cost of the proposed Scope 3 disclosure would be borne by those least able to afford it...small- and medium-sized farms and ranches. Because our small- and medium-sized members often deal with thinner profit margins compared to their large peers, the Proposed Rules could cause a market shift in which registrants prefer to buy products from only those farms that can afford to invest in the controls and processes necessary to track emissions down to the product level. We believe that such a consequence would be disastrous for our small- and medium-sized farms and ranches, lead to further monopolization and vertical consolidation within the agriculture sector which would harm farmers, ranchers and consumers.

In addition, farmers and ranchers that can afford to invest in such technology and controls 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 would reduce a farm's water consumption, or reduced nitrogen fertilizer applications that would improve farming practices and environmental quality will be put aside in favor of emissions reporting and tracking software so that farms and ranches 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.

3. Mandatory Disclosures on Climate-related Targets and Goals Will Discourage Registrants from Using Sustainable Agricultural Products.

MOFB's members are concerned that the Commission's Proposed Rules on climate-related targets and goals could, in turn, discourage companies from setting targets in the first place, diminishing the ability of farmers and ranchers to economically capitalize on climate-smart agriculture opportunities. Given the level of granularity and detail the Proposed Rules require for companies that make such targets and goals, it seems reasonable that this will cause some

⁴ 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/>.

registrants to not set them at all, or cause other registrants to retract previously set targets or goals.

4. The SEC Should Provide Guidance to Registrants on How They Should Exclude GHG Emissions From Manure Management Systems in Their Emissions Disclosures.

The SEC should provide guidance on how registrants should report GHG emissions in light of the prohibition on reporting set forth in Section 437 of CAA.⁵ Section 437 of the CAA states: “[n]otwithstanding any other provision of law, none of the funds made available in this or any other Act may be used to implement any provision in rule, if that provision requires mandatory reporting of greenhouse gas emissions from manure management systems.”⁶ Section 437 prohibits all agencies government-wide—including the SEC—from using funds to require mandatory reporting of GHG emissions from manure management systems.⁷ This prohibition extends to the use of non-appropriations funds (*e.g.*, Section 31 fees) as money received by the government would be deposited in the Treasury per the Miscellaneous Receipts Act, and use of such funds would still be considered a federal appropriation.⁸ Under the Proposed Rules, presumably, registrants would be required to disclose GHG emissions from manure management systems, as the Proposed Rules provide no guidance regarding how a registrant should exclude such emissions from its GHG emissions disclosure and manure management is a significant part of dairy, meat, poultry and protein production.

Manure management systems are ever-present features of farms and ranches, and our members are concerned with the lack of guidance with respect to the CAA prohibition and the SEC’s Proposed Rules. Therefore, MOFB and its members urge the SEC to clearly indicate that registrants operating manure management systems are not required to disclose such GHG emissions and provide guidance to registrants and auditors on how they should exclude such emissions from their respective mandatory GHG disclosures.

5. Location Data About the Source of Emissions Will Create Privacy Concerns for Farmers.

Question 108 of the Proposed Rules seeks guidance if the SEC should require registrants to provide location data for its GHG emissions in the Final Rules.⁹ MOFB strongly urges the SEC not to adopt such a requirement if it proceeds with Final Rules, as this will undoubtedly 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 will inadvertently reveal to the

⁵ Consolidated Appropriations Act, 2022, H. R. 2471—372, 117th Cong. §437 (2022).

⁶ *Id.*

⁷ *See id.*

⁸ Congressional Research Service, Congress’s Power Over Appropriations: A Primer, (Jun. 16, 2022), available at <https://crsreports.congress.gov/product/pdf/IF/IF11577>.

⁹ Securities & Exchange Commission. The Enhancement and Standardization of Climate-Related Disclosures for Investors, page 179. March 2022.

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.¹⁰

6. 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.

If the Commission moves forward with Final Rules, it 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.*”¹¹ 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. 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. Further, 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.

7. Potential Legal Challenges to the Proposed Rules.

In addition to the concerns with the specifics of the proposal, we urge the Commission to strongly consider whether it has the legal authority to implement the Proposed Rules. First, requiring this type of expansive disclosure raises questions under the compelled-speech doctrine. Many registrants publish sustainability reports and are voluntarily trying to meet investor demand for climate-related disclosures. However, the Proposed Rules could likely be viewed as the Commission seeking to compel such speech in the form of SEC disclosures.

¹⁰ 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)).

¹¹ Securities & Exchange Commission. The Enhancement and Standardization of Climate-Related Disclosures for Investors, page 474. March 2022.

Because of the magnitude of the SEC's proposal that cuts across every aspect of the U.S. economy—and beyond—the Commission should consider whether this is a matter for the Congress to act or direct, before embarking on this rulemaking. Further, the SEC should revisit whether the Commission's existing statutory authority granted to it by Congress is sufficient to require the detailed disclosure of climate-related metrics, and in particular, whether the Proposed Rules satisfy the requirements set forth in Section 13(a) of the Exchange Act.¹² MOFB has taken note of, and wholeheartedly agrees with recent letters sent to the Commission by 117 members of the U.S. House of Representatives, 32 United States Senators and 16 governors, questioning the Commission's authority to issue the Proposed Rules and calling for a rescission of this effort. The SEC should strongly consider these and other legal principles before finalizing climate-related disclosure rules.

MOFB appreciates 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. Should you wish to do so, please do not hesitate to contact Dan Engemann, MOFB Director of Regulatory Affairs at [REDACTED] or [REDACTED]

Respectfully,



Garrett Hawkins
President

¹² See generally 15 U.S. Code § 78m(a).