



June 17, 2022

VIA ELECTRONIC FILING (<https://www.sec.gov/rules/submitcomments.htm>)

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

Re: File Number S7–10–22.  
The Enhancement and Standardization of Climate-Related Disclosures for  
Investors, Proposed rule, 87 Fed. Reg. 21,334 (Apr. 11, 2022)

Dear Secretary Countryman:

The Coalition for Renewable Natural Gas (“RNG Coalition”) represents the renewable natural gas (“RNG”) industry in North America. We are a non-profit association of companies and organizations dedicated to the advancement of RNG as a clean, green, alternative, and domestic energy and fuel resource. RNG Coalition’s diverse membership includes each sector of the RNG value chain: waste collection, waste management & recycling companies, renewable energy/gas developers, engineers, banks, financiers, investors, gas/power marketers, gas/power transporters, manufacturers, technology & service providers, environmental advocates, research organizations, organized labor, law firms, consultants, non-profits, airports, municipalities, universities, utilities, and individual ratepayers.

RNG helps reduce and avoid greenhouse gas (“GHG”) emissions. Because of its significant benefits, RNG is (or should be) a key component of decarbonization strategies in both voluntary and mandatory programs to address GHG emissions across jurisdictions and across various economic sectors. As such, RNG Coalition has a substantial interest in ensuring that climate related reporting is clear, credible, consistent, and transparent.

In addition, several of our members are publicly traded corporations and registered with the Securities and Exchange Commission (“SEC”), while others are suppliers or part of the value chain for such companies. Accordingly, we have a significant interest in ensuring that this rule is feasible and does not create undue liabilities for good faith actors.

We appreciate the opportunity to submit comments on the SEC’s proposed rule, “The Enhancement and Standardization of Climate-Related Disclosures for Investors” (“Proposed Disclosure Rule”).

The Proposed Disclosure Rule would require a domestic or foreign registrant to include certain climate-related information in its registration statements and periodic reports, such as on Form 10-K, including (a) disclosures related to climate related risks and transition risks, including how the company identifies and manages those risks, (b) financial disclosures where climate risks impact line items, including expenditures, and (c) GHG emissions.

RNG Coalition generally supports efforts to promote and standardize reporting of climate related information so long as those efforts also provide companies with the tools they need to accurately account for GHG emissions and offsets. Because of the differences across economic sectors, we believe those tools are best developed through a collaboration of government, registrants, investors, and other stakeholders.

Even if the SEC does not prescribe methodologies, we believe that increased transparency will lead to a convergence of methods based on what investors and the market find useful.

However, while we appreciate the phase-in approach, safe harbor for certain emissions disclosures, and exemption from certain reporting requirements for smaller reporting companies, we encourage the SEC to further consider how to best transition to such complex new requirements before imposing significant potential liability on companies acting in good faith with respect to these types of disclosures.

### About RNG

RNG is biogas-derived fuel that is cleaned and conditioned to achieve quality standards necessary to blend with or substitute for geologic natural gas. Every community in America produces waste. As that waste breaks down, it emits methane, which is a naturally occurring, but potent and harmful GHG. RNG facilities capture this methane from existing food waste, animal manure, wastewater sludge and garbage, and redirect it away from the environment, repurposing it as a clean, green energy source. As such, RNG can produce carbon-negative results when fueling on-road vehicles like short- and long-haul trucks, transit buses, and refuse and recycling collection vehicles.<sup>1</sup> During power outages, RNG can be tapped to provide reliable, sustainable energy. This dependability is also why it is used to power essential services for food storage, airports, universities, hospitals, and other important facilities.

RNG is used in the same infrastructure and appliances as conventional natural gas, including in transportation, industrial, heating and electricity applications. According to the U.S. Environmental Protection Agency's ("EPA") GHG Inventory, the largest source of carbon dioxide ("CO<sub>2</sub>") in the United States, and of overall GHG emissions, is fossil fuel combustion primarily from transportation and power generation.<sup>2</sup> RNG is key to reducing these emissions and meeting this Administration's climate change goals. As a significant bonus, RNG also reduces the impacts of organic wastes. Solid waste is expected to grow nearly 70 percent by 2050 due to natural human

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<sup>1</sup> Decomposition of wastes in landfills was identified as a major source of methane emissions in the United States. See EPA, *Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-2020*, at ES-7 (2022), available at <https://www.epa.gov/ghgemissions/inventory-us-greenhouse-gas-emissions-and-sinks-1990-2020>.

<sup>2</sup> See EPA, *Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-2020*, at ES-7 (2022), available at <https://www.epa.gov/ghgemissions/inventory-us-greenhouse-gas-emissions-and-sinks-1990-2020>.

activity. RNG provides a near-term solution for effectively managing this colossal waste issue and getting us on the path to implementing a source of clean, reliable fuel. Regulators and companies have recognized these benefits, making RNG an important component of climate change strategies.

In particular, RNG is currently sold in the transportation fuel market as renewable compressed natural gas (“CNG”) and liquefied natural gas (“LNG”). In 2021, 64 percent of all on-road fuel used in natural gas vehicles was RNG, providing substantial environmental benefits, including GHG emissions reductions.<sup>3</sup> Technological and commercial maturity of medium- and heavy-duty natural gas vehicles have encouraged adoption of natural gas for commercial vehicle fleets, with reported reductions in the total cost of ownership through fuel cost savings and reduced maintenance, in addition to substantial emission reductions.<sup>4</sup> RNG availability enhances the economic value of converting trucking and municipal fleets from diesel to natural gas, which in turn supports investments in supply infrastructure, increasing the value and viability of further conversions.<sup>5</sup>

Indeed, RNG makes up over 95 percent of our nation’s cellulosic biofuel under the Renewable Fuel Standard (“RFS”) program. In establishing the RFS program, Congress, among other things, sought to reduce GHG emissions from the transportation fuel sector by moving away from petroleum based fuels and toward renewable fuels. It did so by imposing a lifecycle GHG emissions reduction requirement to be eligible under the program and establishing “advanced biofuel” categories. The cellulosic biofuel category requires EPA to find the fuel provides at least 60 percent reductions in lifecycle GHG emissions compared to the applicable petroleum baseline.

States, including California, Oregon, and Washington, have also implemented low carbon fuel standard programs that are driving investment in RNG. Using California Air Resources Board data, the average carbon intensity value of RNG in its Low Carbon Fuel Standard program was carbon negative at -44.41 gCO<sub>2</sub>e/MJ for calendar year 2021. Based on this data, RNG use in transportation fuel displaced 3.8 million metric tons of CO<sub>2</sub> equivalent in 2021, which is equivalent to removing CO<sub>2</sub> emissions from more than 427 million gallons of gasoline consumed.

RNG can be used to produce renewable hydrogen and other renewable fuels, such as sustainable jet fuel. In particular, renewable hydrogen at scale could significantly reduce carbon emissions from the heavy-duty transportation sector where electrification is especially difficult or impossible. When renewable hydrogen production is paired with carbon capture and sequestration, the RNG process is ultimately carbon-negative. RNG deployed as renewable hydrogen provides another avenue for zero-carbon and carbon-negative renewable gas in the energy, transportation, and industrial sectors.

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<sup>3</sup> NGVAmerica and RNG Coalition, *Decarbonize Transportation with Renewable Natural Gas*, May 2022, available at <https://ngvamerica.org/resource-center/>.

<sup>4</sup> Bates White Economic Consulting, *Renewable Natural Gas: Transportation Demand*, at 4 (2022), available at <https://static1.squarespace.com/static/53a09c47e4b050b5ad5bf4f5/t/626c52a437caa619cddf533b/1651266213212/Bates+White+RNG+Transpo+Demand+Study+Feb+2022+plus+April+2022+Supplement.pdf>.

<sup>5</sup> *Id.* at 3.

RNG has been a clean source of renewable energy for decades but is growing in importance and popularity today because the urgent need to combat climate change and deal with the emissions of society's growing waste streams. RNG is a tangible and immediately available solution predicated on improving waste management and reducing methane emissions. Governments and companies are embracing RNG because it provides a real, sustainable path to decarbonization. Because the emissions from waste are not optional – but rather a naturally occurring source of GHG that we must address – RNG is an essential part of the energy future, providing meaningful opportunity for companies to decarbonize their operations and supply chains.

Nevertheless, the real and tangible environmental benefits of RNG will only help the country and this Administration reach its climate goals if those benefits are counted in a clear, credible, consistent, and transparent framework.

### Comments on SEC's Proposal

The SEC is proposing to require registrants to provide certain climate-related information in their registration statements and annual reports, including certain information about climate-related financial risks and climate-related financial metrics. 87 Fed. Reg. at 21,335. The SEC's stated goals are to facilitate the collection of this information across all companies and to improve the consistency, comparability, and reliability of climate-related disclosures. *Id.* In so doing, the SEC indicates that it sought to mitigate the burdens on registrants, such as providing phase-in periods, a safe harbor for certain emissions disclosures, and an exemption from certain reporting requirements for smaller reporting companies. *Id.* at 21,337. RNG Coalition generally supports the SEC's stated goals.

Additionally, we understand concerns regarding the content of current climate disclosures and the underlying assumptions. Standardizing the location of these disclosures and providing a general framework to use when making such disclosures are laudable efforts. However, it is unclear how these disclosure requirements apply to companies that are already engaged in reducing GHG emissions and part of the climate solution. As noted above, RNG provides significant GHG emissions benefits, but the proposal provides little guidance or discussion on reporting of these GHG benefits. At a minimum, RNG Coalition believes that the SEC should provide updated guidance on how to elicit better disclosure about climate-related risks under its current regulations. 87 Fed. Reg. at 21,348 (Request for Comment 4).

RNG Coalition believes, and consistent with existing regulatory programs, GHG emissions and benefits can be reflected in direct emissions calculations. Although framed as a disclosure requirement, it appears that many of the SEC's proposed requirements are based on an anticipation that the proposed rule will have an impact on company practices, including how registrants oversee, manage, assess, and mitigate climate risk and the impacts of climate change, as well as the data they collect and how they assess and validate that data. The RNG industry is already subject to various regulation, including reporting requirements, and participates in voluntary programs crafted through significant stakeholder engagement, creating potential inconsistencies with the requirements in the SEC proposed rule. Thus, we believe an extra measure of flexibility is needed through transitional periods. Even if the SEC finalizes the proposal here, further guidance should be provided before imposing potential significant liability on companies for disclosures that are otherwise consistent with established programs and practices.

The SEC’s proposal is ambitious in scope and potential impact. To the extent that scope is narrowed prior to adoption, RNG Coalition believes the SEC should focus its efforts on the provision of concise and financially material climate change information by issuer companies for investors, while maintaining sufficient notice and “ramp-up” time to help companies minimize compliance costs and avoid litigation over disagreements in reporting. Because of the complexities associated with the required disclosures, RNG Coalition also urges the SEC to reconsider whether and when the disclosures must be filed rather than furnished, to provide for a smoother transition.

1. Because of the complexity and uncertainty involved in climate-related disclosures, the SEC should provide protections to companies against potential liability for disagreements over disclosures.

a. Furnish versus file

In the proposal, the SEC acknowledges the complexity and uncertainty involved in assessing climate risks. Nonetheless, the SEC is requiring the disclosures to be “filed.” This exposes companies to substantial liability risk. Liability could be imposed for material misstatements or omissions contained in reports and other information “filed” with the SEC. The SEC only states that requiring the disclosures be filed, rather than furnished, provides more assurances to the investors. But the goal of the proposal is to provide greater transparency and standardization of climate related disclosures. Climate change disclosures are evolving and may not be sufficiently mature to support the more rigorous liability structure for “filed” information.

The SEC argues that requiring the information be filed would protect against “the applicable disclosures being *perceived* as less reliable by investors.” 87 Fed. Reg. at 21,449 (emphasis added). But such perceptions must be weighed against the uncertainties involved in these determinations. Moreover, companies should be able to rely on disclosures they already make under state or federal law, which should provide sufficient assurances to investors. Indeed, if, as the SEC contends, voluntary frameworks and protocols are being widely used, it would appear that this is because it gives investors some modicum of assurance. There is a difference between standardizing reporting and potentially opening up companies to significant liability risks in disputes over complex analyses.

The SEC also considered requiring disclosure about any assurance obtained over GHG emissions disclosures. 87 Fed. Reg. at 21,451. This could be added to a “furnish” requirement to allow investors to make a determination as to the reliability of those assurances.

b. Scope of regulated entities

The SEC considered but rejected requiring the proposed disclosures only from larger registrants. 87 Fed. Reg. at 21,448. Given the breadth of and the complexities associated with the proposed climate change reporting framework, compliance costs are likely to be significant. The SEC could have explored additional alternatives to who should be required to file. While the SEC engaged in an analysis of who was reporting climate-related information, it does not appear to tie that into those industries that are more likely to be at risk from climate change impacts. Such an analysis could assist companies in determining materiality of these risks.

While standardizing climate related disclosures is useful and we generally understand the potential benefits for providing information regarding material physical risks on a company's facilities (if not already required under current SEC requirements), the SEC fails to provide adequate explanation why *all* registrants should be required to provide *all* the climate-related disclosures that would be required under this rule, including, in particular, GHG emissions beyond what is already reported. The SEC appears to imply gaps in EPA's GHG reporting, but EPA estimates that the required reporting covers 85-90 percent of *all* GHG emissions from over 8,000 facilities in the United States. 87 Fed. Reg. at 21,414. The SEC also notes at least 17 states have specific GHG emissions reporting requirements. *Id.* As the SEC notes, companies subject to these requirements may already have processes and systems in place to measure and disclose their emissions. *Id.* Again, the SEC notes data gaps, but ignores the reasons why these laws focus on these high emitters they regulate, which may be connected to transition risks for future regulation. *Cf. id.* at 21,434. The SEC's proposal fails to connect these dots or explain why expansion of these GHG emissions reporting *requirements* in SEC filings provides benefit *in understanding climate risks to the companies*, aside from being of some interest to some investors.

Significantly, the SEC's proposal does not address activities that are intended to reduce GHG emissions in response to regulatory requirements. As noted above, state and federal incentives promote use of RNG, and obviously changes to these programs could have impacts. However, these are also programs with various opponents often raising unsubstantiated concerns based on questionable assumptions. While the SEC raises concerns with incomplete and varying reporting, calling them "market failures," 87 Fed. Reg. at 21,428, criticisms with respect to such complex and uncertain assessments do not necessarily mean that the companies are being misleading. Indeed, the SEC's reference to potential "green-washing" (87 Fed. Reg. at 21,353, 21,429) raises significant concerns as to purpose of the proposed rule, as these are often value judgments and could lead these disclosures to be used against companies, regardless of whether the companies are acting in good faith and have a credible basis for their disclosures.

c. Safe harbor provisions

If the SEC is going to require all the information in the proposal, it should broaden the safe harbor provisions. Safe harbors have been proposed for Scope 3 emissions and forward-looking statements only. Safe harbors also should apply to governance information and disclosed results of scenario analysis. These safe harbors should provide protection from both third-party litigation and from action by the SEC itself.

2. Because of the complexity and uncertainty involved in climate-related disclosures, the SEC should provide for a smoother transition to imposing all the requirements in the proposal.

Although the SEC's proposal provides for a phased approach to the climate-related disclosures, many companies may not have the infrastructure in place or the resources to prepare all the climate-related disclosures under the proposal. The SEC recognizes as much. 87 Fed. Reg. at 21,411 ("We recognize that many registrants may require time to establish the necessary systems, controls, and procedures to comply with the proposed climate-related disclosure requirements."). The SEC should reconsider the timing of the disclosure requirements and provide clearer and smoother transition rules.

Existing emission reporting schedules and the proposed rule's filing timelines, which would be based on a fiscal year, do not align. 87 Fed. Reg. at 21,373; *see also id.* at 21,381 (Request for Comment 97) and 21,382 (Request for Comment 105). For example, reporting obligations are typically done in calendar year not fiscal year, and the SEC acknowledges that estimates may be needed to report data for the fourth quarter fiscal year. To avoid the potential for undue reporting burden and uncertainty, the SEC should consider options for registrants to report data consistent with other existing reporting timelines, even if this may be behind a deadline based on a fiscal year. Adjusting the deadlines could also give companies more time to put the infrastructure in place to comply with the SEC's new requirements. Alternatively, the disclosure requirements for the first several years should be to furnish only (rather than "file") to give companies time to put their processes in place and better understand the disclosure requirements.

Finally, the SEC's proposal would require disclosure of information related to historical fiscal years (See, e.g., Request for Comment 55-57, 114, 197-201). While we do not dispute that considering trends in climate risks may be helpful information, such information was not previously required to be disclosed and the information required may not have been collected by companies. The SEC states that a registrant would not be required to provide historical GHG emissions information if "it was not required to and has not previously presented such metric for such fiscal year and the historical information necessary to calculate or estimate such metric is not reasonably available to the registrant without unreasonable effort or expense." 87 Fed. Reg. at 21,384. However, the initial years should not require historical reporting where companies may not have had processes in place to obtain the information required prior to the SEC finalizing the proposal. Whether the information is "reasonably available" is not an adequate standard, and the SEC provides no explanation for why such information is necessary from time periods prior to the start of any new requirements.

3. The SEC must analyze the risk of competitive harm across different sectors prior to imposing requirements that may reveal proprietary information. (See, e.g., Request for Comment 9, 18, 19, 22, 24, 34-41, 42-51, 111)

The SEC would propose to require disclosure of a significant amount of information with respect to a company's operations, including their governance (See, e.g., Request for Comment 20). The SEC in passing recognizes that the required disclosures may require release of proprietary information that could cause competitive harms to the registrants but does not sufficiently address it. *See, e.g.*, 87 Fed. Reg. at 21,444 ("Another potential indirect cost is the possibility that certain provisions of the proposed rules may force registrants to disclose proprietary information. Under the proposed rules, registrants would be required to disclose a wide range of climate-related information, including potential impacts on its business operations or production processes, types and locations of its operations, products or services, supply chain and/or value chain. Registrants would be further required to disclose whether they have emissions-related targets and metrics or an internal carbon price, and if they do, what they are. To the extent that a registrant's business model or strategy relies on the confidentiality of such information, the required disclosures may put the registrant at a competitive disadvantage."). Companies should be able to protect against disclosure of internal company processes.

As noted above, it is unclear how the SEC's proposal would address activities that are intended to reduce GHG emissions in response to regulatory requirements. For example, it would

be unreasonable to require companies to monitor and report any opposition bills or requests for administrative action that could impact these programs and thereby may have an effect on the company's business plans. While the SEC notes that it is not requiring disclosure of information about "any climate-related opportunities," making such disclosures optional, it is unclear how transition risks and climate-related opportunities apply to operations intended, at least in part, to address GHG emissions, among other environmental benefits. These concerns are exacerbated by the SEC's proposed requirement to provide information on the company's management. At a minimum, the SEC should provide clarifications and guidance on identifying transition risks and should account for whether such disclosures may reveal proprietary and confidential business information.

4. The SEC should reconsider and provide additional guidance with respect to several aspects of the proposal.

The SEC proposes to require climate-risk related disclosures related to "physical risks" and "transition risks." The proposal outlines the information that would generally be required. RNG Coalition notes the following concerns and suggestions with these proposed regulations.

- a. Scope of Climate-related risks

(Request for Comment 8) Under the SEC's proposed rule, a registrant would be required to disclose whether any climate-related risk is reasonably likely to have a material impact on a registrant, which may manifest over the short, medium, or long term. 87 Fed. Reg. at 21,351. However, the SEC is not proposing a specific range of years to define short-, medium-, and long-term time horizons in order to allow flexibility for a registrant to select the time horizons that are most appropriate to its particular circumstances. *Id.* While RNG Coalition supports providing flexibility, this makes little sense in light of the SEC's stated goal to standardize reporting. Such open-ended terms would appear to be unhelpful for investors to make any type of comparisons. We believe the SEC should provide time frames for short-, medium- and long-term, otherwise companies are likely to have different definitions. To provide flexibility, the SEC could provide a range and options to at least give companies some parameters, allowing companies to revise and disclose those timelines if needed for their particular sector or operations.

The time frames, however, must be reasonable. The SEC requested comments on whether they should specify time frames, providing examples that range up to 50 years for long term impacts. 87 Fed. Reg. at 21,352. As the SEC notes, a materiality determination with regard to future events requires an assessment of both the probability of the event occurring and its potential magnitude, or significance to the registrant. *Id.* at 21,351. The SEC further notes that this determination "may be difficult." *Id.* at 21,352. More than mere difficulty, the SEC should recognize that the further into the future companies must consider events and risks, the more uncertainty is introduced. To that end, the SEC should put in place safeguards to limit liability for good faith attempts to ascertain long term impacts, especially from "Monday morning quarterbacking" litigation.

(Request for Comment 17) RNG Coalition supports lifecycle and value chain analysis that looks not only at direct impact, but also at upstream and downstream impacts. However, as an industry with significant experience attempting to quantify those impacts, we know all too well



how difficult it can be to obtain operations information along the company's entire value chain. While our members typically obtain rights to collect and share this information in regulatory filings through their gas contracts, we recognize that many industries and sectors have not had to make these provisions part of their existing contractual relationship. Further, although the RNG industry has incorporated these contractual provisions for, for instance, reporting to EPA, our members have not necessarily prearranged for the value chain information disclosures the SEC proposes to require. As such, the SEC should allow additional time considerations and confidentiality protections for upstream and downstream reporting.

(Request for Comment 30) The SEC proposes to require a registrant to describe the resilience of its business strategy in light of potential future changes in climate-related risks, including requiring disclosure of scenario analysis when used. 87 Fed. Reg. at 21,356. Scenario analysis is a process for identifying and assessing a potential range of outcomes of future events under conditions of uncertainty. *Id.* If a registrant uses a scenario analysis or other analytical tool, the SEC would require disclosure of such information. However, recognizing not every registrant conducts scenario analysis and such analysis "may be costly or difficult," it is not requiring that registrants conduct scenario analysis. *Id.* RNG Coalition agrees with the SEC that such analysis is not conducted by many and would present significant challenges to conduct for some registrants. *Id.* at 21,449. It supports the SEC's decision not to require scenario analysis for purposes of SEC disclosures. If a scenario analysis is used by the registrant, we believe general information of the model used is sufficient information to investors.

b. Defining Transition Risks

The SEC defines "transition risks" to mean "the actual or potential negative impacts on a registrants' consolidated financial statements, business operations, or value chains attributable to regulatory, technological, and market changes to address the mitigation or, or adaptation to, climate-related risks." 87 Fed. Reg. at 21,350. The SEC provides a long list of potential risks that might fall under this provision. *Id.* The SEC asserts this information would allow investors to understand the nature of the risk and the registrant's actions or plan to mitigate or adapt to the risk. But this definition is broad. While it makes sense to require actual legislative or regulatory changes and pending litigation that may impact a company's operations, these are likely already reported, and it is unclear at what point a company must identify possible changes or how to identify and assess changes in consumer preferences. The SEC should not require companies to engage in any additional legal or market analysis that it is not otherwise conducting to respond to an overly broad definition of "transition risks." At a minimum, the SEC should provide further examples and guidance on identifying and reporting transition risks (*see, e.g.*, Request for Comment 10).

c. Internal Price of Carbon

(Request for Comment 26, 27, 28 and 29) The SEC would require a registrant to disclose information about an internal carbon price if they maintain one sufficient to allow an investor to determine whether the internal pricing is reasonable. 87 Fed. Reg. at 21,355-21,356. The SEC would not require registrants to maintain an internal carbon price or to mandate a particular carbon pricing methodology, recognizing that many registrants do not track this information and a carbon market on which to base such a price may not exist in many contexts. *Id.* at 21,356. The SEC recognizes that this "necessarily would include assumptions about future events" and the "carbon

price applied should not be viewed as a promise or guarantee with regard to future costs to the registrant of GHG emissions.” *Id.* While it is unclear if this requirement could or would reveal CBI, RNG Coalition does believe there is benefit in providing more transparency as to how companies calculate and utilize carbon prices. There is federal and state guidance outside the SEC as to how to assess costs of carbon that companies and investors can use, but it is often unclear how companies calculate carbon prices and utilize those prices. Providing more transparency could lead companies to move toward standardization of methods, which should benefit the market.

5. The SEC should not initially impose a specific methodology for calculations but rather require companies to identify or explain their methodology.

a. Scope 1 and Scope 2 Emissions

Scope 1 and Scope 2 emissions reporting provides important and beneficial climate related information; however, several credible but different methodologies exist and are prevalent in different voluntary and government programs. As such, the SEC’s goal as it pertains to Scope 1 and Scope 2 emissions reporting should be transparency, rather than initially imposing a specific methodology. Overtime, the SEC could place greater parameters around the type of acceptable methodologies to better standardize accounting methodologies. However, a hastened standard adoption could do more harm than good. This is especially true for those companies that already participate in programs that require or include GHG emissions determinations, such as California’s low carbon fuel standard. If companies are already required to disclose GHG emissions or are utilizing a voluntary program, they should be able to use those estimates and refer to those programs, which should give investors sufficient information to understand the company’s methodology and make decisions.

While commenters may have indicated choosing one approach could help produce consistent and comparable results, we do not agree that they necessarily would be reliable. 87 Fed. Reg. at 21,376. Where there is no one way to make these determinations, arbitrarily choosing one protocol over another may create confusion, rather than clarity and there may be legitimate disputes over aspects of that methodology. For example, the SEC refers to protecting against “greenwashing” as the need for its requirements. *Id.* at 21,376. While the Federal Trade Commission has provided guides to protect against such claims, the SEC could play an important role in increasing transparency. At its core, greenwashing is a practice of deception and misrepresentation. Scope emissions reporting and methodology disclosure helps combat greenwashing with sunshine. Unfortunately, the term greenwashing has become some groups’ favorite accusation against any company, technology, or energy resource they disagree with or dislike. The SEC should be vigilant against encouraging a new green McCarthyism and instead place value on transparent demonstrations of actions, innovations and improvements that directly benefit the environment, especially reducing GHG emissions.

The SEC considered requiring a specific protocol for GHG emissions disclosures, such as the GHG Protocol. 87 Fed. Reg. at 21,449. The SEC noted significant drawbacks with such an approach, including creating inconsistencies with how companies report organizational boundaries elsewhere in their financial statements, reducing innovation in driving the most appropriate forms of disclosure, and potentially creating problems in the future if the protocol changes. *Id.* Most important, the SEC acknowledges that such an approach would “limit flexibility for registrants

and thus reduce their ability to report emissions in a manner that is tailored to their specific circumstances.” *Id.* We agree with SEC about these concerns. As such, RNG Coalition opposes the alternative considered to require a specific methodology (such as GHG protocol) for calculating GHG emissions.

The RNG industry is already participating in various regulatory and voluntary programs that involve GHG emissions determinations. Each calculate them differently and the GHG Protocol does not necessarily take a similar approach. Thus, while some of our members may decide to utilize the GHG Protocol methodology, the SEC should provide sufficient flexibility for companies to identify the appropriate approach and minimize its burdens, so long as it identifies the basis for its determinations.

For example, RNG promotes the capture of methane from organic wastes, which otherwise would be vented, flared, or enter into the atmosphere unabated, which has significant implications for addressing climate change. Accounting methodologies often consider biogenic emissions as carbon neutral, which reduces a company’s Scope 1 emissions (or possibly Scope 2 if using RNG for electricity generation). While we believe this is the best approach based on the best available science for RNG, some have argued against such accounting for certain biogenic emissions, despite the fact that it has been generally accepted and has long been in use. It does not appear that the SEC has done an independent assessment of these methodologies, noting only comments that indicate GHG Protocol is widely used. Nor is the SEC in a better position to identify proper accounting methodologies than these other regulators or programs. As such, the SEC should not tie the hands of companies by requiring a particular methodology.

As another example, methodologies currently in use differ as to how to calculate avoided emissions. As with biogenic emissions, avoided emissions are accounted for in some programs against total emissions (i.e., Scope 1), which RNG Coalition supports. For example, when assessing a company’s carbon intensity score, the California Air Resources Board accounts for avoided methane emissions from diversion of wastes to anaerobic digestors. This is a key benefit of RNG. On the other hand, some may report it as offsets or part of Scope 3, and, in such cases, companies should be allowed to report them. Similarly, the SEC should expand, clarify, or complement the definition of renewable energy credits (e.g., to acknowledge and account for renewable thermal credits, RINs, LCFS credits, etc.) that can qualify toward Scope 1 emission reductions. How companies utilize RNG may depend on the economic sector and the specifics of the company’s operations. As such, RNG Coalition supports providing at least initial flexibility and giving companies more time to work with investors, rather than prescribe specific methodologies and potentially impose significant liability on companies because of potential disagreements around reporting of these RNG benefits.

Calculation of GHG emissions, particularly lifecycle emissions, continue to evolve. The SEC should work with other agencies that are addressing these issues to provide for a more consistent approach that provides the regulated industry with more certainty while reducing their regulatory burdens. While the SEC indicates that many commenters recommended basing any GHG emissions disclosure requirement on the GHG Protocol and we support looking to the GHG Protocol’s concept of “Scope,” *id.* at 21,344, we support the SEC’s proposal not to require any specific methodology.

b. Scope 3 emissions (Request for Comment 98-104, 106, 133-134)

The SEC also proposes to require Scope 3 GHG emissions disclosures, if material, or if the registrant has set a GHG emissions reduction target or goal that includes its Scope 3 emissions. Often, Scope 3 emissions provide “the rest of the story” not seen or covered by Scope 1 and Scope 2. As such, an ideal and holistic view on GHG impact and climate related information from a company should include its full value chain. Inherent in lifecycle assessment, however, is a reach beyond a company’s “four walls” into the purview and privacy of every company and contractor they do business with. This makes Scope 3 emissions especially difficult to monitor and, as the SEC acknowledges, especially vulnerable to overlap and double counting. 87 Fed. Reg. at 21,388.

In general, ‘requiring’ Scope 3 GHG emissions disclosures from companies that have set a GHG emissions reduction target or goal that includes its Scope 3 emissions makes the most sense. In this instance, the SEC is acting as a third-party clearing house for companies that have elected to make and demonstrate progress on Scope 3. Transparency in how those goals or targets are being met is helpful information – although we caution that these filings may be duplicative with other regulatory filings, especially at the state level.

Consistent with our statements above, however, although RNG Coalition certainly supports standardization of reporting, we believe this is likely to happen as reporting occurs and the market reacts. Transparency, not one specific methodology, should be the goal – especially to avoid imposing potential significant liability on companies over Scope 3 emissions disclosures.

The SEC would also require such disclosures if Scope 3 emissions are “material.” The SEC provides no guidance as to how to determine if Scope 3 emissions are material, and the SEC acknowledges that it may be difficult to obtain the necessary information to assess Scope 3 emissions. We believe the SEC should provide further guidance on how to determine “materiality” or reconsider the best approach for when to require disclosure of Scope 3 emissions for registrants in other contexts or simply provide a framework for those companies that do seek to report such emissions. Indeed, SEC’s requests for comment illustrate how more information is needed, *see, e.g., id.* at 21,381 (Request for Comment 93 - asking how GHG emissions disclosures would be used by investors).

To the extent Scope 3 emissions data is required, it should be carefully bounded. Scope 3 emissions is broadly defined to include the company’s entire value chain. Better defining the value chain at issue or providing more guidance to companies as to how to identify whether the impacts would be material is needed. In addition, although RNG Coalition believes all climate-related disclosures should be furnished not filed, this is particularly true for Scope 3 emissions. Registrants of different sizes and sophistication will have different resources available to them to obtain the information needed. Because of the likely need for estimates and the uncertainties in identifying these emissions, including this information as “furnished” not “filed” would help limit the company’s liability exposure. Even though the SEC proposes a delayed compliance date for Scope 3 emissions, the SEC recognizes the challenges in reporting these emissions. 87 Fed. Reg. at 21,390. If, as the SEC suggests, these challenges “may recede over time,” the SEC can then consider requiring additional assurances, such as requiring the information be “filed.” *Id.*

For similar reasons, RNG Coalition supports providing safe harbor provisions for reporting companies and exemptions for small reporting companies. In the alternative to limiting Scope 3 emissions disclosures to companies that have set goals or targets including these emissions, the SEC should broaden these exemptions to require material disclosures only from those companies with the resources and possibly significant emissions in this regard. At a minimum, the SEC should clarify and provide guidance as to when Scope 3 emissions may be “material” beyond those companies that have set goals or targets for GHG emissions reductions based on such emissions.

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RNG Coalition appreciate the opportunity to submit these comments on the SEC’s Proposed Disclosure Rule. Thank you for your consideration. If you have any questions on these comments, please do not hesitate to contact us.

Respectfully submitted,

A handwritten signature in cursive script that reads "David Cox".

David Cox  
General Counsel  
Coalition for Renewable Natural Gas