Agricultural Groups Seek Extension to Commenting Period Regarding Proposed SEC Rule

Michael C. Zahrt
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AUTHORS/ CONTRIBUTORS
Michael C. Zahrt

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Recently, more than a hundred different agricultural interest groups have asked the Securities and Exchange Commission (SEC) for a 180-day extension to submit comments on a proposed rule that would require publicly traded businesses to report climate efforts. The proposed rule, entitled "The Enhancement and Standardization of Climate-Related Disclosures for Investors," has sparked concerns among those in the agricultural industry because of the potential impact on farmers and ranchers.

Under the proposed rule, registrants would need to provide specific climate-related information in both their annual reports as well as their registration statements. This includes information regarding climate-related risks that are considered to "have a material impact on its business, results of operations, or financial condition." Additionally, registrants would need to disclose information regarding greenhouse gas emissions, as well as required climate-related financial metrics.

According to the proposed rule, the goal of the disclosure is to "provide consistent, comparable, and reliable—and therefore decision-useful—information to investors to enable them to make informed judgments about the impact of climate-related risks on current and potential investments."

However, the proposed rule has raised a number of concerns, as explained in a letter to the SEC signed by numerous agricultural organizations, including the Michigan Farm Bureau, Michigan Pork Producers Association, and Michigan Soybean Association. For starters, the organizations are seeking an extension until November 16, 2022 to respond to the rule. As it stands, they have only been given 39 days to examine the 510-page proposed rule.

Furthermore, the letter highlighted concerns related to the proposed rule's "expansive treatment" pertaining to the reporting of "Scope 3" greenhouse gas emissions. According to the letter, there are worries that the proposed rule will cause "certain reporting obligations, technical challenges, significant financial and operational disruption and the risk of financially crippling legal liabilities.” The letter also says that the changes would impact the ability to produce food, fiber, and fuel, while also affecting the country’s agricultural supply chains.

The proposed rule is positioned to cause additional changes. For instance, registrants would be required to describe their risk-management process as it relates to climate-related risks, as well as the oversight and governance by both board and management of these risks. Additionally, the rule would necessitate that registrants disclose information about the impact of these risks on their business and consolidated financial statements, among other potential changes.

The letter sent to the SEC is dated April 26, and at this point, it remains to be seen if there will be an extension on the commenting period. We will continue to monitor this situation, if you have questions about how this rule may affect your business, contact a member of our Ag Law team.