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Clerk of the Board
California Air Resources Board
P.O. Box 2815
Sacramento, CA 95812

Submitted electronically via: <https://ww2.arb.ca.gov/public-comments/public-comments-california-climate-disclosure-information-solicitation>

**RE: POET COMMENTS ON THE IMPLEMENTATION OF CALIFORNIA'S
CLIMATE-DISCLOSURE LEGISLATION UNDER CALIFORNIA SENATE BILLS 253
AND 261, AS AMENDED BY SENATE BILL 219**

Dear CARB:

POET appreciates the opportunity to provide comments on the California Air Resources Board's ("CARB") implementation of California's Climate-Disclosure Legislation: Senate Bills 253 and 261, as amended by Senate Bill 219 ("Climate Disclosure Rules"). Because of the complexity and breadth of the Climate Disclosure Rules, CARB published a [detailed list of questions](#) for commentors to address. POET offers comments on a subset of those questions below.

I. IMPLEMENTATION AND ENFORCEMENT

POET is concerned with the current lack of published guidance for complying with the Climate Disclosure Rules. Under the Rules, an entity that "does business in California" must collect data during 2025 for disclosure in 2026. But the term "does business in California" is undefined. Furthermore, the broad and detailed nature of CARB's request for public comment indicates that the agency has not yet determined how to set up and administer foundational pieces of the Climate Disclosure Rules, leaving regulated (or potentially regulated) parties in the dark regarding the rules several months into the first year for which reporting data is required. CARB's delay in formulating and promulgating guidance raises serious concerns about both the agency's preparedness to receive and review thousands of reports in 2026 and its expectations regarding compliance by potentially regulated entities.

Perhaps recognizing compliance challenges in the absence of guidance, CARB recently released an [enforcement notice](#) stating that it will "exercise its enforcement discretion" and not take

enforcement against entities that submit 2026 reports and “demonstrate good faith efforts to comply with the requirements of the law.” Although CARB’s announcement is a step in the right direction, it leaves unresolved the most basic question as to which entities must even collect and report data, and it introduces but does not define the subjective term “good faith efforts.” Moreover, the announcement does not alleviate the burden on entities already committing significant resources to developing protocols they may need to materially alter or abandon altogether later this year.

POET understands that CARB is required by law to adopt regulations by July 1 and cannot delay implementation without authorization. Nonetheless, in view of the significant delay in releasing the regulations, there are several steps CARB can take to avoid the unnecessary expenditure of resources by potentially covered entities. First, CARB could announce that it will not enforce the rules at all for the 2026 reporting year. Second, CARB could announce that it will not enforce the rules against entities who reasonably believed they were not regulated entities prior to the adoption of regulations. Third, CARB could announce it will assert only a *de minimis* penalty against entities who choose not to report 2025 data. Each option serves the purpose of allowing companies more time to understand the rules once adopted and reducing the initial resource drain on CARB.

If CARB decides to maintain its current stance, POET urges CARB to adopt a safe-harbor approach to enforcement for the 2026 reporting year, accepting third-party verification as *prima facie* evidence of “good-faith efforts” to comply. Not only would a safe-harbor rule provide a measure of comfort to companies navigating the unclear landscape of the Climate Disclosure Rules, but it would also help CARB manage resources when reviewing the 2026 reports. POET also encourages CARB to establish a permanent safe-harbor rule in the final regulations to be released by July 1, 2025.

II. APPLICABILITY

CARB Should Exclude Private Companies from the Climate Disclosure Rules

POET respectfully urges CARB not to subject privately held companies to the requirements of the California Climate Rules. By remaining private, a company’s owners or shareholders are often already involved in decision-making and can exert control over environmental policies or practices, meeting a key policy objective of the Climate Disclosure Rules. This is not the case with publicly traded companies, where a broad shareholder base has significantly less involvement in day-to-day operations and requires public disclosure to meet the policy goals of the Climate Disclosure Rules. Forcing private companies to disclose operational data unfairly punishes privately held companies while providing minimal support to California’s policy objectives.

Relatedly, CARB asks how it should, in a cost-effective manner, identify private companies “doing business in California” and subject to the rule’s revenue threshold. The simple answer is that there is no easy way of obtaining this information. There are websites that estimate private company revenues, but it is unlikely CARB would find an accurate and cost-effective way to identify all private companies meeting the applicable requirements. Accordingly, regulatory burdens are likely to fall unevenly upon private companies with proactive and responsible compliance functions. A more reasonable and less resource-intensive approach would be for CARB to exclude private companies from the Climate Disclosure Rules.

CARB Should Clarify the Reporting Requirements for Related Entities of Covered Entities

POET asks that CARB narrowly interpret the GHG Protocol and adopt Climate Disclosure Rules clarifying that corporate entities with no relation to California be excluded from reporting requirements under the Climate Disclosure Rules. For example, a parent company with two subsidiaries covered by the Rules and eight subsidiaries with no relationship to California should not be required to report emissions for all ten subsidiaries. There is no legitimate policy purpose served by requiring emissions disclosures related to corporate operations that bear no relationship to services and products sold in California, and which do not impact the interests of California consumers or investors.

III. SB 261

POET urges CARB to place reasonable limits on the range of entities required to report “climate-related financial risks” and allow flexibility for those who are required to report. The term “climate-related financial risks” is both vague and broad, providing little guidance as to what may or may not be covered by the term. Moreover, SB 261 places undue burdens on businesses, particularly privately held companies, by compelling them to publicly engage in speculative speech and disclose sensitive information that may not be relevant to their operations or the public interest. It is unclear how such broad reporting requirements align with California’s policy goals and, as such, POET urges CARB to limit the requirements.

The First Amendment protects both the right to speak freely and the right to refrain from speaking at all. SB 261 takes away one half of that protection. Instead, it forces entities, whether public or private, to publish speculative assessments of their future climate-related risks and opportunities and leaves them vulnerable to uneven and potentially arbitrary enforcement. Further, SB 261 compels companies to disclose sensitive business information that they may not wish to make public. Companies may have legitimate business reasons for not disclosing certain strategic or financial information and being forced to do so undermines their autonomy. This is especially true for private companies who are under no duty to make commercial information available to potential investors or current shareholders.

POET also respectfully requests CARB provide flexibility in making the reports envisioned by SB 261. As with the reporting requirements under SB 253, companies will almost certainly need more time to adapt and comply with the ambiguous and delayed guidance. POET therefore requests that CARB extend the relief set out in the December Enforcement Notice to SB 261 or otherwise allow covered entities to meet less stringent requirements initially. Finally, POET requests that CARB explicitly affirm that covered entities may disclose in accordance with the 2017 TCFD recommendations.

IV. CONCLUSION

POET appreciates the opportunity to comment and looks forward to working with CARB to make its Climate Disclosure Rules fair and successful for both California and companies doing business in California. If you have any questions, please contact me at Josh.Wilson@POET.com or (202) 756-5612.

Sincerely,

A handwritten signature in black ink, appearing to read 'JWP', with a stylized flourish at the end.

Joshua P. Wilson
Senior Regulatory Counsel